

Chapter 10 (pr)

Recognition, Politics of Difference, and the Institutional Identity of Peoples

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In this paper, I explain in very broad terms how I see the relationship between issues of justice and issues concerning the recognition of peoples. In order to achieve this task, I sketch a crude version of a theoretical picture that I develop in finer details in my most recent book (Seymour 2008). According to this approach, it is important to move away from the traditional comprehensive versions of liberalism developed by Kant and Mill and embrace a strictly political version that concentrates on the institutional identities of persons and peoples. It is precisely by considering the institutional personality of agents that we are in a position to acknowledge the presence of peoples as distinct moral agents in the political realm. Our capacity to incorporate within a liberal framework politics of recognition for peoples also depends on the possibility of distinguishing between the structure of culture and the character of culture for any given people. Politics of recognition are meant to secure the structure of the culture of peoples and not their particular character. This is a constraint that must be imposed on any liberal approach based on the principle of neutrality. I then proceed to develop the analogy between the difference principle, as instantiating a theory of distributive justice in its application to persons and peoples, and the politics of difference also applied to persons and peoples, as an instance of the theory of recognition. By doing this, I hope to underline the coherence of an approach that seeks to include the recognition of different cultures within the general framework of a theory of justice. I then show that political liberalism can provide a justification for the self-determination of peoples, because all agents that show respect for others in the political realm can be treated as moral agents and be entitled to develop their institutional identity. Since the right for a people to develop its economic, social, cultural, and political institutions is precisely the right to self-determination, it follows that we are able to derive the right to self-determination from the main premises of political liberalism. I end the paper by showing how to account, in very broad terms, for the relationship between recognition and self-determination.

Political Liberalism and Politics of Recognition

The concept of recognition is intimately related to the notion of justice in at least two ways. First of all, when cast within the general framework of political liberalism, the theory of

justice is based on the fundamental principle of “respect for others,” understood as a political stance taken in the political realm toward any agent having a distinct institutional personality. The “others” are not only individuals but also, more generally, any agents, including peoples, that have a distinctive institutional personality. Now, respect for others is certainly a form of recognition. Therefore, in this general sense—for political liberalism—issues of justice are issues of recognition. Consequently, political liberalism is itself a theory of recognition. And if recognition functions within a liberal theory as a basic political principle that can be applied at the social, cultural, and economic levels, it is not too different from the theoretical position adopted by Axel Honneth (1996; 2007; 2008; 2009). Honneth sees socioeconomic distributive issues as recognition issues in this deep fundamental sense. So even if, as a proponent of Critical Theory, Honneth is critical of liberalism, his contribution is nevertheless very important for liberalism. As I see it, it is closely related to the fundamental assumptions of political liberalism, understood as a theory based on the principle of toleration-as-respect for others.

Anyone who wishes to develop a theory of recognition must in some way take a stand in the debate between Honneth and Nancy Fraser. But let us first note that despite the many differences between the two accounts, both authors agree that recognition is not opposed to redistribution; their two perspectives form integral parts of a theory of justice. Also, the concept of recognition must not be construed as a strictly psychological notion and be confined only to the interactions that take place between individuals. Just as we distinguish between tolerance as a psychological attitude and the political principle of toleration, we should also distinguish between recognition as a psychological attitude and the various approaches to the politics of recognition, understood as a set of institutional measures designed to accommodate persons and peoples. I believe that Honneth now more or less agrees with Fraser on the fact that issues of recognition and misrecognition are, to a very large extent, also issues of justice (Fraser and Honneth 2003).

I said that there is a second connection that holds between justice and recognition. This time, it concerns a more restricted sense of the word. Recognition policies in the narrower sense are instances of “politics of difference”; they seek to recognize the distinctiveness of persons and peoples. The object of these policies is the cultural realm and they are a particular manifestation of recognition understood in the previously introduced general sense. In this narrower use of the term, recognition is complementary to the policies of distributive justice. It refers to all the policies that show a certain political “esteem” toward the cultural contributions of persons and peoples. And, here, the contribution of Nancy Fraser

(2000; 2001; 2008a; 2008b) is certainly useful. In her work, she indicates how liberalism could incorporate such a cultural perspective without jeopardizing the already established theoretical apparatus of distributive justice. This twofold approach, according to which issues of recognition and issues of distribution are seen as two fundamental aspects of justice, is well captured by her dualism of perspective.

So, very roughly speaking, we have here two ways by which liberalism can be amended in order to become a theory of recognition. We should accept liberal theory as being one based on the principle of toleration-as-respect in a way that is reminiscent of Honneth, and we should add to the perspective on distributive justice a second perspective that takes into consideration the demands for political esteem made by cultural groups, as suggested by Fraser. Both amendments can be made without prejudice to our liberal tradition as long as we adopt political liberalism and are willing to interpret demands for recognition as raising issues of justice. In other words, a political version must be adopted in order to prevent the issue of recognition from transforming liberalism into a psychological theory.

