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Communitarianism and Collective Rights*

Abstract: The article distinguishes metaphysical from practical communitarianism. Metaphysical communitarianism is alleged to involve a concealed ideological element, which leads its adherents to stereotypes when trying to capture the essence of the modern self. The claim is examined that minorities, or other ethnic and cultural groups have collective rights, either moral or legal in nature. Justifications of collective rights resorting to the value of cultural identity are said to be in need of explaining why the proper way of protecting such value is through rights. It is argued that practical communitarianism's case for collective rights needs embracing meta-normative and normative relativism, whose application to political action yields consequences at odds with widespread ethical intuitions.

1. Introduction

It is well known that the traditional doctrine of human rights, developed in liberal political practice, accepts as an axiom that only individual persons can be the holders of such rights. The individualist doctrine of rights reigned almost unopposed up to a few years ago, accepted both by libertarians and by welfare liberals. Thus Nozick begins his *Anarchy, State, and Utopia* by saying "Individuals have rights...", and the whole of Rawls's theory of justice, in Ronald Dworkin's interpretation at least, is based on the idea that individuals should be treated with equal consideration and respect. Neither of these authors defends the existence of rights not belonging to individual persons. Recently, however, the idea that an ethnical or a cultural minority is an entity capable of possessing interests morally deserving protection has won prestige while political philosophy has been experiencing a renaissance of Aristotelian- or Hegelian-inspired communitarianism. The essays of Alasdair MacIntyre (MacIntyre 1981), Michael Sandel (Sandel 1982), and Charles Taylor (Taylor 1975; 1979; 1985), among others, contain vigorous criticisms of the conception of the self presupposed in contemporary liberal philosophers like Rawls and Nozick. In Kymlicka's words, "a dominant theme of communitarian writings is the insensitivity of liberalism to the virtues and importance of our membership in a community and a culture" (Kymlicka 1989, 1). The

* I acknowledge with gratitude the support of the John Simon Guggenheim Memorial Foundation, and likewise the suggestions I received from my colleagues at the School of Law of the Universidad Torcuato Di Tella.

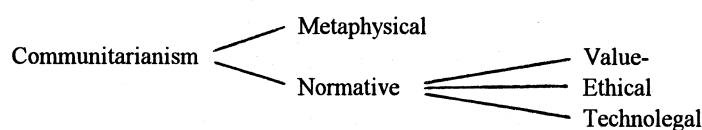
criticisms – Kymlicka goes on to say – revolve around the feeling that liberalism, "in a misguided attempt to protect and promote the dignity and autonomy of the individual, has undermined the associations and communities which alone can nurture human flourishing" (Kymlycka 1989, 9).

Elsewhere (Spector 1987) I have suggested that one can distinguish between two types of communitarianism: value- and metaphysical communitarianism. *Value-communitarianism* maintains that certain collective entities, like communities, collectivities or minorities, are subjects or bearers of *per se* value.¹ Extreme value-communitarianism holds that individual persons have no value in themselves but only as members of some collective entity. Defined in this way, value-communitarianism runs afoul of value-individualism, which claims that individual human beings are the only beings bearing *per se* value.

By contrast, metaphysical communitarianism maintains that people are made up of their metaphysical connections or ties with communities. From this standpoint the recognition of rights to communities, even when these are the only rights the social order recognises, cannot stifle persons because they achieve their identity thanks to their insertion in communal life. In an extreme organicist version, people not only do not have an existence independent of the community but neither do they have one different from it, as persons are only phases or moments of communal development.

The distinction between value- and metaphysical communitarianism, though important, is incomplete. Actually, as Michael Hartney makes clear (Hartney 1991, 294-5), the practical or normative issue about collective rights is a mixture of three different questions: (1) whether communities have a *per se* value (*value-communitarianism*); (2) whether the value-importance of communities justifies their having collective moral rights (*ethical communitarianism*); and (3) whether the protection of certain values or moral rights is best canalized by the attributes of legal collective rights (*technolegal communitarianism*). With Hartney's classification we get the following picture:

Varieties of Communitarianism



In the following section I shall set out the essence of the contrast usually drawn between the metaphysical conceptions of the self (presumably) defended by liber-

¹ By '*per se* value' I understand the same as Raz: a thing has *per se* value when its existence is valuable without its mattering what other things exists. This is to be distinguished from the instrumentally valuable, whose value depends on what it promotes or fosters. But it should be emphasized that what is *per se* valuable does not exhaust what is intrinsically so. *Constituent goods* are likewise intrinsically valuable, elements of what is good *per se* which contribute to its value, i.e. elements without which a thing which in itself is valuable would be less so (Raz 1986, 200).

als and communitarians. I shall suggest that both the conception of the embedded or situated citizen in communitarianism, and that of the atomized citizen, attributed to liberalism, are partialized and erroneous descriptions which must give place to a more credible pluralist anthropological outlook, albeit less striking metaphysically and unable to function as the ultimate basis of a political theory. In section 3 I shall deal with a few attempts to reduce the axiological communitarian justification of collective rights to an expanded liberal theory. In section 4 I shall endeavour to show how those attempts fail and I shall suggest that communitarian value judgements cannot be reduced to liberal parameters. Once value-communitarianism is separated from liberalism, in sections 5 and 6 I proceed to investigate if there is any justification of collective rights, both moral and legal ones.

My negative reply to this question is based substantially on the essential connection I perceive between the notion of rights and the idea of human rationality. My point is that if this connection is to be preserved, the communitarian must adopt a relativist theory of rationality whose application to the public domain brings forth anti-intuitive consequences in terms of widely shared values. I likewise suggest that liberalism is best interpreted as a theory resting upon objectivist epistemological assumptions.

2. Metaphysical Conception of the Self and Political Theory

The individualist conception regards the self as prior to or independent of its ends, that is, as a value-empty will capable of choosing its ends keeping at a distance the ends, attachments, and values endorsed by the community. In Sandel's explanation, the individualist self is unencumbered, and by this he means that its identity is never tied to the aims and interests it may have at any moment. Indeed, "for the unencumbered self, what matters above all, what is most essential to our personhood, are not the ends we choose but our capacity to choose them" (Sandel 1992, 19). Instead, according to communitarians the self is made up of communal ends and values, i.e. predetermined by the culture of the community of which it forms part. The communitarian self is a value-laden entity; its existence is intimately and indissolubly linked to the existence of the community.

Since in the individualist conception the self is devoid of communal values, the role of practical reasoning is to choose ends, values and life plans. Theoretically, the self of liberalism may choose its ends and values in complete isolation from shared communal values, having no need of and being entirely independent of the values animating the existence of its community. The communitarian conception of the self differs radically in this aspect. For communitarians the self is made up of certain ends which are endowed with meanings in the community. The self of communitarianism does not choose ends and values but communal ends and values define its own identity. Thus, the 'practical reasoning' of the communitarian self does not imply so much the idea of choice as that of self-discovery. Here the fundamental question is not "What ends am I to choose?" as "Who am I?" (Kymlicka 1989, 53).

One of the most interesting contributions in this field is Kymlicka's attempt to dissolve the communitarian-liberal duality in the conception of the self. In the first place – he argues – when the liberal affirms that the self is prior to its ends, he does not mean that one can conceive a self without ends, but without its present ends. This means that the self is prior to its ends "in the sense that no end or goal is exempt from possible re-examination" (Kymlicka 1989, 52). Thus, the liberal does not commit herself with the implausible metaphysical thesis that there is, or can be, a completely unencumbered self. In the liberal vision, the self is not a *tabula rasa*, but neither is it an entity with rigid, unmodifiable ends. Defined thus, liberalism is not necessarily incompatible with a communitarian view of the self; specifically, it is not incompatible with a communitarian position that admits that it is possible for the self to re-examine its ends.

