MULTICULTURALISM AND COLLECTIVE RIGHTS: TOWARD A NEW CATEGORY OF FUNDAMENTAL RIGHTS?

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I. INTRODUCTION

The last few decades have witnessed a remarkable interest amongst political philosophers and constitutional theorists over the need of recognizing collective rights to cultural minorities. There are a number of reasons that could explain the growing interest in this issue. But, in general terms, the starting point of the debate lies in a more general criticism towards liberal philosophy for not paying adequate attention to phenomena such as multiculturalism and nationalism, or to the problem of how do human belonging to identity groups affects individuals autonomy and equality. As a category different from that of individual rights, collective rights are thought as a legitimating instrument for a wide range of claims raised by minorities in those states with high levels of cultural pluralism. Its advocates typically emphasize the limitations of democratic systems and current constitutional catalogues of civil and politic rights to achieve equality between identity groups and to face ethnocultural conflict. The relevance of this topic goes far beyond the mere theoretical dimension. It is not only that there are few states whose citizens share language, traditions, history, religion or ways of life these days. Rather, the striking fact is that, since the end

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1 Termination used to refer to these rights changes a lot. In addition of the term “collective rights”, the expressions “community rights” “group rights” “cultural rights”, etc. Along the paper, I will prefer to use the term collective rights mainly for reasons of its predominance in the specialized literature. Initially, by cultural minorities I will refer to those groups whose members perceive themselves as carrying a particular identity or institutions that they regard as valuable and, hence, want to preserve. It is perhaps important to note that modern discourses on multiculturalism have incorporated the notion of “cultures” in plural of the modern anthropology that eliminates the trends of inferiority or superiority of particular forms of living. See, for instance, Kymlicka’s notion of “societal culture” (W. Kymlicka 1995, p. 76) or Raz idea of “encompassing culture” de Raz (J. Raz, 1994, pp. 129-130).
of the Cold War, multicultural coexistence has become a major source of violence and political conflict around the world.\(^2\)

To be sure, there are good signs indicating that the tendency to attribute legal rights to certain groups on the basis of cultural peculiarities is increasing –especially, along the recent evolution of the International Law of Human Rights\(^3\). However, the interpretation of these new rules incorporating a collective component to rights is highly contended. More specifically, its accommodation within the classical scheme of justification and ascription of individual rights is remarkably ambiguous. Critics have tenaciously argued that the grounds for collective rights rest on assumptions opposed to—or deviating from—the project of a democratic society which is congenital to contemporary liberalism. This thesis persuades them to claim a fundamental incompatibility between these rights and individual rights—without possible trade-offs amidst the values underlying both categories of rights. Other authors, rather than questioning the legitimacy of some familiar demands raised by cultural minorities in democratic states, either stress that we do not need a new category of rights to respond to these demands, or reject that the interests or needs underlying them might be considered as morally significant, or “fundamental” ones. According to these approaches, current liberal-democratic principles do provide a framework which is flexible enough to promote peaceful coexistence of different cultural groups in any democratic state. For one thing, the traditional liberal doctrine of

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\(^2\) See on this matter, T. Gurr (1993).

toleration, together with the ideal of state neutrality, provide suitable instruments to deal with diversity and hence successfully manage ethnocultural conflict and accommodate minorities complaints.

Underlying the latter reasoning, there is often the assumption that the language of rights is too intransigent and leaves little room for compromises, adding even more obstacles to the complexities that multicultural societies confront. Hence, framing their aspirations in terms of rights, minority groups tend to assume that fulfillment of their interests should depend neither on negotiation and agreement with other groups, nor on considerations related to the common good. Since claiming “our” own rights seems to inevitably entail marking a distance from others—it means to announce, borrowing Waldron terms, the beginning of the hostilities⁴—the language of rights might turn out to be self-defeating, adding even more difficulties. Moreover, it is a common concern that placing the emphasis on rights may inhibit alternative discourses, such as that of responsibility and civic virtues, eroding cherished values of democratic citizenship and diminishing the possibilities of establishing a civil society where human relations are sustained upon ties of affection, respect, tolerance and bona fides. To a good extent, the communitarian spirit embedded in today’s revival of republicanism lies at the heart of this criticism against expanding present catalogues of human rights. The argument would go as follows: if we enjoy democratic forums to deal with social conflict, why should not be trusted?, why would be want to define inter-group relations through an impersonal institution such as rights, instead of overcoming existing barriers between cultural minorities

and majorities through dialogue? In short, according to this objection, the debate over minority collective rights would be an example of how the language of rights is trivialized in today’s political discourses.5

This fourth panel aims at exploring several central questions arising from the widespread use of the language of rights in contemporary controversies. My purpose in this paper is to elucidate some of the proposed issues taking the debate over the so-called “collective rights of cultural minorities” as a framework. Rather than defending any definitive answer to the legitimacy of these rights, the ultimate aim of the following pages is to offer a critical view of the terms in which the debate is established which may be useful to elucidate the questions posed by the organizers. More precisely, my main goal is to dispute the widespread skeptical conclusion concerning the existence of collective cultural rights endorsed by many liberal-egalitarian philosophers.6 To this end, most of the paper is mainly devoted to showing the deep inadequacy of the standard approach to the problem of minority rights, and on suggesting the need for a more accurate theoretical framework based on both different conceptual and normative premises. It will be asserted that this modification constitutes an essential preliminary step to correctly assessing the implications of defending a positive answer about the need for recognizing certain collective rights to cultural