In what sense does the account of recognition within the framework of political liberalism avoid the pitfalls of psychologism? It insists on *toleration-as-respect*, understood as a basic political principle, and not on *tolerance-as-respect*, understood as a psychological attitude. If identity and recognition are closely related, it is only in the sense in which “institutional identity” and “political recognition” are themselves related in an important way. Persons and peoples are considered only in relation to their respective institutional identities, as citizens and as societal cultures, and the metaphysical issues concerning personal identity or social ontology are no longer relevant at that level. It is argued instead that the institutional identities of persons and peoples can only be fully achieved when they are formally recognized and when the state or the international community accepts the institutional consequences of such recognition.

It is also important to note that within the general framework of political liberalism, the politics of difference apply to peoples as well as to persons. By saying this, I depart from Honneth and Fraser, of course, since they are both reluctant to recognize peoples. In order to appreciate this point, it is important to emphasize that political liberalism significantly differs from the more classical version of liberalism. The classical version of liberalism defended by Kant and Mill stipulates (i) that persons are—from a metaphysical point of view—“prior to their ends” and are thus substantially autonomous individuals. It also states (ii) that persons are the *ultimate* sources of valid moral claims. And finally, it presupposes (iii) that autonomy is the most important liberal value. As opposed to these claims, the political liberalism of

John Rawls (i) introduces political conceptions of persons (Rawls 1993, 29) and peoples (Rawls 1999, 23). These conceptions are institutional and not metaphysical. The political conception of the person is the citizen and the political conception of the people is “society” (or societal culture), which must be distinguished from a mere “association of individuals” and from a “political community” if, by the latter, we mean a community endorsing the same religious beliefs, the same moral values, or the same philosophical doctrines (Rawls 1993, 15). Secondly, (ii) peoples, and not only persons, are sources of valid moral claims. According to political liberalism, peoples—like persons—are moral agents (Rawls 1999, 17, 27, 35, 44, 62) because, as institutional agents, they are both distinctly present in the political realm and are sources of reasonable claims within that realm as long as they show respect for others (Rawls 1999, 35). Finally, (iii) political liberalism no longer treats autonomy as the most fundamental value, because toleration is, under this account, the main foundational principle, and toleration here must be understood as a form of political respect (Rawls 1999, 16). This is why I say that the theory of justice is, within the framework of political liberalism, an approach that is favourable to politics of recognition. The account is founded on the political principle of toleration-as-respect; it can incorporate a cultural perspective, and it can accommodate collective identities, not only individual identities, into its framework.

I am therefore closer to John Rawls than to Honneth and Fraser, because he sees justice as applying to persons (in domestic justice) and to peoples (in the law of peoples). However, I must admit that I also differ from Rawls in many important respects. First, I believe in a universal application of the difference principle to persons, while Rawls wishes to restrict its application to some Western liberal democracies. Second, I also believe that a global version of the difference principle may apply to peoples, while Rawls only accepts the obligation to assist burdened societies and altogether rejects the application of a collective version of the principle. Third, Rawls simply ignores the importance of the various approaches to the politics of difference in his work and does not seem to give a lot of importance to cultural recognition, while I wish, along with Fraser, to emphasize this additional perspective. That is, I also wish to argue for the universal value of the politics of cultural recognition applying to persons and peoples. Finally, I also wish to extend the recognition of peoples so that it can also apply to “nations without states.”

To some extent, I share the worry expressed by some liberal theorists who claim that recognition of one’s cultural identity may lead to a very problematic form of essentialism (Benhabib 2002; Appiah 2005). But contrary to those philosophers, I do not think that this is an inescapable consequence, as long as we stick to a political conception of persons and

peoples. It is possible to develop politics of recognition without being entangled in complex metaphysical or moral issues concerning collective identity. When recognition is cast in the framework of political liberalism then a large number of issues become irrelevant to the politics of recognition, because political liberalism deals only with institutional identity.

I agree with Jeremy Webber (in this volume) that toleration, or toleration as respect as I call it, should serve as a foundational concept and that a full blown recognition should occur at a second level and be less psychological in its implications. I am also mostly interested in institutional forms of toleration and recognition, that is, those that involve the state and not those that take place between citizens. But I disagree with him when he suggests that it is too demanding for both parties. Since 1982, when a new Canadian constitutional order was imposed upon Quebec and a new amending formula was introduced that makes it very hard for any future constitutional change to occur, many Canadian scholars have been looking for alternative approaches to constitutional reform. The virtues that some find in conversation (Blattberg), deliberation (Chambers), negotiation (Tully) and now toleration (Webber) should not blind us from acknowledging the existence of a domination exerted by this new constitutional order. *Pace* the Supreme Court of Canada, the 1982 constitutional order is indeed a strait jacket. We should not try to hide the misrecognition of the Quebec people in this new constitutional order by downplaying the importance of politics of recognition. The only acceptable repair to the misrecognition that Quebec suffered would require nothing less than a new constitutional order.

The Institutional Identities of Persons and Peoples

Political liberalism is a doctrine that considers the distinctive personality that agents exhibit in the political realm. It considers only the institutional identity of persons and peoples. It is important to refer to the institutional identity of persons and peoples in order to be able to identify them through time without resorting to cultural practices, customs, religious beliefs, and traditional values, or resorting to metaphysical characterizations. It would be problematic for liberalism to adopt institutional measures that promote such identities, for this would violate the principle of neutrality. Indeed, liberalism is not in the business of formulating politics of recognition that are meant to promote particular moral, metaphysical, or religious practices. It is only in the business of recognizing the institutional identity of persons and peoples.