In the second place, Kymlicka points out that, though communitarians like Sandel hold that the self is constituted by its ends, they admit the possibility of a 'reconstitution' or change of the self thanks to the exercise of practical reasoning. Moral or religious conversions (e.g. Lawrence of Arabia) might be cited as examples of 'reconstitutions'. If these changes of the self are possible, then practical reasoning is not exhausted in a passive intuitive faculty ('self-discovery'). Liberals, like Rawls, hold that the self is fixed independently of the ends which it may adopt contingently. But is there any more than a terminological difference here? Kymlicka thinks there is not. For Sandel, the ends of the self are constitutive, but the limits of the self are fluid (i.e. the self may undergo a change or be 'reconstituted'); for Rawls, the ends of the self are contingent (variable), but the limits of the self are fixed (a reconstitution of the self is not possible). But beyond the verbal difference, both agree that a person – wherever the frontiers of the self are set up – may re-examine her objectives and purposes, and this calls for a faculty of active practical reasoning, dub it self-discovery or evaluative reasoning.

It may be, as Kymlicka alleges, that a number of communitarian writers include something like escape valves in their metaphysical conceptions to accommodate the obvious counterexamples of persons who modify their ideals and values in contemporary societies. But this does not mean that metaphysical communitarianism has only terminological differences with metaphysical individualism. The differences persist, even though now they are only of degree; in the course of her lifetime a person is likelier to undergo a change of her ends than a reconstitution of her identity. Anyhow, Kymlicka's endeavour to conciliate the communitarian and liberal metaphysical outlooks is in my opinion misdirected, because there is scant sense in attempting to reconcile positions which in themselves are wrong. Both metaphysical communitarianism and metaphysical individualism may be adequate descriptions for certain human models or paradigms, but they are quite fallacious inferences when applied to human nature in general. In fact, the communitarians' theses of metaphysical anthropology sound ideologized distortions as regards current human types in industrial democracies, such as the 'citizen of the world', the 'playboy' or the 'rocker'. Metaphysical communitarians incline towards the 'embedded self' stereotype because they beg the normative question. They start by slipping into the idea of human nature their

own normative ideals and standards, as if they were accepted by all human beings. Once this has been done, it is only natural for these 'metaphysical' theses about human nature to entail precisely the political positions they considered attractive beforehand.

Conversely, there is no universal truth either in the image of the uprooted and cosmopolitan individual rampant in some liberal writings, at least according to the interpretation the communitarians give of them. Not even in the great financial and industrial capitals, where, it is alleged, information technology "creates a *universalism* that shades out the qualitative differences in individuals, groups, regions, etc., in favour of a uniform, anonymous and, at bottom, atomized"² human existence, is it difficult to find large groups of people who cleave to traditional customs and values.

In my opinion, an empirically adequate description of the self of modernity must be more heterogenous and pluralist, though likewise less striking, than the unqualified metaphysical conceptions maintained by the individualists and communitarians. In modern societies, people of very different personalities and conceptions live side by side, belonging to communities more or less integrated and cohesive. Who in her right state of mind would be bold enough to affirm that the orthodox New York Jew, the Boston software analyst, the Amish farmer from Pennsylvania, the Catholic Irish peasant, the Wall Street yuppie, the Bavaria farmer, or the Hollywood actress, have the same degree of identification with communal values or ends? Besides, lots of people belong to two or more communities or groups, based on interests, problems, or ideals of different kinds (political, religious, professional, commercial, sporting, social, artistic, intellectual, etc). But if the verifiable anthropological reality is so varied, shaky and changing, it is unacceptable from the start to base our public ethics on one single metaphysical conception of the self.

3. Liberal Justification of Communitarian Politics

Kymlicka takes up the question of aboriginal rights in Canada and the United States for exploring the role of cultural membership in liberal theory. His central argument is that collective political rights fulfil the economic function of a subsidy for cultural membership. Unlike monetary compensations, a political statute like the one provided for in indigenous legislation has the added advantage of making sure that its cultural objective is not impaired by shortcomings in the administration – collective or individual – of the funds allotted.

² An observation made by Professor Espinosa (1994) in his review of my book *Analytische und postanalytische Ethik* (1993). At the end of his commentary Espinosa hints at a regionalist communitarian reading of the last chapter entitled "Communitarian Moral Realism". Perhaps I should have made it clear that when in this chapter I speak of moral facts as given in a community, I understand by "community" the ethical culture developed in Western history. The fact that the book includes an exposition of the theses of American political communitarians may – I now realise – lead to a romanticist interpretation of my metaethical position, which I do not endorse.

Kymlicka's argument may be divided up into two claims: (a) the thesis of the liberal value of cultural membership, and (b) the thesis of the egalitarian treatment of cultural minorities.

(a) Thesis of the Liberal Value of Cultural Membership

Kymlicka holds that the membership of a cultural community is a basic value for liberalism, even though this is not always recognised by liberals. For liberal ethics it is of fundamental importance that people choose from within themselves, i.e. freely, those plans of life they consider valuable. The adoption of a lifeplan is, in the liberal view, a private decision of each person, but this decision always consists in the selection of available options. Consequently autonomy is always exercised against the background of a *context of choice*.

The context of choice for the exercise of personal autonomy may admit of a *physicalist* conception and of a *cultural* one. In the former, the available options are identified as mere bodily movements, such, for instance, as raising the hand, chewing, walking, etc. In the latter, instead, the available options are identified on the basis of descriptions which only have significance in the range of a cultural matrix, such as "being a successful business man", "rearing a family", "devoting one's life to research", or "being ordained priest". It is clear that, when people exercise their autonomy, they do not do so in the light of a context of choice defined in physicalist terms. People can hardly give a meaning to their autonomy by choosing from a repertory of mere bodily movements. Thus, the cultural conception of the context of choice is the only possible one, even in the liberal vision. As Kymlicka says:

"This is important because the range of options is determined by our cultural heritage. Different ways of life are not simply different patterns of physical movements. The physical movements only have meaning to us because they are identified as having significance by our *culture*, because they fit into some pattern of activities which is culturally recognised as a way of leading one's life." (Kymlicka 1989, 165)

In this way, Kymlicka's thesis is that cultural membership is important for the pursuit of our essential interest in living a good life. It is not that cultural structures are accepted in liberal ontology as entities which, on the same footing as individuals, have value or importance by themselves. Cultural structures are important inasmuch as they constitute a pre-requisite for people to be able to exercise their personal autonomy. If we do not pay attention to this value when we give equal consideration to persons' interests, we are denying the very reason why we think that persons have fundamental liberal rights, like the freedom of expression, conscience, movement, association, and all the others recognised by liberal constitutions. This reason, as we saw, is that people may lead their lives in accordance with what they regard as worthwhile.

If cultural membership were so important for the exercise of autonomy, there would be reason to expect liberals to attach great importance to cultural minorities' rights. Nevertheless, liberals are far from having any such concern. To

explain the anomaly, Kymlicka asserts that liberals "work with a very simplified model of the nation-state, where the political community is co-terminous with one and only one political community" (Kymlicka 1989, 177). When the political community comprises different cultural communities, we are face to face with the phenomenon of the *multicultural State*, and it is in this State that there arises the problem of constitutional and legal treatment which has ethically to be given to cultural minorities.