5 This was professor Calsamiglia’s opinion. In his last book he claimed that the language of rights is overused and this has result in trivialization. A. Calsamiglia (2000). For a similar view: M. A. Glendon (1991), A. Etzioni (1995).
6 By “liberal-egalitarianism” I mean certain strain within liberal philosophy characterised by the assumption of certain kind of individualism—that is, human beings are conceived as the latter repository of moral value, as an end in herself, along the Kantian tradition- and of certain kind of egalitarianism—say that every individual has an equal moral status and should be treated by the government with equal respect. In contrast with the libertarianism of Friedrich Hayek and Robert Nozick, this line of thought—in which we may include philosophers such as Gerald A. Cohen, Ronald Dworkin, Stuart Hampshire or John Rawls—prescribe state’s interventionism to give content to the moral postulate that “is life counts and counts equally” (T. Nagel, 1979, p. 105). About liberal-egalitarianism, see R. Gargarella (2000), W. Kymlicka (1995).
minorities and, therefore, to progressively expand existing catalogues of fundamental rights. But, before, let me make before remarks in order to shed some light on the link between the philosophical debate about multiculturalism and the defense of minority rights.

II. THE PROGRESSIVE RECOGNITION OF HUMAN COLLECTIVE RIGHTS: GENESIS OF A POLEMIC TENDENCY

Defenders of human rights understand these rights as protecting the kind of needs or goods that all individuals possess as free and equal agents. In other words, the imposition of duties on others –individuals as much as states– on the basis of these rights may only be justified if it is necessary to satisfy our most urgent interests. Generally speaking, the language of rights is used to emphasize the relevance of certain kind of reasons. This is the idea underlying Dworkin’s famous statement that rights are trumps against the majority, hence acting as constraints to possible invocations to the common good or collective utility within the context of institutional decision-making\(^7\).

Philosophical approaches to human rights tend to start by asking what is the test or criteria that any given right should satisfy in order to be subsumed into this category. To make this requirement intelligible, scholars normally resort to the distinction between legal rights and moral rights\(^8\). To claim that somebody has a moral right operates as a relevant reason to defend the need for its recognition and protection by means of legal rules. For this reason, an essential part of the political form of the constitutional democracy consists in guaranteeing certain fundamental rights associated with the concept of justice, either through a

\(^7\) R. Dworkin (1984).
\(^8\) A common method to distinguish both kinds of rights consists in saying that legal rights are those recognized into a legal order, whereas moral rights exist in a moral normative system.
written constitution, or through certain conventions or statutes that parliaments can not violate\textsuperscript{9}. Interpreted this way, fundamental rights are rights from which properties such as universality and non-alienation are predicated. Their most praiseworthy end is perhaps to bring together all existing human diversity into some common features. But, beyond these prevailing premises, we lack of a single theory with regard to the precise identification and justification of fundamental rights. Rather, we use to rely on several arguments in favor of the protection of some specific interests, goods, and aspects of the human existence. Yet, unavoidably, within the occidental culture and traditions of thought we find some well-settled and defined views about the nature of individual and society which become essential to realize why, beyond the peculiarities of our legal systems, the processes of recognition and protection of fundamental rights have been largely similar in most modern constitutional democracies. Against the dogmas prevailing in the medieval world, Renaissance humanism brought about a deep belief in the intrinsic merit of each individual, and her capacity to autonomy, that will be widely developed by all philosophers during the Enlightenment.

Nowadays, philosophers as Raz and Lukes think that humanism means \textit{value-individualism}, and that “value-individualism” entails that the goodness or badness of any object or action derives from its actual or potential contribution to the human life and its quality\textsuperscript{10}. Moreover, the core of the human rights discourse along the whole post-war liberal tradition is the recognition of the intrinsic merit of each and every

\textsuperscript{9} In this sense, J. Rawls (1999).
\textsuperscript{10} Raz (1986), Lukes (1975).
individual. This claim is projected on the individualist and universal structure adopted by fundamental rights in almost all constitutions currently in force, as well as in the particular content of these legal documents.

Indeed, liberal constitutions attribute to all individuals a set of fundamental rights and liberties that are specially protected. Generally, they are the kind of civil and political rights that—at least in theory—enjoy the international consensus expressed in documents such as the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights. However, this option implies, however implicitly, that the best strategy to cope with discrimination is turning invisible our differences. That is, liberal states must prevent that empirical differences become relevant to the Law. The ideal of a universal citizenship embraced by the liberal theory is associated, then, with a homogeneous distribution of rights: assigning the same rights to all citizens is considered to be enough to guarantee the legitimate forms of diversity in a democratic society. This is the philosophy guiding the strategy of most states and human rights organizations to deal with the problem of cultural minorities. As Young writes:

“Ever since the bourgeoisie challenged aristocratic privileges by claiming equal political rights for citizens as such, women, workers, blacks, and others have pressed for inclusion in that citizenship status. Modern political theory asserted the equal moral worth of all persons and social movements of the oppressed took this seriously as implying the inclusion of all persons in full citizenship status under the protection of the law. Citizenship for everyone and everyone the same qua citizen.”

The sketched observations allow highlighting the challenge that the recent tendency to recognize human collective rights to certain groups involves for the principles inspiring the traditional doctrine of

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human rights. There are probably several reasons to be put forward to explain this new orientation but, in
general terms, it is connected to the democratic states urgency in facing the common dilemmas emerging
from multiculturalism.

Let me elaborate. The debate about multiculturalism concerns essentially the normative conditions
of social justice in contexts of etnocultural diversity, that is, in societies where different ethnic and cultural
groups coexist\(^\text{12}\). As it was noted at the beginning of this essay, the upsurge of interest on cultural diversity
and the status of ethnocultural minorities amongst political philosophers and jurists is connected to the
increasingly acknowledgement of the high level of conflict originated in this factor. Additionally, there is no
trace of any changes in that respect that would allow predicting the banishment of these fights in the near
future. On the contrary: the massive movements and interaction of peoples initially provoked by the de-
colonization process and, today, by massive migrations and globalization, allow us to foresee the
consolidation of multicultural citizenship, and therefore of the sort of problems associated to it. With some
7000 to 8.000 ethnocultural groups in the world, the around 200 states inevitably have to be shared by
more than one of these groups.