By referring to the institutional identity of a people, I do not mean to restrict our attention only to peoples organized into sovereign states, although sovereign states certainly offer a particularly clear instance of what I call the institutional identity of a people.¹ But as nations without states, Quebecers, Catalonians, and Scots should be recognized (constitutionally and institutionally, and not merely verbally) as peoples. These nations have less than sovereign political institutions, but they nevertheless have an institutional identity because they enjoy some kind of self-government. Moreover, by “institutional identity,” I do not mean to refer exclusively to peoples with political institutions. In order to be institutionally organized, a people need not have any political institutions such as a sovereign state, a federated state, a quasi-federated state, a political organization after a devolution of powers, a canton, a *land*, a province, or even a reserve. Like the Acadian people, it may fail to have any political institutions at all. The minimal institutional features that would justify a recognition policy are those that would secure the integrity of the identity of a people. These features are, for instance, a shared language, a set of rituals, celebrations and ceremonies, an anthem, a flag, some representatives, a territory, or a shared history.

As we shall see, politics of recognition express our attachment to the value of cultural diversity. Peoples do not have intrinsic value, but they may have instrumental value as long as they achieve internal or external cultural diversity. There is therefore a connection between the instrumental value of peoples for cultural diversity and politics of recognition. But we need not reduce their value to the fact that they can provide a wide context of choice, and thus a rich *internal* cultural diversity, for they may also play an important role in securing cultural diversity across the globe—that is, in favouring *external* cultural diversity. So a people offering a very limited internal context of choice and exhibiting a very low level of internal self-determination may still be the subject of a recognition policy if it has a very distinctive culture, as opposed to other cultures.

By a very limited context of choice, I mean that the people may fail to be institutionally complete in the sense that they might have very minimal or no political institutions at all, and minimal legal, social, and economic systems. They may also have a very minimal educational system, and almost no libraries, museums, bookshops, record stores, newspapers, TV channels, radio stations, etc. This is an important difference between my account of societal cultures and Kymlicka’s account, for he defines societal cultures as institutionally complete (Kymlicka 1995, 76-78). He does so because he wants to justify different sorts of measures for peoples and for immigrant groups. But even if I agree with him that different measures must be put in place for these two kinds of groups, and agree also that

immigrant groups have the obligation to integrate in their welcoming societal culture, I do not think that the right way to make the distinction between these two sorts of group lies in the completeness of one and the incompleteness of the other.

I am therefore not vulnerable to the criticisms that have been raised against Kymlicka's notion of a context of choice (Young 1997; Parekh 1997; Carens 1997). According to Kymlicka, societal cultures are valuable only because they serve the purpose of individual freedom by offering a wide context of choice to their citizens. If so, a society exhibiting a very narrow context of choice should be less valuable and, as a result, there would be less reason to make it the subject of politics of recognition. This also means that only very fortunate peoples would be recognized. It would also be an incentive for the state to reduce the context of choice offered by its internal minorities. It would be an incentive to do so because these contexts of choice would then be less valuable and the minorities would consequently have less justification for requesting recognition.

But I am not in danger of falling into this trap, and can avoid the criticism formulated against Kymlicka. Peoples may have very minimal institutional identities offering very minimal contexts of choice. They, nevertheless, should be the subject of recognition policies because their fulfillment of an instrumental role for cultural diversity may, not only be the result of internal features (a wide context of choice), but can also be the result of external features (uniqueness when compared to other cultures). So we do not need to restrict the societal cultures that deserve cultural protection to those that are institutionally complete in order to justify a differential treatment from immigrant groups. Although immigrant groups are also entitled to some kind of cultural protection, their main difference from peoples is that they have the obligation to integrate into their welcoming societal culture. This obligation is incompatible with asking for self-government, while it is always possible and legitimate to do so for a people (Seymour 2004).

But can there be societal cultures that are so decimated that their populations could be described as having no institutional identity whatsoever? If that were true, the institutional account that I offer would exclude all those peoples, and the argument against Kymlicka could also be formulated against the approach that I favour. Even worse, the state would be inclined to reduce as much as possible the institutional organization of these peoples, so that these minority nations could not legitimately ask for recognition. In other words, why exclude nations without an institutional identity from the account? Are we not once again favouring only an elite group of peoples and excluding others?

There are many things to say in response to this argument. But first of all, notice that there is no such thing as a people without an institutional identity. A people with no institutional identity are no longer a people at all. How could we still be talking about a people if we do not even have a language, a distinct set of symbols, rituals, ceremonies, celebrations, and a distinct history? If some are willing to admit the possibility of peoples without institutions, it is because they tend to equate institutions with political institutions. Of course, many peoples have no political organizations at all. But still, they do have more basic institutions such as those mentioned above. If they do not, we are no longer dealing with a very special kind of people; we are dealing with a group that has been completely assimilated. Of course, a people may lose its original language, but when it does so, it assimilates through another language. Therefore, its population speaks a new common language, and the people may now in principle be institutionally organized around this new language (for example, Ireland). As long as they develop their own institutions, have a shared history, and distinguish themselves from others, then the group may remain distinct and still exhibit a unique institutional identity even if its population has been linguistically assimilated. Of course, my account does not favour linguistic assimilation. I allow it only if the population democratically decides to assimilate. But to the extent that linguistic diversity is an instance of cultural diversity, and to the extent that most peoples do not want to be assimilated, I am committed to the preservation of linguistic diversity. As we shall see, there is no intrinsic value to cultural diversity, but there are constructive arguments that lead to the adoption of a principle asserting the value of cultural diversity.