Communitarian politics may have potentially anti-liberal consequences. Suppose that a cultural community restrains its members' freedom of expression on the ground that it is necessary for the preservation and continuity of the community. Or let us suppose that an aboriginal community accepts as the only kind of therapeutic treatment that which is administered by the witch-doctor in pursuance of ancestral communitarian traditions, and prevents its members from receiving alternative medical treatment, arguing that otherwise the community would be faced by the serious and imminent risk of cultural dissolution. Should a liberal State, convinced by Kymlicka's thesis, remain passive to these authoritarian communal measures, as a way of assuring that the members of those communities exercise their autonomy? Kymlicka's answer is a downright No, but in order to reply thus, he must propose a distinction between two meanings of "culture". In one sense, "culture" is a collection of rules characterizing a community at a given moment (*character of a community*). In another sense, "culture" is defined in terms of the existence of a feasible community of individuals with a shared conceptual heritage (*existence of a community as a context of choice*) (Kymlicka 1989, 168). Kymlicka maintains that the cultural community is valuable for liberalism in the second sense, as context of choice; hence measures taken to limit the context of choice are unjustifiable. The restriction of the freedom of choice of the members of a cultural minority cannot be interpreted as a way of guaranteeing its context of choice. It is true that the unrestricted exercise of these liberties may change, or help to change, the character of the aboriginal community, but – Kymlicka claims – this is rather different from threatening the existence of a community as a context of choice (Kymlicka 1989, 195-9).

(b) Thesis of the Egalitarian Treatment of Minority Cultures

Once the thesis of cultural membership has been defended, Kymlicka asks himself why it is necessary to introduce collective, ethnical or cultural minorities rights as a suitable answer to the value of cultural membership. Can by chance a democratic State complying fully with the ideal of treating all citizens equally, without considerations of race, sex, ethnics or religion, be at fault as regards cultural membership? With the predicament of the Aborigines of Northern Canada chiefly in mind, Kymlicka notes that it may be justifiable, from the liberal standpoint, to recognise collective or special rights to cultural minorities when the working of market economy or the application of majority rule runs the risk of eroding the existence of such minorities as contexts of choice. This could happen if, for instance, a business enterprise buys part of the territory on which the communi-

tarian economy depends (from the State in the case of fiscal lands, or from some members of the community, in the case of lands subject to private property); or if an invasion by migrant workers changes the electoral balance and thereby alters essential decisions for communitarian continuity, like the preservation of the minority language as the compulsory language in schools.

An 'ethnically blind' constitution – i.e. one insensitive to considerations of race, ethnics or religion – is a bad answer, according to Kymlicka, to the value of cultural membership. A good answer must include the so-called collective or special rights, which may limit the scope of fundamental liberal rights. For example, the special statute claimed by the Canadian Aborigines includes restrictions on the freedom of movement and the right to vote and to acquire property of non-aboriginal Canadians in Indian territory. But why is an ethnically blind constitution a bad answer to the value of a cultural membership? Kymlicka puts forward an argument based on a familiar distinction in egalitarian literature: *the choices/circumstances distinction*. The upholders of the egalitarian conception of distributive justice maintain that individuals must have an equal share of initial rights but that any distributive pattern after the initial distribution is not unjust, even though it be highly inegalitarian, always provided it reflects the choices that the persons have made. Thus, for instance, if A and B have received at the first share-out two plots of 50 hectares each, but A decides to devote most of her time to sports while B strives to cultivate her land, and after a time B buys out A, ending up with a hundred hectares and A with none, the distributive pattern we find at the moment is not unjust because it reflects the impacts of A's and B's respective choices.

Egalitarian philosophers believe that the consequences of people's free choices are their exclusive responsibility and not the concern of the State. To quote another example, made familiar by Ronald Dworkin, if someone decides to consume champagne and caviar, she ought to foot the bill, and has no right derived from social justice to expect that the other members of the society should subsidize this consumption. But if a crippled person needs a special car, more expensive than the common run, according to the egalitarian theory of social justice she does have the right to expect the State to compensate her for the difference which is not of her choice.

From the egalitarian outlook, the State ought to make up for the disadvantages brought about by persons' differential circumstances, not chosen, but not those derived from their choices; these are their exclusive responsibility. Kymlicka asserts that the membership of a certain cultural community is not the product of persons' choices but of their circumstances, in the sense of the choices/ circumstances distinction just explained (Kymlicka 1989, 186). The disadvantages that may arise as a consequence of belonging to a cultural minority, then, affect the equality of the distribution of rights and resources, and should be compensated. As Kymlicka says, the citizens of British or French Canada "get for free what aboriginal people have to pay for: secure cultural membership" (Kymlicka 1989,

190).³ In this way, aboriginal rights might be justified as a way of compensating for the differential cost of maintaining and preserving a minority cultural matrix. While the members of the majority culture are able to preserve gratuitously their cultural structure and, therefore, their context of choice, the Aborigines have to face the difficulties of keeping up their cultural life – their own economic activities, religion, language, family relationship, funeral habits, etc. – in an unfavourable environment. The economic decisions of the non-aboriginal citizens – purchase of land, setting up companies, work relations, etc. – as well as the political decisions adopted in a democratic system where the minority number of the Aborigines is not enough to make its opinion heard in high voltage cultural questions, may represent a threat to the cultural survival of the aboriginal minority. On the other hand, these decisions, says Kymlicka, cannot endanger the continuity of majority culture.⁴

Another liberal explanation of collective rights is Buchanan's (Buchanan 1994). He divides group rights into two kinds according to the standing the individual is vested with in wielding rights: *nonindividual standing rights* and *dual standing rights*. Nonindividual group rights can only be exercised by the community collectively, for instance, through a majoritarian procedure, or by an agent. Dual standing rights can be wielded in a nonindividual fashion, like nonindividual rights, but also in an individual way.

On a similar path as Kymlicka, Buchanan claims that "the value of groups is the value that membership in groups has for individuals" (Buchanan 1994, 7). He concludes that nonindividual group rights are justifiable from a liberal standpoint as they are important "both as a structure for the individual's choices and in supplying some of the main ingredients of the content of her conception of the good" (Buchanan 1994, 10).

Buchanan points to language, property, and political autonomy rights as chief examples of nonindividual standing rights. Some of these rights are positive ones in that they require State financial support. This is the case of aboriginal rights, which – Buchanan claims – are needed for sustaining indigenous peoples lacking own resources as a result of a "history of unjust treatment at the hands of the

³ We should come to the opposite conclusion if we supposed that membership of the aboriginal culture is a decision like 'drinking champagne'. Under this assumption, the Aborigines – always according to Kymlicka's theory – would not be in a position, in the light of considerations of equality, to claim special political rights correcting the vulnerability which the continuity of their culture as a context of choice is subject to.

⁴ It should be pointed out that for this position the justification of aboriginal rights does not lie in the fact, often referred to, that the Aborigines do not have the share of resources which would be theirs in a distribution guided by the dictates of distributive justice. This inequality of resources might be rectified by just appealing to universal principles of justice, applicable to all citizens, aboriginal or not. The foundation of aboriginal rights is that apart from – or rather, over and above – the economic inequalities that may affect Aborigines – and other marginal groups in society –, they suffer from a basic inequality which must be made up for equality reasons, to wit, the disadvantage of belonging to a minority culture whose survival may be threatened in a way in which the majority culture is not.

majority" (Buchanan 1994, 10). Other nonindividual rights are *prescriptive* in that they forbid actions protected by classical individual rights, like the right to use the language one wishes, or the right to sell one's land to anybody. Buchanan suggests that prescriptive language and property rights may be needed to overcome collective action problems taking place when group members wish for the preservation of a community but lack the individual economic incentives to assume the burdens thereto. Of course, a chief concern here is that, in the absence of relevant behaviour – e.g., assuming costs for maintaining a certain language, or shunning opportunities to sell one's property on convenient terms –, it is hard to imagine what criteria could be relied on for assigning group members truly communal preferences.