However, multiculturalism is not a distinctive phenomenon of our time. The presence of different
ethnocultural groups within the same political unit –as well as the conflict between them– has been a
pervasive feature throughout history. For this reason, if we are to understand where does the great deal of
interest on minority issues in recent years comes from (after a whole century of relative marginality of the

\(^{12}\text{See A. Gutmann (1993)}\)
subject) it is essential to take into account a series of events that have contributed to dispute certain
common assumptions deeply rooted in the liberal thought. Surely, one of these widespread assumptions
is the idea that, in fact, cultural diversity involves no challenge whatsoever for integration, social unity and
justice in democratic societies. According to this view, ethnocultural conflict is characteristic of backward
societies or non-democratic states that do not respect their citizens’ fundamental human rights. This premise
would has eventually led many prominent liberal scholars to ignore the question of cultural diversity, treating
it as a minor difficulty when designing political institutions. In short, this omission has not been motivated
by the unawareness of the fact that states are not culturally homogeneous, but because of the idea that this
is an irrelevant fact that does not deserve special normative relevance.

The origin of this assumption may be found in the scheme of values liberal theorists have inherited
from the Enlightenment. Philosophers such as Voltaire or Condorcet predicted that cosmopolitanism would
be the natural and unavoidable result of modernization and individual emancipation. In their view, while
people belong to particular ethnic, religious or linguistic groups, attachment to identity groups won’t
determine the options of free individuals. Moreover, many heirs of the Enlightenment assumed that, once
modern communications and liberal education linked people across countries, cultural identity would
progressively vanish. Condorcet, for instance, predicted that progress would entail a gradual assimilation
between cosmopolitan citizens, a process which would culminate into the blending of all cultures and the
emergence of a single cosmopolitan society with a universal language\textsuperscript{13}. However, today, more than two

\textsuperscript{13} More on this idea in W. Kymlicka (2001).
centuries afterwards, such predictions not only remain uncompleted, but had probably been based on an excessive optimism.

Indeed, during the early eighties, some political theorists as Connor and Van Dyke yielded genuine insights into the centrality of some critical facts generally downplayed in the liberal literature. In particular, their works stressed the existence of enough empirical evidence to show that neither the mobilization inherent in modernity nor democracy have resulted in a decrease of the conscience of ascriptive identities (cultural, ethnic or national) amongst individuals\textsuperscript{14}. Further research carried out on this field reveals that virtually no cultural group has voluntarily accepted assimilation. On the contrary, ethnonational conscience, far from being in decline, has proved to be perdurable, even increased its power. And no state (whether unitary or federal, democratic or authoritarian) has managed to avoid this fact. Moreover, neither the process of political integration started in some regions nor globalization have led to the predicted uniformity and merging of peoples. As EU Chief Representative for Foreign Affairs and Common Security, Mr. Javier Solana, puts it: “In view of this necessary globalization, individuals want to identify themselves more than ever with their own culture, their roots, their history, the language that they learned from their parents, and the traditions staying with them from birth”\textsuperscript{15}.

I would certainly argue that the recent evolution of political events in several geographical areas of the world corroborates Solana’s thought. An illustration might be useful: after the fall of the Berlin wall and

\textsuperscript{14}Starting from this reflection, both authors criticized the indifference of liberal political theories towards the issue of the status of cultural minorities and indigenous peoples. See W. Connor (1994) y V. Van Dyke (1985).

\textsuperscript{15}J. Solana (2000, p. 21).
the collapse of communism, the establishment of democratic systems and liberal constitutions have proved unable to avoid the emergence of identity conflicts throughout Central and Eastern Europe. National minorities that seemed to have faded away behind the Iron Curtain have emerged with renewed force in many territories, frustrating the hopes that occidental analysts had placed in the processes of democratic transition as natural warrantees of peace and progress in the region. Current debates tend to focus on how does membership to an ethnonational group should affect the political articulation and distribution of powers within the new states. Most cultural minorities do not dispute the legitimacy of civil and political rights and democracy, but the established territorial borders as well as the very processes of nation-building and integration\textsuperscript{16}. Undoubtedly, in this context, to determine who is the \textit{demos} is an extraordinarily complex issue, and this uncertainty is partly responsible for the slow recovering of the new countries at levels. On the other hand, the same claims for recognition of cultural diversity underlie many of the dilemmas that some well consolidated democracies still have to face: from the power of nationalism in Scotland, Quebec, Puerto Rico, or Catalonia to the controversy over indigenous rights and the principles guiding immigration policies and social integration of ethnic groups in both Europe and America. In all these cases, majorities and minorities confront each other around questions like political autonomy, the representative system, the

\textsuperscript{16} Ironically, one of the first decisions that the new democratic governments in Central and Eastern Europe took was to revoke, or do not restore, the autonomy status enjoyed before by several cultural minorities. Thus, Georgia revoked the autonomy of Abkhasia; Azerbaijan did the same with Ngorno-Karabakh and Serbia with Kosovo. In other cases, demands of restoring historical forms of self-government were downplayed. For instance, Rumania rejected the claims of some sort of autonomy from Transylvania and Macedonia opposed to the referendum of the Albanian majority in the North. Summing up, just as some two or three centuries ago other occidental states did, all projects of national-building in these new states are based upon the official diffusion of one language and culture.
delimitation of territorial borders, educational curriculum, official language, subsidization of religious schools, and even the choice of state symbols. Although, in these contexts, most of these controversies have not still end up in dramatic breaking-offs, this is not a good reason to ignore their existence.