I have just argued in favour of the concept of institutional identity, underlining its usefulness for political liberalism and for internal as well as external cultural diversity. But the concept is also important for reasons that may become obvious in the case of indigenous peoples. We rightly see it as offensive to describe their identity as intimately related only to pre-contact practices, most of all because this identification severely limits their rights as peoples. It is indeed a mistake for the Supreme Court of Canada (*R. v. Van der Peet* 1996) to equate the identity of indigenous peoples with pre-contact practices. But how are we then to refer to their identity? How shall we describe their continued existence through time if it is not by invoking traditions, customs, and pre-contact practices? Shall we have to postulate some ancestral continuity through kinship? Of course not, and the way to avoid this is simply to refer to their institutional identity. Indigenous peoples are entitled to ask for the maintenance, development, and emancipation of their economic, social, and cultural institutions, as well as for self-government and for adequate representation in political

institutions, because these demands may in certain cases be essential to the maintenance, development, and emancipation of their institutional identity as peoples. The moral character of many indigenous peoples has changed and is no longer related to the preservation of practices held before the arrival of Europeans in North America. It is therefore important to restrict their identity to the institutional realm because it allows them to claim that some aspects of their actual practices may be important for their identity.

In some cases, indigenous peoples can still invoke their common ancestral identity. Under such circumstances, they can be entitled to ancestral rights. In this case, they will be able to prove that their populations were there before the arrival of Europeans. But they need not have to make such a demonstration in all cases. Indigenous peoples are entitled to collective rights of national self-determination and self-government whether or not they have such ancestral roots. They can also develop a different sense of their identity and ask for different forms of self-government. Like all other peoples, they can rely on different self-representation as a people and claim that they have an institutional identity as an indigenous people. Their claims as indigenous peoples must be respected and honoured whether or not they have also long lasting ethnic roots and are entitled to ancestral rights. In that sense, the present account offers them additional room to manoeuvre.

The Structure and Character of Societal Cultures

I have distinguished between the institutional identity and the moral/metaphysical identity of peoples. Nations are all “societal cultures,” understood as structures of culture involved in crossroads of influences and offering contexts of choice. The key concept is the concept of a structure of culture, because it is the structure of culture that carries with it the common public national identity (Kymlicka 1989, 166-170). In its simplest version, the structure of culture assumes a common public language, common public institutions, and a common public history.² The common public language is the language mainly spoken in public spaces within a particular territory, by individuals who may have different mother tongues or use different languages at home. The common public institutions within that territory are those in which the common public language is the language primarily spoken. The common public history is the history of the common public institutions, that is, the heritage of society: its architectural and patrimonial public resources. In this way, history is defined by a certain subject matter, and not by a particular narrative account. If the common public history had to be a specific narrative, we would have to presume a single historical account. There is never, however, a definitive consensus concerning the line taken by history, and members of the

nation must be able to criticize the official historical interpretation without losing their national identity. The concept of a “common public history” must therefore be understood to mean only a commonly shared subject matter. It is the history of the common public institutions, and these may be interpreted in many different ways and into many different narratives.

With a common public language, a common set of public institutions, and a common public heritage, we have a clear case of the structure of culture found at the core of a simple societal culture. The structure of culture has sufficient thickness to qualify as national, at least when the population in question is concentrated in a given territory and has, in addition, a certain degree of national consciousness; that is, when a majority of the population represents itself as a population sharing the same language, the same body of public institutions and the same public history. National consciousness is an identity trait additional to the structure of culture, a common crossroads of influences, and a common context of choice. I would eventually also add another important element, such as the existence of a collective will to live together (Ernest Renan’s daily plebiscite), but for our purpose it is only important to note that the structure of culture is relatively thick.

It is important to contrast this common public identity with a richer notion in which people are seen as sharing the same beliefs, values, traditions, customs, goals, and ways of life. The difference is congruent with Will Kymlicka’s distinction between the structure of culture and the character of culture. As a matter of fact, the distinction between structure and character made at the collective level is in a way similar to the Rawlsian distinction made at the individual level between the political identity of persons and their moral identity. In referring to a collective identity, it is not necessary to postulate among members an agreement or consensus concerning beliefs, values, traditions, customs, goals, and ways of life. We may accept that we are dealing with an irreducible and reasonable (moral, philosophical, and metaphysical) pluralism within society. So by referring to a people, we may merely be referring to elements belonging to the institutional identity of the group: language, particular institutions, history of these institutions, national consciousness, collective will, crossroads of influences, and context of choice. Sharing a language, institutions, and a history of these institutions in a specific crossroads of influences and with a specific context of choice constitutes a fairly thick identity. It involves a certain kind of particularism, but it is not the kind of particularism that characterizes a population sharing the same life world, if this means living in accordance the same view of the good life and the same view of the common good.