Habermas also tries to accommodate modern concerns with collective rights within the liberal view. Against the liberal and the welfare paradigms of law, he presents a *proceduralist paradigm*, according to which a full-fledged democracy should not only respect private autonomy but public autonomy (Habermas 1993, 133). In a mature democracy citizens feel autonomous when they take part in the establishment of legal rules restraining their autonomy, and this means public debate, not only for pursuing goals and policies chosen on the basis of the majority rule but also for legally recognising and protecting individual rights. At this juncture Habermas makes an interesting move whereby he parts company with most liberal thinkers. Traditionally, both the liberal (Lockean) and the welfare paradigms of law presuppose the self-sufficiency of moral rights for providing the content of legal institutions meant to protect personal autonomy. But Habermas contends that moral rights cannot be implemented – i.e., converted into legal rights – without the working of democratic procedures open to all citizens. Should some citizens be excluded from the procedure, their autonomy would be seriously encroached upon, notwithstanding the fact that their rights have all the same been taken into account in laying down legal rules affecting them. Habermas maintains that the process of discussing and enacting law requires ethical discourses articulated on the background of a cultural identity (Habermas 1993, 139).

Habermas seems to oppose the familiar Rawlsian thesis that the right is independent from the good. Indeed, the ethical discourses needed for implementing individual rights imply a conception of the good, as Habermas define them as "discussions about a shared conception of the good and a desired life form that is jointly recognised as the authentic one". People sharing such discussions "clarify how they want to see themselves as citizens of a specific republic, as inhabitants of a specific region, as heirs to a specific culture, which traditions they want to perpetuate or discontinue, and how they want to deal with their historical destiny, with one another and with nature, etc." (Habermas 1993, 139). Since these public debates and the working of the majority rule require the demarcation of national constituencies, national demands and struggles for recognition do not stem from communitarian concerns but from the very liberal ideal of autonomy, properly understood.

4. Irreducibility of Communitarianism

Kymlicka's project to reduce communitarian politics to a liberal position has been the target of important criticisms – also applicable to Buchanan's view. The first paradox to notice comes from the fact that Kymlicka advocates for a communitarian politics of collective rights as a means of increasing the possibilities of choice. But then it is paradoxical, as Beiner points out, that the essence of a number of communitarian measures should be the reduction of the options for the members of the protected minority and as often as not for the majority ones too (Beiner 1994, 253). Beiner is aware of Kymlicka's distinction between the community as a particular collection of rules and values, and the community as a system of conceptual categorization working as context of choice. As we saw previously, Kymlicka thinks that the liberal State can protect the context of choice without at the same time committing itself to the maintenance of specific standards and values. But if a minority can change and evolve without at the same time being affected as regards the context of choice it affords its members what sense would there be in protecting the minority by collective rights implying the restriction of options? (Beiner 1994, 253)

Perhaps Kymlicka might reply that collective rights aim at protecting the cultural structure, this being compatible with allowing the community to evolve by modifying its character or content. Indeed, in his latest book he claims that a collective right can be established as an internal restriction or as an external restriction. "The first" – says Kymlicka – "involves the claim of a group against its own members; the second involves the claim of a group against the larger society." (Kymlicka 1995, 35) He contends that whereas internal restrictions can invade individual rights and therefore are not in principle permissible, external restrictions lack any such disadvantage and should be established for assuring a group's stability against external pressures. However, if internal restrictions are based on the need to protect cultural frameworks and these, in turn, are indispensable for affording people the opportunity to exercise autonomy, it is not clear why individual rights could never be sacrificed in the name of a greater chance to achieve autonomy with the aid of internal restrictions. To rule out this possibility Kymlicka should again resort to the character/content distinction.

Now even if it were possible to clear up the meaning of protecting the cultural structure of a community as distinct from its content, Kymlicka still ought to take account of the fact, as McDonald points out, that the perspective of the member of a frail cultural minority is quite different from that of a person concerned to widen his repertory of significant options. The identity of such a person is linked to his membership of a community with a certain character (content) and, therefore, "the refusal to protect the character of his identifying cultural community is like the refusal to protect him as an individual embedded in this particular culture" (McDonald 1992, 128).

Charles Taylor exploits the same point (Taylor 1994, 259-60). Even though the liberal may find it justifiable to apply communitarian policies, her reasons for doing so are not the integrity of the protected communities or the survival of their

members as communally embedded persons, but the value of such communities as a means whereby their members may be aware of repertoires of meaningful options. These two reasons are not the same. And the policies they justify only overlap in part. If the sharers of a culture in danger of extinction could avail themselves of another means of visualizing options, e.g. by rapid assimilation – possibly effective for children and young people –, then there would be no point in protecting this community on Kymlickian bases. By contrast, for the genuine communitarian, as Taylor says, the community "is something invaluable and irreplaceable, not merely in the absence of an alternative, but even if there are available alternatives" (Taylor, 1994, 260).

On the other hand, Beiner suggests, there seems to be a tension between the Kymlickian explanation of cultural membership and the principle of neutral concern. If what is of interest is the context of choice, the very argument that leads Kymlicka to subsidize ethnical and cultural minorities should lead him to aid certain ways of living which proffer bunches of options otherwise inexistent, as for instance, the transvestite way of life. "A strict neutralist liberal should demand the same share of state resources to maintain the transvestite way of life as to protect from extinction a threatened aboriginal culture", asserts Beiner (Beiner 1994, 256). And it is hard not to agree with him. Even if the transvestite way of life does not constitute a community in the sense of the transvestites having a collective conscience, it does offer significant options which would otherwise not be available, and it might even be insinuated that it provides its adherents with a kind of sexual identity. Anyhow, if the transvestite way of life does not constitute a community, so much the worse for Kymlicka. It would show, not that his principle of egalitarian concern does not justify the protection of transvestism but that the concept of community does not really play a leading part in his policy of protection for ethnical and cultural minorities.

The discrepancy between Kymlicka's programme and the communitarian programme of protection of collective rights also comes out, as McDonald shows (McDonald 1991, 235-6), in the issue of the protection of non-liberal communities, i.e. those ones not engaged with the value of autonomous choice (this does not mean that they exert coercion on their members). For McDonald the logics of the liberal position would not only lead to not encouraging the maintenance of authoritarian minorities but also to discouraging it so as to promote the autonomy of their members. The liberal Kymlickian, for instance, would say that "the State of Wisconsin is quite right to insist then on the Amish children attending high school because if they do not, their social mobility would be seriously restricted". Instead, the authentic communitarian would stand up for the educational rights of the Amish because the meaning of her policy of collective rights is not to protect individual autonomy but collective autonomy. It is the fact that the Amish constitute an identifying group for a lot of people that justifies their protection for the communitarian, and not that they afford a background for autonomous election. In McDonald's words "collective autonomy like individual autonomy is valuable in its own right; hence, one should not to be valued simply as a means to the other" (McDonald 1991, 236).