In short, the successive spreading of a liberal political culture does not appear to be enough for achieving social and political integration in multicultural settings. Considering the evolution of political events over the last quarter of the twentieth century, it is surprising that only few theorists anticipated the centrality that fights for recognition of the different cultural identities would acquire. The same thought is valid as far as the salience of nationalism and the claims of minority groups are concerned. The dominant view that democratization and economic development would help to liberate emancipated individuals from ascribed identities (so that they will stop being a source of political conflict), explains that most modern liberal theorists have operate with an ideal model of the *polis* which do not grant any relevance to the social scenario where their theories and arguments are supposed to be implemented. Therefore, it is not at all paradoxical that, despite taking into account ideological pluralism (that was not predicted to diminish, rather the opposite) political thinkers such as Rawls seem to dismiss de relevance of cultural pluralism too quickly\textsuperscript{17}. In this sense, Glover might be right claiming that the lack of foresight of the significance of culture for the modern individual shows that the Enlightenment view of human psychology inherited by last century political thinkers was too weak and mechanic, too * naïve* in the end\textsuperscript{18}.

\textsuperscript{17} This is surely the main criticism posed by multiculturalists and liberal nationalists as Kymlicka, Miller, Tamir and Taylor along the last decade.

\textsuperscript{18} J. Glover (1999).
The previous reflection will hopefully be enough to grasp the elemental concerns underlying the language of collective rights, as well as the deviation from standard liberal views that recognition of this kind of rights apparently implies. Of course, each of the conflicts so far referred has its peculiar nature and historical genesis. Nevertheless, there is a common trend to all the heterogeneous claims made by cultural minority groups living in the midst of multicultural states (from national minorities to ethnic groups). Namely the idea that cultural membership/identity is morally relevant and should be recognized and protected through specific rights. Since, at first glance, the considerations involved seem to be related with justice and equality between groups, the general assumption guiding those claims has been the idea that both, basic catalogues of constitutional civil and political rights and the majority rule, are insufficient to accommodate them properly. As Kymlicka rightly points out neither freedom of expression nor the right to education states what are fair linguistic policies, the right to vote do not indicate which would be a just delimitation of borders or electoral circumscriptions, and freedom of movement do not explicit what policies of immigration and naturalization are legitimate\textsuperscript{19}. In part, this argument grounds the defense of group rights as fundamental rights at the theoretical level. Recognition of certain minority rights, it is argued, will help to promote equality in multicultural states, remedying the disadvantages suffered by minority groups willing to maintain and develop their own cultural identities and particular institutions. According to this reasoning, collective rights contribute to diminish the impact that globalization and dominant cultures have over minorities, setting up, at the same time, the grounds to resolve potential conflicts more fairly.

\textsuperscript{19} W. Kymlicka (1995, p. 5)
III. THE DOMINANT THEORETICAL APPROACH AND LIBERAL CRITICISM TOWARD COLLECTIVE RIGHTS

So far I have focused on what I believe are the main reasons for the upsurge of the language of collective rights in the debates over how to deal with multiculturalism. Whereas the doctrine of human rights is surely one of the greatest achievements of post-war liberalism, traditional understanding of these rights do not provide us with specific arguments to justify the expansion of existing catalogues as to include a new category of rights. This breach may be observed in the enormous difficulties regarding the interpretation and application of some of the few group rights already acknowledged by several international organizations working in the field (from the right of peoples to self-determination to the recent instruments to protect national minorities and languages adopted within the European setting). As it has been stressed earlier in this paper, supporters of collective rights tend to assume, albeit implicitly, that the best way of guaranteeing a special protection for these groups is through a different category of rights. This idea results from the common perception that the kind of political and moral interests that are on the basis of the type of demands at stake cannot –or should not, according some versions– be subsumed under familiar catalogues of individual rights constitutionally recognized in most Western democracies. However, what does it mean to describe a right as a “collective” or “group” right?, and what are the criteria to identify which are the groups potentially candidates to enjoy such rights? (after all, nobody is defending, as with individual rights, that all groups, but the fact of being so, have collective human rights).

First of all, most scholars understand “collective rights” as rights whose holder is a collective subject, justifying them in an analogous fashion to that of individual rights. Very briefly, the reasoning would
go as follows: defenders of individual human rights start by identifying human beings as holders of certain goods (life, physical integrity, freedom, and so on) whose especial value justify individual’s interest in its respect and protection through certain legal rules. Consequently, rights are ascribed to individuals as a primary guarantee against the violation of those interests, so justifying the imposition of various duties on others. Proponents of collective rights proceed in a similar way: they try to clarify the terms “group” or “minority” (when talking about minority rights), then outline some collective interests that they claim to be morally legitimate (cultural preservation, for instance) and, finally, argue that these interests conform the essence of certain collective rights. Therefore, the central difference between individual rights and collective rights would be, according to the dominant view, the nature of their holders. The ultimate foundation for collective rights would be the existence of some group interests that are not reducible to the sum of aggregated interests of its members. Thus, it is commonplace to maintain, for example, that the interest of communities in preserving their distinctive cultural traits can not be adequately understood if it is reduced to a sum of aggregate individual interests. On the basis of this reasoning –hereafter “the irreducibility thesis”– proponents insist on that collective rights can not and should not occupy the conceptual space of individual rights. There are certain elements or goods, they argue, that only group possesses: processes of socialization, structures of communication or what it is often called “the fraternal community”. Because

20 In this sense, Freeman (1995, p. 38) argues that “Collective human rights are rights the bearers of which are collectivities, which are not reducible to, but consistent with individual human rights, and the basic justification of which is the same as the basic justification of individual human rights”. M. Freeman, “Are there Collective Human Rights?”. Similarly, M. McDonald (1991, p. 220).

groups are, in themselves, those having legitimate interests toward such kind of goods, rights should be attributed directly to them. If we assert, say, that the asháninka people has the right to self-determination, this right would be something else than the aggregate of interests of asháninka individuals to organize themselves politically.