The particularist features that are relevant to the structure of culture are common ingredients such as public languages, institutions, and heritages.

To be sure, societal cultures are at the same time also embodied into “characters” at any point in their history. That is, a critical mass of its population shares the same beliefs, values, and ends. But these may change through time even if the structure remains the same. Even if the structure of culture is always embedded in a particular character, it may remain the same while the character is changing.

Classical liberal philosophers may, up to a certain point, be willing to accept the distinction between institutional and moral identity as applied to individuals, but they are keen to ignore the distinction in the case of peoples. They sometimes do so by suggesting that the very existence of a common culture among a population requires the presence of common practices, customs, traditions, beliefs, and values. Most criticisms addressed against politics of recognition belong to this category. Jürgen Habermas (1995; 2005), Seyla Benhabib (2002), and Chandran Kukathas (1992; 1997), for instance, reject different varieties of politics of recognition because they believe that peoples, if they exist at all, are by definition to be understood as involving shared beliefs, values, traditions, customs, and ends.

Kwame Anthony Appiah (2005) criticized the distinction. Although he allows that a distinction between institutional and moral identity in peoples can, in principle, be made his argument proceeds, however, to label such as morally unacceptable. He accepts that one could in principle distinguish, as Kymlicka does, between the existence of a culture and the character of culture. But he wonders what that existence could amount to when a people is stripped of all its particular characteristics, and he concludes by mistakenly attributing to Kymlicka the view according to which the continued identity of the group is based on kinship and shared ancestral origin (Appiah 2005, 136). Of course, this is a complete misunderstanding with no basis whatsoever. The continued identity of the group through time is institutional and it need not be based on sameness of ancestral origin. The structure of culture may roughly remain the same through time even when the cultural character changes. It is not necessary to postulate any metaphysical essentialism since we are dealing only with the institutional personality of peoples as they appear in the political realm. This institutional identity may in principle remain the same despite the changes that may occur in the moral character of the group.

Politics of Difference and the Difference Principle

I now want to suggest that there is a structural analogy between the arguments for politics of recognition understood as “politics of difference” and those for the difference principle, the

latter being at the core of Rawls's theory of socioeconomic distributive justice (Rawls 2001, 75). The argument for the difference principle is based on the principle of equal respect toward persons, along with the observation that there are socioeconomic inequalities within the basic national structure of society. In order to remain faithful to the respect that we owe to persons, we must try to redistribute as much as possible the surplus of cooperation to the less favoured members of society. I also believe that there could be, in addition, a collectivist version of that argument according to which respect toward peoples, along with the observation that there are socioeconomic inequalities among peoples within the global basic structure, creates the obligation to apply an international version of the difference principle.

Similarly, I want to suggest that the different approaches to the politics of difference are based on the principle of equal respect toward persons and peoples, together with the observation that there are cultural inequalities within the basic national structure of society or within the global basic structure. In order to resolve (partly) these inequalities, we must appeal to politics of recognition.

So there seems to be an analogy between the arguments for the politics of difference and the arguments for the difference principle. Affirmative action policies, the Convention on Cultural Diversity, and the *Declaration on the Rights of Indigenous Peoples*, instantiate politics of difference and may coherently be defended alongside more traditional forms of distributive justice, such as equalization payments, Philippe van Parijs's (1992; 1995) substantial unconditional basic income, or Thomas Pogge's (2001) Global Resources Dividend (GRD).

Let us pursue the analogy between distributive principles of justice and principles of cultural recognition. When socioeconomic distributive justice principles are applied to a capitalist society, they yield a property-owning democracy in which the diversity of talents belonging to persons and the variety of natural resources belonging to peoples are seen as values. That is, the difference principle expresses the view that the diversity of talents held by its different members is a common asset for society as a whole. Similarly, the international version of the difference principle implies that the variety of natural resources held by peoples are a common asset of humanity. In other words, by adopting measures that seek to minimize as much as possible the inequalities between persons and also between peoples, our society is showing its appreciation for the common pool of diversity of talents, and the international community is doing the same concerning the diversity of natural resources.

Similarly, when the politics of difference is applied to a capitalist society, the intellectual property of persons and the cultural heritage of peoples are seen as instances of

cultural diversity and therefore seen as common assets. The policies that one may adopt to secure domestic and global cultural diversity may force us to impose reasonable restrictions on free trade agreements, in perfect harmony with the idea of a property-owning democracy.