To my mind Habermas's project does not fare better. What are the implications of Habermas's proceduralist paradigm for practical politics? He is sympathetic to Kymlickian rights to cultural membership but only if they are conceived as individual rights, rather than collective ones. According to Habermas collective rights could make sense if national and ethnical recognition had the meaning of a programme of protection of cultural species, much in the same sense as biological species are protected as a means of preserving biological diversity. But what Habermas has in mind is an "equal right to coexistence" guaranteeing the preservation of ethnical and national groups, and of their cultural views and conceptions of the good, as a demand arising from the ideal of autonomy (private and public). However, Habermas gives us scant indications about the institutional translation of such a right to coexistence. Perhaps the clearest statement is the following:

"In multicultural societies, the equally protected coexistence of lifeforms means ensuring for each citizen the opportunity to grow up, and have his or her children grow up, in a cultural world of his or her own origins without being insulted because of this by others; the opportunity to come to terms with this culture – as with every other – to perpetuate it in its conventional form or to transform it; and also the opportunity to turn his or her back on its imperatives out of indifference or to break away from them in a self-critical manner, to live henceforth spurred on by having made a conscious break with tradition or even to live with a split identity."
(Habermas 1993, 143)

In the face of this statement, it is difficult for me to see any substantial difference between Habermas's politics of recognition and the standard neutralist demands for equal concern and non-discrimination on account of ethnics, religion, genre, race, etc. He has dispensed with collective rights and communitarian concerns but only at the price of his position coming down to the standard sort of contemporary liberalism.

5. Scepticism about Moral Collective Rights

Let us suppose that we grant, in favour of McDonald, Taylor and Beiner, that the preservation of cultural communities is valuable in itself. Even so, it might be argued that in the communitarian approach the ultimate reason why communities are protected does not lie in themselves but in a basic interest of persons in maintaining their own identity. In other words, it might be suggested (Hartney 1991, 297) that when they articulate their justificatory theory communitarians have recourse to value individualism, i.e. the thesis that only the lives of individual human beings have ultimate value and collective entities derive their value from their contribution to individuals' lives.

When practical communitarianism is interpreted in these terms, it amounts to what Michael Walzer calls Liberalism 2, which "allows for a state committed to the survival and flourishing of a particular nation, culture, or religion, or of a (limited) set of nations, cultures, and religions – so long as the basic rights of citizens who have different commitments or no such commitments at all are

protected" (Taylor 1992, 99). Taylor grounds this sort of liberalism precisely on the value of cultural identity for the well-being of people. The name notwithstanding, it seems clear that this type of liberalism is more akin to communitarian politics than to standard neutralist or libertarian proposals. Even Kymlicka now seems to endorse the value of self-identity in his account of the liberal value of membership (Kymlicka 1995, 89-91)

Let us now consider this sort of communitarianism (or heterodox liberalism), which appeals to the value for persons of cultural membership as a source of their identity. If cultural identity is valued as a component of individual well-being, it may be considered that it occupies in the communitarian programme, as a personal good worthy of protection by rights, an analogous position to personal autonomy in the liberal programme. In such a case, the question may be posed why the recognition that persons have a right to the protection of their cultural identity gives rise collective rights instead of individual ones.

Let me explain my point. The justificatory reasoning of the standard communitarian is as follows:

Reasoning 1:

(1) Communities are valuable in themselves.

Therefore,

(2) Communities have collective rights.

This reasoning is acceptable if we think that the function of (moral) rights is to protect certain fundamental interests or values. Now, if it is true that the communitarians, when they speak of the intrinsic value of the community, refer really to the value of cultural identity as an ingredient of individual well-being, a reliable reconstruction of their argumentation should be the substitution for proposition (1) of another representing its true value meaning. But in this case the reasoning would lose plausibility, as can be seen from what follows:

Reasoning 2:

(1) The cultural identity of a person is valuable in itself.

Therefore,

(2) Communities have collective rights.

Let us compare the previous reasoning with one whose purpose is to justify a right to life:

Reasoning 3:

(1) The life of a person is valuable in itself.

Therefore,

(2) Persons have a right to life.

Similarly, reasoning starting from the value of cultural identity should lead to an individual right, rather than a collective one, in the following manner:

Reasoning 4:

(1') The cultural identity of a person is valuable in itself.

Therefore,

(2') Persons have a right to (the protection of) their cultural identity.

Communitarians do not explain why an axiological property of an individual entity (that cultural identity is valuable *per se*) entails an ethical property (the

possession of a moral right) of another entity, a supra-individual one. If reasoning 4, and not 2, is the one corresponding to communitarians concerned about the protection of cultural identity through rights, what is the point of talking about *collective* rights? Let us leave this question pending, and concentrate on this other one, more important theoretically, Is 4 a sound justificatory reasoning? A lot depends on whether cultural identity is a good important enough to be taken out of the aggregative reckoning of individual preferences recommended by the utilitarians. To explain this point it is convenient to bear in mind two conceptual aspects of rights stressed by Raz and Dworkin.

According to Raz, a subject S has a right to X if S's interest in X is important enough to justify others having the duty towards S of adopting or not some conduct with regard to X (Raz 1984). Furthermore, for Dworkin rights fulfil a singular normative role in practical reasoning: interests protected through rights cannot be subjected to utilitarian reckoning, but they outweigh necessarily any other interests (not protected by rights).⁵ If cultural identity is a sufficiently important interest to justify others' duties, then it might be argued, in accordance with Raz's analysis, that persons have a right to cultural identity. This, in turn, in accordance with Dworkin's thesis, would imply that the interest of persons in the protection of cultural identity cannot be compared with other interests not protected by rights for the purpose of carrying out the utilitarian programme of the maximization of human well-being.

Of course liberals agree that autonomy is a value of such importance that it deserves a moral protection via rights along the lines of Raz's and Dworkin's analysis. They often allege that autonomy is especially important because the exercise of it allows people to express their own nature, i.e. be the authors of their own lives. If it is considered especially important to respect the possibility of persons' making their identity by means of their evaluative capabilities, why should it not be equally important to respect a persons's possibility of maintaining her identity in those cases where the person is only too glad to accept the identity provided by the culture to which she belongs?

But the communitarian will not be in agreement with this line of reasoning. She will tell us that there is no need for a person to accept her cultural identity for it to be worthy of protection. 'To accept' presupposes having made a critical examination of what is accepted. Instead, the cultural identity most appealing for communitarians is the one that is assumed acritically, when the communal ends are adopted as really one's own and the 'I' is replaced by 'We'.

Well, let us correct the vocabulary: Why not respect through moral rights the identity that a person has as the result of a process of non-reflexive identification with the community in which her being is embedded, just as we respect the identity that a person constructs evaluatively? At this point the parallel breaks down. Liberals attribute an especially important status to autonomy not because by doing so they satisfy some people's preference for acting autonomously. This preference,

⁵ As regards the function of moral rights as 'trumps' blocking the pursuit of ends and goals, the *locus classicus* is of course Dworkin, R. 1978.

as such, would not be very different from other preferences, like taking a chocolate ice or having a funfair near home. Autonomy is especially important because it involves the exercise of second-order evaluative capabilities which tell us whether a preference we have is appropriate or not, compatible or incompatible with our nature. It is this rational ability in the leading of our lives that the liberal attaches fundamental value to (Spector 1992, 97-8). And it is this rational ability that the communitarian weakens or replaces directly by the preferences of her community (or its authorities). The fact that the liberal bases individual rights on the value of autonomy does not mean that she has to grant protection via rights to cultural identity collectively imposed. Even if we admitted that such an identity is intrinsically valuable, we should still have to show that it is important enough to justify the protection of the preferences expressing this identity by moral rights, rather than as a mere question of utilitarian policy. (This, of course, does not mean that a utilitarian policy cannot justify *legal* collective rights.)