As part of the standard route to justifying collective rights it is assumed that there are at least certain groups with a clear identity and capacity to be moral agents (both being pre-conditions to be a human rights holder). Thus, Van Dyke, a pioneer in the defense of group right, argues that ethnic communities meet all the relevant criteria to be considered as potential holders of moral rights (and not merely legal rights as those that corporations or other interest groups use to have): “I speak of a group”, he writes, “as a collective entity that it comprises one unit, one whole, with a collective rights of its own –a right that cannot be reduced to the rights of individuals”\(^{22}\). In fact, the very notion of group is often connected to psychological elements defining personal and collective identities. Fiss points out that a group is something else than a mere aggregate of individuals arriving to a corner at the same time, delimiting two elements in order to distinguish between aggregates of individuals and social groups\(^{23}\). The first is that a group is an entity, which means that “has a distinct existence apart from its members, and also that it has an identity”\(^{24}\). Therefore, according to this author, it does make sense to speak of the existence of a group over a period of time, independently of whose their members are at any given moment. Secondly, there must be what Fiss

\(^{22}\) V. Van Dyke (1985, p. 207). Similarly, M. McDonald, \textit{op. cit.}, p. 218.


\(^{24}\) \textit{Ibid.}
calls “a condition of interdependence”; that is, the identity and well-being of the group and the identity and well-being of its members have to be linked in a way such that “members of the group identify themselves—explain who they are—by reference to their membership in this group”\textsuperscript{25}. In sum, the deepness of the group members’ constitutive interests and their mutual recognition as such are what mainly enable us to distinguish them from what Held calls mere “collections”\textsuperscript{26}. More recent references to the sort of group qualified as a holder of collective rights essentially point to these two basic elements\textsuperscript{27}.

Now, even if we accept both the outlined ideas of group and the irreducibility thesis, the problem of identifying the relevant candidates to be rights-holders would remain. As it was noted, in the debate over multiculturalism, collective rights are envisioned as a good device for accommodating cultural minorities. In its common understanding, the term “minority” refer to a group of individuals that, due to certain circumstances, find themselves in a position of inferiority with regard to other group of individuals to which they are linked by some contingent relationship. The problem rests in that the elements that may entail such relation of subordination are quite diverse: number, ethnos, religion, life conditions, enjoyment of rights, and so forth. In his well-known \textit{Study on the rights of persons belonging to ethnic, religious and linguistic minorities}, Capotorti illustrated the main difficulties to delimit the relevant elements that should be taken into account to define the term “minority”\textsuperscript{28}. Capotorti outlined some of the most contested issues, such as the necessity of a minimum size of the group, or its numerical inferiority with regard to the global population.

\textsuperscript{25} Ibid.
\textsuperscript{26} V. Held (1970).
\textsuperscript{27} For instance, M. McDonald, \textit{op. cit.}, p. 219, Raz, Margalit (1994), I. M. Young (1990).
\textsuperscript{28} F. Capotorti (1979).
of a state, the interaction of objective and subjective elements, the inclusion or exclusion of foreign immigrants. According his final proposal, the notion of minority is defined by two properties. The first refers to objective elements: a group identified by ethnic, religion or linguistic features, inferior in number, occupying a non-dominant position within a state, whose members are full citizens. The second element is subjective in nature: the group must possess an interest in –or be willing to- preserving its particular identity.

But both elements are deeply problematic: for example, the numerical criteria might be considered arbitrary, since it would not permit to take into account oppressed groups like the black population in South Africa during the apartheid, or women in ultra-orthodox Islamic states. With regard to the subjective element, criticisms in relation to its evasiveness are also familiar. Even though, as we have seen, the notion of group is connected to the conformation of individual and collective identities, to the existence of certain common understandings and to a sense of mutual recognition, the psychological nature of this criteria makes it difficult to apply: since the construction of identities is a dynamic phenomenon, involving the relation between different groups that are not internally homogeneous, it might be argued that it is no possible to speak of “distinct identities” at all and, hence, of different groups. This thesis leads to the conclusion that it is impossible to delimit the borders of identity groups, even if we take them as abstract generalizations. In fact, part of the reluctance to accept the collective rights comes from an anti-essentialist critique in which the charge is that these rights support basically incoherent ideas of impossible implementation.

Certainly, even though in the last few years multiculturalism has won respectability, becoming a progressive political and academic discourse, various commentators have directed their criticisms against
monistic or fixed –frozen in time– images of culture, emphasizing instead internal differentiation and dissent as well as fluidity in the conceptions of belonging and identity (both being historical constructs changing over time). In this political contest, the target is the so-labeled “ethnic absolutism” or “differentiating culturalism”, to which theories such as Kymlicka and Taylor’s would eventually derive. The thrust of this positions (represented by human rights activists like the British Women against Fundamentalism and academics as Yuval-Davis and Okin) is that, under post-modern circumstances of people sharing public spaces with multiple influences, ethnocultural identities are not simply given or atemporal, but hybrid and mixed ones.