Persons own their talents. These are not the property of society as a whole. But the diversity of these talents is a common asset of society as a whole. And, by applying the difference principle, you express your attachment to the value of the diversity of individual talents. The claim that the diversity of talents is a common good is not treated as a premise leading to the difference principle. The difference principle should instead be understood as expressing the idea that the *diversity* of talents is a common asset (Rawls 2001, 74-75).³ The diversity of talents is therefore not an intrinsic value. It becomes valuable only because we respect persons and because we react to socioeconomic inequalities among individuals by distributing the surplus of cooperation.⁴

A similar argument can be made for an application of the difference principle at the global level. Here, I establish an analogy between natural resources for peoples, and talents for individuals. Both are natural endowments. To have individual talents is a contingent matter, a circumstance of justice for which no one should be rewarded. It is the development of these talents that deserves to be rewarded and it is the benefits of this development that should be distributed. Similarly, to have natural resources (water, minerals, gold, lumber, oil etc) is for a people also a contingent matter that should not be rewarded as such. It is the development of one's natural resources that can be seen as valuable and it is the benefits from such a development that should be distributed.⁵

Peoples own their natural resources. Humanity as a whole does not own the natural resources that we find on the globe. But the *diversity* of natural resources is a common asset for humanity as a whole. Once again, this is not a normative principle that we must invoke as an objective truth in an argument for the application of the difference principle at the global level. Rather, it must be emphasized that the global difference principle expresses the idea that the diversity of natural resources is something valuable. The global version of the difference principle expresses our attachment to the value of the variety of natural resources held by all peoples. This diversity is therefore not intrinsically valuable. It only becomes valuable because we respect peoples and because there are socioeconomic inequalities among peoples that are to be partly corrected by distributing the cooperative surplus among them. By applying the difference principle among peoples, humanity as a whole is expressing its attachment to the common good that I have described as "the diversity of natural resources."

The analogy also works well with the various approaches to the politics of difference. Persons have intellectual property over their cultural expressions; society does not own these creative expressions. But the *diversity* of cultural expressions is a common good held by society as a whole. This latter claim is not an autonomous moral truth serving as a premise leading to the adoption of politics of recognition. Instead, when applied to persons, the politics of difference can be seen as the expression of the principle asserting the value of the diversity of individual cultural expressions. So the diversity of individual cultural expressions is not an intrinsic value. It only becomes valuable as the result of policies adopted on the basis of the respect that we grant to others, and in the presence of cultural inequalities among individuals. If we partly correct these inequalities by affirmative action policies, we in effect show our attachment to the variety of cultural individual expressions.

Similarly, peoples own their cultural heritage; it is not the property of humanity as a whole. But the *cultural diversity* exhibited by peoples is a common asset of humanity as a whole. We are not presupposing the value of cultural diversity as an objective moral principle. That is, we are not asserting that cultural diversity is intrinsically good, and the reason for this is that the value of cultural diversity is expressed by our politics of difference. The politics of difference for peoples will be justified on the basis of the equal respect that we owe peoples, and on the observation that, within the global basic structure, there are cultural inequalities that could partly be corrected by applying various policies of recognition. This means, among other things, that there should not be free access to the cultural heritage of peoples. A general tax on the circulation of cultural goods or quotas could be welcomed as a policy designed to protect and promote the cultural heritage of peoples.

Recognition and the Collective Right of Peoples to Self-Determination

There are important advantages to be gained if we choose to interpret issues of recognition as issues of justice and adopt political liberalism as a way to accommodate the institutional identities of persons and peoples, for we are able on the basis of its premises to derive the fundamental rights of persons and peoples. Let us see how this can be done in the case of peoples.

Persons and peoples respectively have individual and collective rights, but the objects of these rights are only those that concern the maintenance, development, and emancipation of the identity of persons understood as citizens or of peoples understood as societal cultures (or “societies” in Rawls’s sense). Since we are treating their identity as institutional, the only goods that can become objects of rights are institutional goods; that is, goods that can play a major role in their maintenance, development, and emancipation, as citizens or as societies.

Persons and peoples may have all sorts of interests, but the only ones that can become rights are those that concern their institutional identity. It is because we owe them respect that we must secure their institutional identity.

From such premises it is possible to derive the right to self-determination of peoples. According to the present account, it is claimed that, as societal cultures, peoples should have the right to develop their basic economic, social, cultural, and political institutions. This is precisely the right to self-determination. From the fact that peoples are considered to have an institutional identity and that the only interests that can become rights are those that relate to the integrity, development, and emancipation of that identity, we can infer that they have the right to protect, develop, and promote their basic institutions. And this is indeed very precisely the right to self-determination.

Thus understood, self-determination is the exercise of a collective right held by a people. When we are dealing with *internal* self-determination, the integrity, development, and emancipation of the people takes place within the parent state. It may take the weaker form of internal representation of elected members of the people in the institutions of the encompassing state. It may also take the standard form of self-government within the encompassing state. Or, it may take the more robust form of a special constitutional status within that state accompanied by institutional arrangements that are particularly designed for the people. These various applications of the exercise of self-determination depend on the demands of the minority people. If these demands are not excessive, and can be afforded without putting in jeopardy the rights of other agents within the state, there is an obligation to comply with them.

By contrast, the *external* right to self-determination amounts to the right to own a state, held either by an already sovereign people or by a seceding people. As I see it, the exercise of external secession by a minority people must be remedial. The remedial-right-only theory of secession is opposed to the primary right theory, according to which a people may legitimately seek secession even in the absence of past injustice. The remedial account stipulates instead that a people are only justified in seceding if the state fails to meet its legitimate demands. If, for instance, the state fails to meet demands for internal self-determination, the minority people will have the moral justification to secede. Similarly, a people already owning a state cannot invoke a primary right to own a state. Its right to territorial integrity does not supersede its obligation to comply with the internal right to self-determination of its component peoples. Territorial integrity is therefore no more important than internal self-determination (Seymour 2008).