Let us leave in suspense for the time being the question as to whether the communitarian can justify the special status she attributes to the interest in preserving cultural identity, and dwell now on another line of reasoning which concludes the implausibility of affirming the existence of collective moral rights.

The sceptical position upheld by Hartney is derived from a different motivation (Hartney 1991, *passim*). Following Réaume, he holds that there may be collective goods in three different senses: *public goods* (in the sense of economic theory), *participatory goods*, and *group goods*. Participatory goods are those consisting in a collective activity (rather than in the outcome of this activity), like friendship, a game, or a cultural activity. Group goods are the ones that contribute to the well-being of a certain individual by virtue of her membership of a group or community, like the self-determination of an ethnical group. Though there are collective goods in the senses distinguished, the interests they serve are individual. This is clear in the case of public goods (like a clean environment), but Hartney asserts that it is equally applicable to participatory and group goods. Self-determination, for instance, is a group good if the members of the group are interested in its being self-determining. And the participatory good of playing in an orchestra – let us say – is a good if the members of the orchestra have an individual interest in taking part in this collective activity. Now, in accordance with Raz's analysis of rights – to which Hartney subscribes –, the community may have rights if it has an important enough interest to justify the compulsoriness of the conduct of certain individuals. But since the community does not have interests as distinct from the interests of its members – Hartney goes on to say –, the community cannot have rights, and, therefore, moral collective rights do not exist.

6. Cultural Identity and Legal Collective Rights

So far we have been canvassing the possible justification of moral collective rights, and have seen that there are reasons for being sceptical on the point. Even granting that it is intrinsically valuable for people to preserve their cultural identity, this position – value individualism – does not seem capable of being the basis

for moral collective rights, as distinct from the individual moral right to the protection of cultural identity. Nevertheless, could there be any justification for legal collective rights?

Some communitarian might claim that, for empirical reasons, the best way of affording legal protection to the cultural identity of a person is by granting collective rights to her community. Two remarks are in place here. First, by collective rights I mean what Buchanan calls nonindividual standing rights, that is, rights appertaining to communities or their agents. Plainly, it is possible to reject rights appertaining to communities but admit collective rights in the sense of rights possessed by individuals by virtue of their belonging to certain groups. Hartney, for instance, takes this position, though he prefers to apply the name "group rights" to rights in the latter sense (Hartney 1991, 311). Secondly, whether rights are empirically needed for promoting cultural identity is, of course, a matter of social technology.

It is unlikely that the communitarian plea in favour of collective rights be reduced to a thesis on the instrumental role of legal collective rights for the promotion of some aggregative value. Allow me to explain why. A number of collective rights, like the educational and language rights granted to certain cultural minorities, collide with individual rights of a moral nature, like the right to the free choice of education. The communitarians (and even liberals supporting collective rights) agree that collective rights may have implications at variance with the respect for personal autonomy. Many of them disagree about whether in such cases collective right should prevail. McDonald, for example, maintains that there is no algorithmic rule for the solution of these conflicts, and that sometimes they may confront us with tragical choices (McDonald 1991, 237). But these are doubts about the option between respecting an individual moral right or a collective moral right. If, instead, it were a question of the collision between an individual moral right and a collective legal right, there would be little doubt about the victory of the moral right. Almost by definition moral reasons prevail over other reasons, whether these be prudential or stem from the promulgations of a legislative authority.

Nevertheless, we may have attributed to the communitarian too simple a reasoning. She might mean, not that collective legal rights are justified by the fact that they foster the value of cultural identity, but that they constitute indispensable institutional tools for recognising and creating respect for the individual moral *right* to cultural identity. In this way, if there were a conflict between an individual moral right – like the right of association and dissociation – and a collective legal right, the conflict would not be between a moral right and a legal one but between two moral rights, to wit, the moral right to the protection of cultural identity and the liberal right in question. Let us now concentrate on this possibility.

When the communitarian maintains that persons have a right to their cultural identity, she means that certain interests have a privileged status. For Hartney, the concept of collective right is made use of politically to claim in favour of certain individual interests a higher rank than the one we should be prepared to grant

them if we did not consider them the object of collective rights. With regard to the case of the collective language rights of the French community in Quebec, this author says:

"The weight of the interest in the preservation of the French language is no greater than that of the individuals concerned. The use of the term 'collective right' here is a rhetorical device intended to give greater weight to the francophone interests than would otherwise be the case." (Hartney 1991, 313)

As has already been pointed out, in liberalism moral rights are linked to the ideal of personal autonomy, which, in turn, is related to the exercise of rational capabilities in the leading of one's own life. The communitarian claims for certain interests a privileged status, but not as a way of showing a supreme concern for the rational capabilities of the human being. But we may have been going a little too quickly in discarding the communitarian's chance to justify the special status she assigns to the interest in maintaining cultural identity. Might not the communitarian assert that she too is concerned about taking seriously the application of rationality to the question of how to live? Let us suppose that the communitarian shows a hidden card and claims that true rationality does not consist in following the aleatory dictates of the flesh and blood beings but in knowing how to catch, *à la* Hegel, the inner rationality in communal development. Just as the liberal cherishes individual rationality and regards it as the basis of moral rights, the communitarian might allege that her theory of communal rationality is equally good for the purpose of justifying the moral right to the protection of cultural identity and, consequently, for granting legal collective rights to communities as a way of protecting this moral right.

I do not deny that a hard-and-fast communitarian might arrive at this point. But would she be at ease with the consequences derived from her position? Let us examine them carefully. In the first place, her position includes now a kind of *normative relativism*,⁶ according to which each person must accept, and act in conformity with, the ethical standards of her own community. In fact, this communitarian maintains that the community has rational faculties to lay down collective norms, values and ends, just as individuals have rational faculties to choose their own lifeplans. Following this parallelism, the communitarian is led to affirm that the community has a collective autonomy, similar to individual autonomy. Consequently, if the community establishes a certain standard of conduct, it should be accepted as a way of respecting the exercise of communal autonomy.

The former position would be hardly credible if we supposed that there are objective moral reasons, in the light of which one can judge and eventually reject the norms set up by communities. Since communal standards are meant to be carried out by the members of the community, if there were objective reasons, it would be natural for these norms to be examined critically by the persons affected

⁶ For the distinction between normative, metaethical, and descriptive relativism, vid. Brandt 1970, and Teson 1988, 34-40.

by an appeal to the objective reasons noted. Consequently, to achieve credibility, the communitarian should complement her normative relativism with a variant of *metaethical relativism* which affirms that there are no objective moral reasons but only ones valid in each particular community.⁷ Once the communitarian incorporates normative relativism and metaethical relativism, the logic of her reasoning engages her to protect identifying cultural groups irrespective of their beliefs, values, and practices. In fact, she may not deny them protection from objection to some practice since she upholds a relativist position which implies that the acceptability or objectability of a practice is judged according to criteria of rationality internal to the identifying group. This communitarian does not consider it valuable to protect certain communities just because they possess morally valuable features, as affording a context of choice – à la Kymlicka – or providing a conception of environment surpassing that prevailing in industrial societies – as some indigenists maintain with respect to certain aboriginal communities (Bozzano 1994, 9). No. Her thesis is that every community deserves protection, regardless of its cultural content, in so far as it constitutes an identifying group for its members. Even more so, since her devotion is to the community, the more cohesive, integrated and fanaticized it is, the better, because it will carry out more effectively its role as an identifying group. And the best members of the community will be the ones most loyal to the communal beliefs, the ones most substantiated with its ideals and aims, the most acritical and unreflecting (seen as such through liberal eyes, of course). Naturally, the communitarian cannot now coherently affirm that the preservation of cultural identity is based on objective reasons (because she does not recognise the existence of such reasons). She could only explain her adherence to communitarian policy by saying that it is a matter of personal decision (does she admit that there are *truly personal* decisions?) or, alternatively, on the ground that this policy is upheld by her own identifying group.