So the prevalent conception and justification strategy of collective rights seems to call into question some basic assumptions of liberal political thought about the nature of rights. To begin with, as can be guessed from the previous discussion, it opens the door to some of the most complex dilemmas confronting liberals and communitarians. In particular, to issues related with human identity, moral agency and the relative priority of the individual or the community. For this reason, it has become a commonplace to assume that positions in favor or against collective rights depend upon philosophical views on these broader debates. More accurately, several liberal theorists reject the idea of collective rights stating that its defense entails a compromise with a dubious ontology. The argument is simple: as moral rights, human rights are ascribed to those possessing certain capacities. A collectivity cannot think, deliberate, assess courses of action, or act by itself, hence it does not satisfy the minimum requirements to be considered as a rights-

30 N. Yuval-Davis (1992), S. Okin (1997)
Panel 4: The Internal Integrity of Rights

holder. Only individual human beings can literally deliberate, make use of reason, have values, make decisions. All facts about group actions and decisions depend on individual acts and behaviors. Following this reasoning, Wellman argues that, even the most organized and active groups lack of agency in the strict sense, so it is impossible for them to become rights-holders. The point that can be drawn is, therefore, that here must be something wrong with an intellectual movement leading to such counter-intuitive conclusions. Taylor eloquently describes which is the ultimate reason for the scarce credibility conferred to the idea of collective agencies within the liberal tradition:

“To think that society consists of something else, over and above these individual choices and actions, is to invoke some strange, mystical entity, a ghostly spirit of the collectivity, which no sober or respectable science can have any truck with. It is so wander into the Hegelian mists where all travelers must end up lost forever to reason and science.”

The claim that there are certain group interests, which are irreducible to individual ones, has been attacked on similar grounds too. To illustrate the point, let us think for a moment in the popular notion of rights as grounds for duties on others. If we argue that certain groups have their own interests, not reducible to those of their individual members, there would be the possibility of having individuals keeping duties towards groups. Now, what does it mean exactly? On the one hand, it is perfectly clear that people belonging to a group may have duties to other members of the group. But this is not what defenders of the irreducibility thesis seem to claim. Precisely because there are some fundamental interests that pertain to the group as an independent entity, in despite of who their individual members may be, the category of

31 C. Wellman (1995, p. 105)
33 Raz (1986, p. 167)
collective rights is necessary to protect them. However, this could imply that some group members—even all of them—could find themselves having duties toward the group itself. In other words, some groups would have rights (to its existence, preservation of distinctive rituals and traditions, etc.) against its own members. Again, what does this would mean? As it becomes clear, elucidating this argument in a coherent way looks complicated. For this reason, authors as Narveson, Gewirth, Hartney or Mackie have stressed that the idea of collective rights is grounded on a categorical mistake\textsuperscript{34}.

Previous objections to collective rights display the close link between methodological individualism and liberal theories of rights. Since it is always possible to provide an account of social actions and institutions in individual terms, individualism is regarded as the basic explanatory unit in the social sciences. For liberals, this is a plausible theory because all collectives of any nature are composed of individuals, and not the opposite. And, whereas it is truth that individuals are social creatures, this fact is also accountable in terms of individual actions and relations. According to this reasoning, invocations of collective interests should be understood just metaphorically, since individuals are the only ones having interests, acting, suffering, etc., they are the natural subjects of moral rights\textsuperscript{35}. The fear underlying the use of this argument against collective rights is that their legal recognition will amount to idolize identity groups without any reasonable understanding regarding its intrinsic value. From here to associate collective rights to communitarism there is just a short step.


\textsuperscript{35} See, for this view, J. Donnelly (1989, pp. 227)
In addition, another two difficulties are conventional rationales for rejecting minority collective rights. The first concerns the idea that existing discrepancies regarding the notion of minority amounts to a serious obstacle for dealing with their justification. From this standpoint, to settle the semantic issue is seen as crucial to satisfactorily approach the normative issues involved. As it has been observed, this strand of argumentation assumes that the justification of minority rights must follow an analogous reasoning to that usually provided to justify individual rights. This explains why the absence of a widely accepted definition of “minority” is seen as an objection to collective rights. The same view generates the pessimism over the viability of establishing effective legal rules to protect the interests at stake and, in short, is usually mentioned as a massive impediment for the progress of the whole debate.\(^{36}\) Secondly, even in case we had a consensus over this latter issue, *prima facie*, recognizing collective rights seems to legitimize a distribution of rights on the basis of groups identity, rather than in parameters of justice. In fact, I would dare to say that the strength with which many liberals have opposed to collective rights is not primarily grounded in ontological reasons, but on the belief that the recognition of these rights will produce several undesirable consequences from a political point of view. More to the point, the concern is that the defense of collective rights involves endorsing a general prevalence of groups above individuals and, therefore, of collective interests or ends over individual ones.

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\(^{36}\) A number of authors claim that the difficulty of reaching consensus over a definition of “minority” is the main obstacle for the progress of the debate and the implementation of international law on this matter. See, for instance, M. N. Shawn (1992), Benoit-Rohmer (1995).
It is certainly reasonable to think that embracing collective rights would involve calling into question some of the most important assumptions on contemporary liberal democratic thought heritage. Mainly, the reliance in that ideals of justice are intrinsically related to the equality principle, and that fulfilling this principle requires attributing to every individual the same rights, independently of her group belonging. After all, liberal states emerged against feudalism and as a solution to religious conflict. This is why classical liberalism requires that the state be neutral with regard to the different backgrounds of its citizens, relegating elements such as culture, ethnicity or religion to the private sphere. A neutral state, the argument goes, should neither promote nor recognize –through rights or by other means– any particular statuses. Otherwise, the individualist and universal structure of human rights would be at risk. This interpretation of the non-discrimination principle, as stating that all individuals should be recognized as equal members of the political community, is widely endorsed by many constitutional theorists both in Europe and America. Liberal views of citizenship tells us how we ought to relate to one another and, according the critics, recognition of collective rights as constitutional rights would imply to magnify the distance that divide us, underestimating our common humanity.