Internal self-determination is of course not opposed to recognition. Quite the contrary. If recognition is understood as an issue of justice, then accommodating a minority people through different kinds of legal measures designed to implement the right to self-determination of a minority people—is, for an encompassing state, the most important way to extend political recognition to this people. Furthermore, it can even be argued that the state *has to* implement politics of recognition to enable the minority people to fully exercise its right to internal self-determination. Recognition is not only a sufficient condition for self-determination; it is also a necessary condition. That is, the constitution must provide a legal framework for the full exercise of self-determination (self-government, special legal status, asymmetric federalism, fiscal powers, exclusive jurisdictions, etc.). Recognition also goes hand-in-hand with self-determination when a minority decides to secede, for if the seceding people are successful in achieving secession, it will only be because the people have been recognized by the international community.

As mentioned above, I agree that issues of recognition should be cast in terms of issues of justice. This means, first, that recognition should lead to the attribution of rights: individual rights for persons and collective rights for peoples. There should be no hierarchy between these two kinds of rights. Courts should always try to reach a balance between the individual rights of persons and the collective rights of peoples. In particular, it is important to note that, according to the present account, peoples do not have priority over social groups such as gays, lesbians, women, etc. The members of these groups have individual rights that could compete with the collective rights of peoples.

Self-Determination versus Recognition?

The notions of self-determination and recognition are closely connected because, as we have just seen, true recognition of a people without a state must translate into the formal entrenchment of their collective right to self-determination. But some have argued that the two notions are somewhat opposed, or that they enter into tension with one another. The problem is that the accommodation of a people through various policies that are meant to “recognize” them as such, may, at the same time, have the effect of forcing the minority into the institutional and constitutional mould imposed by the majority. It may be a means to secure a forced integration of the minority and, in this sense, it could serve to maintain a paternalistic attitude toward the people within a constitutional order—one that the minority people may not have accepted in the first place.

This problem can be partially resolved by arguing that the entrenchment of the collective right of self-determination transforms the legal order. When recognition policies are

understood in terms of the acknowledgement of collective rights, they are not just administrative measures introduced within an already established legal framework. They modify the legal order itself because the rights must be entrenched in a constitution and they affect the interpretation of all the other clauses contained in the constitution.

But some might want to explore an alternative option in order to harmonize the notions of recognition and self-determination (as well as to avoid paternalism and forced integration) to secure the true participation of minorities in the political institutions, and give them a say in the legislative and executive branches of government. Policies of recognition should, according to this account, take the shape of forums of deliberation that would allow representatives of the minority people true participation in the political institutions of the encompassing state. According to this view, we should reverse the importance of the different ways of interpreting internal self-determination. I have suggested that the weakest form achieved a fair level of representation of the minority people within the institutions of the encompassing state. But, according to the present view, securing a fair representation and making sure that conversation, negotiation, and deliberation can take place, is the most sophisticated way of achieving self-determination. Recognizing the other is, according to this view, accepting a face-to-face exchange with a partner. It means, first and foremost, accepting that the exchange will take the form of a conversation, negotiation, or deliberation (see, for instance, Blattberg 2003; Chambers 2001; Tully 2000). So instead of adopting more substantial versions of the politics of recognition, why not adopt such an ethics of hospitality? It is perhaps not entirely important whether the substantial demands for recognition are met as such and lead to a constitutional amendment. Although we should, of course, pursue that goal, the most important thing may be a procedural process that secures conversation, negotiation, and deliberation between the parties. Instead of benefiting from a recognition leading to more sovereignty on the part of the minority people, we would have an “acknowledgement” by the majority of what is “disclosed” by the minority (Tully 1999). This approach would fit nicely with the particular interpretation of internal self-determination put forward by the Supreme Court of Canada (*Reference re: Secession of Quebec* 1998, para.133) according to which the people must be able to elect its own representatives and these representatives must play a major role in the institutions of the encompassing state.

But, in my view, minority peoples must be extremely suspicious about arrangements of the sort that allow them to enjoy a mere procedural deliberative form of internal self-determination and that could fall short of any institutional or constitutional amendment. If there is a possible tension between recognition and self-determination, it is perhaps when self-

determination is understood in this very weak form. The representatives of the state could, after all, converse, negotiate, and deliberate without recognizing the minority people. The only circumstance that might be appropriate for this kind of self-determination would be a situation in which the populations involved are equal in size, economic strength, and political force. Otherwise, self-determination must be more substantial and lead to self-government or even to a special entrenched legal status.

Another tension could take place if self-determination were understood as a form of self-government and if the state were composed of many different self-governments. The fiscal and political autonomy of the substate level of government could be put in jeopardy by a fiscal imbalance between the central state and the substates and by the spending power of the central government. The only way out of such a tension—one involving a still very weak form of recognition leading to a form of self-determination that is also very weak—is to provide for constitutional arrangements that are specifically designed (made to measure) for the minority people. The robust version of self-determination would be the result of a robust form of recognition.