Owing to the romantic evocations of collectivist language, it may possibly be still difficult to visualize what such a communitarian defends in concrete practice. This is not the place for a comprehensive examination, but some illustrative casuistry is called for. Let us begin with a paradoxical example where the invocation of collective rights sought to justify the erosion of linguistic identity, rather than its protection. This occurred in the case of *Attorney-General of Quebec vs. Quebec Association of Protestant School Boards*.⁸ In 1982 a group of Anglophones decided to enrol their children in English schools in Quebec, but the Ministry of Education turned down their application. The parents took the case to the courts claiming that the Ministry's decision was contrary to Article 23 of the Canadian Charter of Rights and Freedoms, which grants parents who have been educated in French or English in Canada the rights to send their children to

⁷ In his letter of 15th. November 1993, Hans Albert has suggested to me that the adoption of a relativist epistemology is a natural complement of communitarian political philosophy.

⁸ This case has been profusely treated by Canadian jurists and philosophers. I follow the exposition of McDonald 1986.

schools teaching in French or English, in the same language as they were taught in. The Ministry invoked Law 101 of Quebec restricting access to English-speaking schools of the children of parents residing in Quebec who were brought up in English in Quebec, or outside Quebec before August 1977. To defend the constitutional validity of this provision, in the light of the aforementioned Article 23 of the Charter of Rights and Freedoms, the Quebec Government adduced that the right recognised by that article is a collective one and is accorded to the English minority in Quebec as a collectivity and not to each of its members. The presupposition of the argument is that the limit established by Law 101 does not endanger the protection of the English minority in Quebec. But as a matter of fact the position of the Quebec Government seemed more to protect the French minority in Canada than the English minority in Quebec by obliging even children of English-speaking families to be educated in French.

On another occasion considerations relative to cultural identity and problems in its formation were appealed to to find a multiple murder justifiable. The Lonco Luan case, sentenced in the Criminal Court of Zapala, is one of the strangest in Argentine penal law. In August 1978, in Lonco Luan, a village in the Department of Alumine, Province of Neuquen, inhabited by a small Mapuche community in the process of conversion to Pentecostalism, there took place a mystical cure based on the Pentecostal conception of medicine. In this conception, which is similar to Mapuche beliefs, the illness is not the result of natural causes but the work of evil spirits, which can be apprehended (diagnosed) and expelled (cured). Three boys and a girl of the 'medical team' were brutally murdered because the priest in charge of the cure and his aids were convinced that they were possessed by the devil. Despite the horror of what was done, the judge understood that the assassins were not guilty of murder because they were in a state of ecstasy which ruled out a consciousness of the criminality of the action. Quite apart from the technical character of the excuse adduced, the arguments of the ruling and the intervention of indigenous organizations on the side of the defendants suggest that the beliefs in demoniacal forces constituting the cultural identity of the murderers played a leading part in the acquittal.⁹

Sebreli describes a series of practices which it would be valuable to preserve and protect in the name of cultural identity, and which are undoubtedly irrational by liberal or humanitarian standards (Sebreli 1991, chap.1). Let us look at some of his examples: in India, which is faced by problems of famine and starvation, "offerings of food are made in the temples and the sacred cows are fed"; "in Katsgarama, a village of Ceylon, mystical Tantra is practised, with voluntary tortures, mortifications ending in mutilation like gouging out an eye with a teaspoon and offering it up to the god on the altar ..."; "the M'bakas tribe, of about two million, living in Bangui, still practice necrophagy, since the belief persists that to feed on the flesh of the dead enemy enables one to assimilate his strength"; "the Manu Laws lay down that in childhood a girl must be subjected to the will of her father, in youth to her husband's, and afterwards to her son's ..."; "on the

⁹ I owe the facts of this case to Prof. Abelardo Levaggi.

Trobriand Islands in Polynesia the grown-ups eat the elderly in the belief that they thus absorb their wisdom".

Sebreli makes a vigorous attack on the thesis that cultural identity is a value that deserves protecting and promoting, a thesis he traces back to conservative thinkers like Burke, De Maistre, and the German romantics: Herder, Schlegel, and Schelling. As he well says, "the dilemma of relativism originates when cultural identities enter into conflict with the concepts of freedom, equality, human rights, sexuality, and individuality, in the face of which we cannot maintain moral neutrality or just say that it is a matter of 'preference' as if we were comparing the native way of cooking with another" (Sebreli 1991, 60-1). Whereas cultural relativism cannot concede preeminence to liberal values in their conflict with values of primitive and backward societies, cultural evolutionism, to which Sebreli adheres, defends the superiority of liberal values and raises the ideal of a universal ethics above ethnocentric prejudices and cultural particularisms.¹⁰

Communitarians comfort themselves by pointing out the corrosive effects on communal life which the working of democratic and liberal institutions is supposed to have, including the free market and the protection of classical individual rights. They seldom reflect on the deleterious consequences arising from the application or diffusion of the ideologies of cultural identity and the monoethnic or monocultural State. And it can hardly be because they are ignorant of them. Let us glance at some examples of ethnical violence caused or spurred by sentiments of identification and membership.

In Germany neo-Nazi groups are wont to make violent assaults on Turkish immigrants and other nationalities (including women and children). Further East, in vast regions of eastern Europe and Asia, the collapse of the Soviet order has given rise to an unparalleled ethnical violence. Thus, a number of republics in the Confederation of Independent States (CIS) are involved in nationalist conflicts, among them the war between Azerbaijan and Armenia, and the revolt of Chechenia.

¹⁰ Neither is Sebreli moved (Sebreli 1991, chap. 9) by the frequent pleas for the protection of indigenous American culture. In the pre-Columbine period – he observes – the majority of American Aborigines were survivors of prehistory in the times of the European Renaissance. They were 6000 years behind the inhabitants of the Old World. Far from living in ideal conditions, many of the hunting tribes, like those in the Gran Chaco, practised anthropophagy and ritual murder, draining their blood away in frequent tribal warfare. The real problem of the Aborigines, according to this author, is not the preservation of or return to – empirically unfeasible and normatively controversial – a cultural identity substantially already lost: "the Indians need advanced techniques to cultivate the land, education, sanitary conditions, integration into modern economy" (Sebreli 1991, 288). These needs cannot be claimed on the strength of cultural identity. On the contrary, it might even be suggested – I add – that these demands, imbued with the Western conception of life style, stand for ways of liquefying this identity even more. (Is it not perhaps more in keeping with the cultural identity of the sick Tobas to be looked after by a witch doctor than by a Western doctor?) The reader interested in the Argentine indigenous question may consult Levaggi 1990 and Sarasola 1992.

In ex-Yugoslavia Serbs, Croats and Moslems are engaged in a bloody war over Bosnia-Herzegovina, with extremes of aberration. For instance, Serbian groups used no less than systematic raping of women as the methodology of racial and ethnical depuration.

In the Middle East, the Palestinian uprising ('Intifada') and the Israeli reprisals have in great part been overcome thanks to the Gaza-Jericho Agreement, but the fundamentalist movements are still strong in the region and are continuing with their terrorist escalation in Cisjordania, the Gaza Strip, and, recently, in the U.S.A and Argentina too.