IV. THE WEAKNESSES OF THE DOMINANT APPROACH

Throughout the later section I have tried to give a brief overview of the range of threats that the idea of collective rights apparently pose for the liberal-democratic theory. As it has been stated, the dominant approach leads to the conclusion that the debate over cultural minority rights has to be necessarily seen as part of the broader and complex discussion about identity, value and moral agency dividing liberals and
communitarians. For this reason, predominant discourses often derive in an extension of this philosophical
dispute. As a result of this connection, we end up faced with a competition between collective rights and
individual rights in terms of absolute or incommensurable values (the relation between both categories of
rights being like those of a game of sum zero: the more the former were accepted, the more the latter would
be weakened). In other words, either we are liberals and defend individual rights, or we are communitarians
and advocate collective rights. And, as it has been remarked at the beginning of this paper, the dispute is
not merely academic. Some consequences for our social and political life necessarily follow from this
alleged incompatibility. Perhaps the most important one is that a liberal society can hardly be founded on
both sorts of rights. As in the case of the liberal-communitarianism debate, the alternative pictured scenarios
are, on the one hand, an open cosmopolitan society where all individuals are treated equally by the public
institutions, without regard to the groups to which they belong, and, on the other hand, a model of society
established upon collective rights, falling into the pattern of a traditional illiberal community, whose members
devote their lives to perpetuate cherished collective roles and values. An ideal of extreme communitarian
society that rejects “modernity”, where the group is considered more valuable than the individual, therefore,
a model that liberals qualify as backward and even fundamentalist.

However, in my opinion, the dominant approach that leads to such conclusion is highly deficient
and has decisively contributed to ignore –or interpret in a simplistic way– the very challenges that the
demands of cultural minorities pose to political liberalism. Moreover, as a result of the former approach,
we are lacking of good structured normative work identifying the substantive reasons for the claims
involved, classifying groups according to their different needs and demands, or suggesting some criteria to
distinguish among legitimate and illegitimate reasons for these claims. This criticism is supported upon
several reasons, from which I would remark the two following ones:

First, as it is conceived, the category of collective rights is a sort of a hodgepodge where any
demand made by a group aimed at preserving certain collective interests may be included. For this reason,
thoretical analysis tends to focus, on the one hand, upon the aforementioned philosophical issues and, on
the other, on a close set of formal issues with the purpose of examining the suitability of the more familiar
criteria for classifying rights, either as “individual” or “collective” (according to who holds them, exercise
them, and so on). But, contrary to what this approach might suggest, the opposition to collective rights is
primarily due to considerations of political morality, rather than metaphysical and formal ones. Thus, some
liberal scholars and politicians do not really believe that the interests at stake are morally significant and,
therefore, consider it a mistake to discuss them in terms of rights. Others, despite being convince of the
relevance of, at least, some of the more typical claims raised by cultural minorities (language rights, for
instance) reject collective rights, either because they are concerned of its illegitimate use –as a group
instrument to reduce or even suppress individual liberties with impunity– or because they fear that its
recognition may open the doors to a proliferation of demands by all sorts of groups. In this latter case, what
is intended is to avoid a slippery slope which may force the recognition of collective rights to all sorts of
groups. As can be seen, these arguments against collective rights are based on reasons that are substantially
different. Nevertheless, the reality of this factor is hardly appreciable in the debate. This is so because the
problem is faced with an strategy that does not accept nuances, since in any event the legitimacy of collective rights is denied on the same basis of its alleged incompatibility with liberal theories of rights, a closer elucidation of the different positions underlying this conclusion is overlooked. The obvious point is, therefore, that earlier presumptions restrict and constraint the framework of the discussion in such a way that the fact that liberal opposition to collective rights can be re-conveyed towards different kinds of objections remains unexplored. This goes in detriment of analytical rigor, thereby providing an important reason for rethinking the adequacy of the entire approach.

Secondly, the dominant view has provoked that demands of what we could call “illiberal minorities” are usually taken as paradigmatic claims of collective rights. Particularly, it is typical to refer to some religious or ethnic groups whose claims are aimed to obtain a certain level of autonomy on the edges of the state, a status of “partial citizenship” (in Spinner expression\(^{37}\)), so that their ways of life remain unaltered, immune to the effects of “modernity”. Even more recurrent is the allusion to the exemptions of compliance with the civil legislation, and even criminal law, in specific matters that some ethnic group’s request in order to maintain some characteristic traits of their cultural identity. But this is a biased selection. Obviously, taking as an example what it is imagined as the stereotype of a “traditional closed community” coincides better with those communitarian ideals to which collective rights are associated. In addition, taking this cases as paradigmatic demands, yield to stress that these rights may be claimed with the purpose of allowing a series of practices (polygamy, circumcision and other ways of women subjugation, divorces

\(^{37}\) J. Spinner (1994)
governed by religious rules, forceful conversions, exclusions from voting, etc.) which, by the mere fact of being part of the “essential” traditions of a given group, are regarded as legitimate. In short, protecting cultures could mean, in practice, leaving to the group a tacit *carte blanche* to mistreat certain categories of members (therefore violation their individual rights). This illustrates the potential risks of adopting a model of multicultural citizenship that recognizes collective rights to minorities. It is what Shachar has called the “paradox of multicultural vulnerability”38. Yet, this is still not a conclusive argument to maintain the illegitimacy of the whole idea in discussion. Those authors who do claim so are falling into a fallacy of generalization. According to what it has been stated, the discussion over collective rights covers a much wider range of demands raised by groups which do not always fit into the former characteristics. Moreover, in my view, it is not venturesome to assert that claims of non-liberal minorities are insignificant to account for the reasons why multiculturalism represents, today, a serious challenge for many democracies. This point is worth emphasizing. Remember that majorities and minorities clash over issues such as the formation of the state, its political system of representation, territorial borders, education curricula, public funding of cultural activities or religious schools, the official language, and so forth. All this is specially so in places such as Quebec, Catalonia or Puerto Rico. However, the dominant approach remains silent on the issue of how these problems (that are also raised in terms of collective rights but not originated in the rejection of democracy and individual human rights) should be faced.