In all the various ways of institutionalizing self-determination (the weak, standard, and robust sense) there has to be an entrenchment of the collective rights of the people. The recognition of a people and its collective rights, including its right to self-determination, should not only be a possible outcome of a process of conversation, negotiation, or deliberation. It should be an *a priori* principle accepted by all parties in the conversation, negotiation, and deliberation process, for it should be understood that conversation, negotiation, or deliberation takes place between peoples. It should thus be clear, before the discussion has even begun, that we are dealing here with peoples that deserve to be formally recognized in the constitution as well as in their right to self-determination.

It is true that recognition must not be reduced to mere administrative arrangements that preserve a legal order. We must transform that legal order. And very often we must not reduce the legal measures to issues of procedural justice, at least when the target population to be recognized is a minority within the state. Collective recognition must not in this case be confined to a process of discussion among participating members. It must lead to a substantial modification of the legal order by entrenching the collective rights of minority peoples. When things are understood in this way, the two notions—recognition and self-determination—no longer enter into tension. On the contrary they support and reinforce each other. One must not simply grant limited administrative self-determination to a minority people, because one must also entrench the right to self-determination in the constitution. And one must not simply

entrench a symbolic recognition. It must have institutional implications. Of course, this does not mean that there is no place for conversation, negotiation, or deliberation. But it means that they concern the institutionalization of the principle of self-determination, and not the principle itself and its entrenchment in the constitution.

Conclusion

Like John Rawls (1999), I endorse a political and not a metaphysical concept of the people. “Political” identity, in this case, does not refer to an identity involving political institutions; it is rather an institutional identity understood as a structure of culture. So, by referring to the political concept of the people, we do not have to restrict the notion only to those groups who already have sovereign political governments. In order to cement the bonds among different individuals within a people, it is not necessary to determine whether the individual precedes the community or the community precedes the individual. It is not necessary to choose between the comprehensive definitions that identify the nation, either with an association of individuals (ontological atomism), or with a collective organism (ontological holism). Nor do we have to decide between those who feel that persons are prior to their ends and those that postulate, on the contrary, a single set of beliefs, values, purposes, or projects defining the identity of the members. We do not have to choose between one side or the other in the debate opposing liberal individualists and communitarians concerning personal and collective identity. The political definition of a people assumes that what cements the individuals into a single unit is their institutional identity. Just as individuals are understood as citizens, peoples are understood as societal cultures; that is, as having a certain institutional identity.

Liberal individualists who are against politics of recognition, and communitarian philosophers often share the view that if we are referring to an ethnic group or to a national community, it can only be because we are postulating a population sharing the same way of life—a common set of beliefs, values and ends. Otherwise, what could be the common bond that unites them all under the same flag? According to them, we cannot postulate the existence of a collective organism; that is, an organic whole comprising all members understood as organs within this whole. So the only way to avoid talking about such problematic entities is to explain the common bond as a set of shared beliefs, ends, and values. In other words, the liberal individualists and communitarians agree that if peoples are irreducible to aggregates or associations of individuals, it must be because their populations exhibit a unique character of culture. Liberal individualists will then insist that such unanimity does not exist, while communitarians believe that there are many such communities. But, if I am right, we are not forced at all into this dilemma, because peoples are institutionally

organized. What unites their populations is the structure of culture. It is as structures of culture that peoples can demand recognition, and their demands can become objects of rights as long as these claims have an impact on the preservation, development, and emancipation of their institutional identity.

I have also argued that recognition and self-determination are not opposite forces and that a correct application of the politics of recognition must take the form of an entrenchment of the collective rights of the people, and this includes the right to self-determination. Moreover, I have argued that self-determination was not something that a people could exercise without the support of others. The legal framework of the encompassing state must be transformed accordingly to accommodate internal self-determination, and the international community must recognize the people if it exercises the right to external self-determination.

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¹ For methodological reasons, Rawls (1999, 38) considers only the peoples that are organized into sovereign states, but he acknowledges that a more complex model should consider the issue of self-determination and secession for peoples, and the rules for federations of peoples. Consequently it is clear that his political conception of peoples is not meant to be restricted only to those who already have sovereign states.

² Of course, there are more complex cases. Some peoples may be multilingual and multicultural. Some may even be multinational.

³ Rawls (2001, 75) writes: “The text of Theory mentioned above [*Theory of Justice* # 17] is commenting on what is involved in the parties’ agreeing to the difference principle: namely, by agreeing to that principle, it is as if they agree to regard the distribution of endowments as a common asset. What this regarding consists in is expressed by the difference principle itself. The remark about the distribution of endowments as a common asset elucidates its meaning.”

⁴ Rawls (2001, 76-77) writes: “Here it is crucial that the difference principle includes an idea of reciprocity: the better endowed (who have a more fortunate place in the distribution of native endowments they do not morally deserve) are encouraged to acquire still further benefits—they are already benefited by their fortunate place in that distribution—on condition that they train their native endowments and use them in ways that contribute to the good of the less endowed (whose less fortunate place in the distribution they also do not morally deserve).”

⁵ Again Rawls (1999, 39): “the point of the institution of property is that, unless a definite agent is given responsibility for maintaining an asset and bears the loss for not doing so, that asset tends to deteriorate. In this case the asset is the people’s territory and its capacity to support them in perpetuity; and the agent is the people themselves as politically organized.”