In India, the ethnical tensions between Hindus and Moslems, together with the separatist aspirations of the Sikhs in the Punjab, are a danger for the lay and egalitarian bases of the Indian State.

Besides the violence let loose by these ethnical conflicts, they help to weaken liberal democracy. This is clearly seen in the case of Germany. There the wave of xenophobia is accompanied by political manifestations which contradict the very heart of egalitarian ethics. Thus, the party of the extreme right, Republikaner, raises the Nazi slogan of racial purity, and even a new grouping of the Christian Democrat Union (CDU), the Christian Conservative Forum, has as one of its objectives the rejection of "the Utopia of a multicultural society" in Germany.

It might be suggested that communitarian policy in defending the granting of collective rights is a possible solution for ethnical conflicts, rather than one of their motivations or incentives. The suggestion is wrong. Although collective rights may fulfil some function in the preservation of peace, they are not precisely the collective rights of communitarianism, but others of a different kind, like the rights of minorities established after the First World War in the Treaties of Versailles. The conception of collective rights underlying the Treaties of 1919 was very different from that which dominates communitarian literature. In the first place, the protection of national minorities through the recognition of collective rights pursued a clearly political goal, namely, to avoid those conflicts between States which often arise as a result of discriminatory treatment and the oppression of national minorities (De Azcarate 1945). In philosophical terminology, it may be said that the rights of national minorities were not considered justified by things like the existence of a national conscience but on utilitarian grounds. Communitarians instead claim that the protection of collective rights possesses moral legitimacy, beyond or heedless of the political, or other kinds of, benefits or losses it might occasion.

In the second place, the difference of motivation is reflected in the normative scope of the minorities' rights protected by the 1919 Treaties and the collective rights defended by modern communitarianism. A lot of the concerns of minorities claiming protection, as distinct from *liberation*, might have been perfectly accommodated in a liberal society granting equal treatment to all its citizens, without distinction of race, religion, or ethnics. Indeed, ethnical or national discrimination is morally condemnable in terms of individualist liberalism and there is no need to appeal to anti-individualist moral visions in this respect. Communitarians, instead, are not satisfied by a State guaranteeing *negative*

equality before the law, limited to the protection of minorities against unfavourable discriminatory treatment. They claim not only an egalitarian treatment but a special treatment implying the recognition of language, political, mobility, and even cultural rights, which in many cases directly transgress some individual rights. In this sense, communitarians echo the position of some advocates of the international protection of minorities in the League of Nations, like De Azcarate, who proposed an interpretation in terms of *positive equality*:

"For the members of a minority to live on equal terms with the majority, they should have the legal, social, economic, and cultural institutions enabling them to preserve their national conscience, and cultivate and develop their own language and culture under the same conditions as the majority." (De Azcarate 1945, 24)

I have been arguing that the communitarian who stands up for a right to the protection of cultural identity is naturally led to uphold a relativist conception – normative and metaethical – whose systematic and coherent application to the public domain has anti-intuitive moral consequences and causal effects dangerous for peace and the maintenance of democratic order. But all this allegation could become a boomerang for my position if it could be shown that in point of fact moral relativism is the position most akin to democratic liberalism. Actually Hans Kelsen maintained this position when he wrote in the 'twenties that "relativism is the world view that the democratic idea presupposes". According to Kelsen, while "the metaphysical-absolutist conception of the world prescribes an autocratic attitude", "democracy concedes equal value to the political will of every one, respecting equally every belief, every opinion in which it is manifest" (Kelsen 1959, 472).

Some years ago, trying to explain why religious conceptions are excluded from Rawls's original position, Gerald Dworkin upheld a thesis with Kelsenian overtones. Liberalism, according to Dworkin, ought to rest upon the sceptical epistemological assumption that we cannot attain a justified belief in religious questions (Dworkin, G. 1974, 503). If metaethical relativism were an epistemological assumption of the liberal doctrine, then the communitarian might reply that liberal values are on the same epistemic footing as other idiosyncratic impersonal values and that there not being any justificatory difference, it is not possible to reject the existence of a right to cultural identity – and of the consequent legal collective rights – on the grounds of its negative implications in terms of the respect for liberal individual rights. Nevertheless, I think that liberalism does not need to base itself on relativism or, generally speaking, on epistemically meagre positions.

It is usual to maintain, against the Kelsenian thesis, that if the liberal subscribes to metaethical relativism, she cannot possibly claim that her political doctrine is true or objectively valid. Perhaps for this reason, a lot of contemporary liberal authors do not speak of relativism, as an epistemological doctrine, but of a normative idea, state neutrality, which is associated in practice with human attitudes similar to the ones typical of fervent liberal relativists like Kelsen. Modern neutralists affirm that the State should refrain from considering (or at

least from considering in an inegalitarian manner) the different ideals of life that citizens have. However, the thesis that the neutral liberal State avoids discriminations between people's conceptions of the good has been put lately under criticism. It is said that if the State pursues a neutralist policy, it favours those citizens who particularly esteem independence of judgement and individual responsibility. We may speculate that it is as a result of a certain dissatisfaction with the notion of neutrality that in recent liberal literature there has been a reappearance of epistemological appeals.

In *Moral Conflict and Political Legitimacy* (1987) Thomas Nagel puts forward an epistemic restriction. Political action has a distinctive morally characteristic, he says: it implies the use of force. But in the opinion of this author coercion is morally admissible only if it can be publicly justified. Nagel endeavours to apply to beliefs the famous distinction between a *personal* and *impersonal* point of view. From the personal point of view, he says, a belief may be justified, but this does not mean that it is for the purposes of political argumentation. From outside, this same belief counts only as *someone's belief*, but not as a truth; only when it is the object of impersonal justification can it serve as a premise to justify the use of force.

It is true that, as Raz observes (Raz 1994), Nagel's thesis confuses the distinction belief/truth with the distinction personal/impersonal. In effect, both the believer and the observer should be aware that a belief may not be true, if they interpret the concept of belief in the standard way. A justified belief does not cease to be justified by the fact of its being seen impersonally. But the core of Nagel's idea is the "distinction between what is needed to justify belief and what is needed to justify the employment of political power" (Nagel 1987, 229). Stated thus, it is not the fact that it distorts the usual interpretation of the concept of belief which makes it open to criticism but its blatant obviousness. It is clear that it is not the same *to believe something* as *to force someone to do something*; indeed, it would be surprising if two such different things required the same type of justification.

Be that as it may, epistemic restriction does not improve the argumentative position of the liberal in comparison with metaethical relativism. According to Nagel, when the State resorts to force, it must justify its action only on the basis of beliefs justifiable by public standards. But it is not at all clear that a number of authoritarian practices, repulsive to the liberal way of thinking, lack justification in the heart of the communities where they are applied. In other words, it is doubtful whether Nagel's epistemic *test* will manage to filter out anti-liberal state action, chiefly because the concept of public justification is too vague to serve as a criterion for selecting state interventions admissible from the liberal standpoint. Though this question of course requires a more detailed treatment, I think that if the liberal wishes to formulate her doctrine in a consistent manner, she cannot uphold either metaethical relativism or Nagel's epistemic restriction. In my opinion, it is not these epistemically meagre doctrines that the liberal needs to justify her position. What she needs is the thesis that some and only some moral claims are rationally justifiable, and that among these there is that which asserts

that it is valuable for people to exercise their powers of reasoning in the choice and development of their lifeplans.

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