In conclusion, the literature on collective rights is cached among two antagonistic angles whose explanatory performance is very limited. By ignoring the origin and character of many of the actual disagreements, this approach offers no more than a slanted view of the complexities involved. Specifically, the usual line of conceptualizing and justifying collective rights does not provide any guideline to distinguish between legitimate and illegitimate demands according to some parameter of justice. This contributes to a distortion of the debate, turning into the center of attention issues that, at best, should be relegated to second rate problems, and leaving aside the truly relevant problems. Furthermore, much of the available literature on this topic is unable to explain those especial legal and political statuses of cultural minorities already operating in countries such as Spain, Canada and the United States. Justifications for these regimes could be possibly related to a way of correcting historical wrongs committed against cultural minorities, but certainly not required from the point of view of the distributive justice.

V. TOWARD A NEW APPROACH: AN ALTERNATIVE NOTION OF COLLECTIVE RIGHTS

The former conclusion give us enough reasons to review the standard approach for the sake of a new, more satisfactory, starting-point, capable of defeat the shortcomings outlined. Along this line, I suggest to focus on exploring alternative conceptions of collective rights, given that, as I see it, the current prevailing notion adds an unnecessary degree of complexity to the whole debate. Indeed, the assumption that collective rights are rights belonging to collective agents has determined that the individualism versus collectivism debate is seen as the adequate theoretical framework from which to discuss the legitimacy of those rights. So, one of the best ways to overcome this scheme would be to elucidate an alternative notion
of collective rights that, while grounded on less contended premises, be able to account for the heterogeneous range of demands requested by cultural minorities. Without aiming to develop it at length, this conception could be based on the following two characteristics:

First, collective rights may be understood, following Raz, as rights to public goods. These goods must be important for the well-being of a group of people, and that is why the reference to the collective becomes unavoidable. This, though, does not mean that the interests at stake are those of a group conceived as an abstract entity. On the contrary, the relevant interests would be simply shared by group members. Here it is important to notice that, on his account of collective rights, Raz does not seem to follow the common notion of public goods used in the economist sense as goods of non-rival consumption (i.e., a good would be of public nature if, for reasons related to its production, is it is available for me, is available for everybody). This is what happens with public goods as having a clean environment or the illumination of streets at night. Leaving aside the issue of the possibility of excluding some people from participating in their enjoyment, what I would like to remark here is that they are goods not necessarily produced by the group and that they can also be individually consumed. On the contrary, the examples Raz uses of “inherently collective goods”, providing general benefits to the whole society are essentially social goods, in Taylor terms, where processes of production and distribution are very distinct from the public goods such as the referred to. This is essentially the reason for predicating “irreducibility” of social goods.

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The question of whether there exist certain non-reducible social goods have been investigated by several authors; i.e., Green (who speaks of “shared goods”), Réaume (that uses the term “participatory goods”), or Waldron (who refers to some non-individualised goods as “communal goods”). All them emphasize that these goods are only produced by means of collective action, that they are most often collectively enjoyed and, therefore, that their full intelligibility cannot be grasped if we would reduce them to individual goods. Thus, language, political rituals, and symbols conforming the identifying trends of the character of one culture are not well understood instrumentally. Of course, social goods provide individual satisfactions, but, without the kind of shared conceptions which are part of one culture, they cannot be fully comprehended. Certainly, one could reply that to talk about collective rights when we are in fact thinking of individual interests in certain kinds of public goods is confusing. But, against this objection, it is important to insist in that the requirement of a group of individuals with shared interests is essential for the very existence of collective rights (and not just for its exercise).

Therefore, rather than being a contingent fact, the requirement of a group of people with shared interests in producing and consuming a particular sort of public goods, such as social goods, is a conceptual need. In this sense, to reduce goods like language or political autonomy to individual ones prevents us from capturing the necessary collective dimension of the meaning of our thoughts and forms of expression. Both would be unintelligible without a background culture that gives them significance. The relation is analogue to that established by Wittgenstein between words and language in order to reject the conceptual possibility

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40 For an excellent explanation of the reasons for the irreducibility of social goods, see Ch. Taylor (1995).
of a private lexicon with just one word. In the case of cultural goods, it is not only that it would be practically impossible to protect them for the enjoyment of one sole individual. Rather, the point is that the amount of roles, institutions, interactions and activities constitute the cultural good in itself. Reducing it to an aggregate of individual satisfactions part of its global significance and the collective fashion by which it is obtained gets lost. For this reason, it should be stressed, as Réaume does, that the value of cultural goods, as other social goods, lies on the publicity of production itself and collective enjoyment rather than in achieving any precise result. As I see it, using the language of collective rights has interest when we are faced with the need of examining the demands of cultural minorities to the sort of collective goods described. And this criterion is perfectly compatible with liberal commitment to humanism. Nothing prevents us of asserting that the importance of having access to the kind of goods protected through the institution of collective rights derives, at the end, from their contribution to the well-being of each and every individual.

However, even if the idea of collective good endorsed is regarded as important to articulate the main common elements behind most demands made by cultural groups, this is not and element which is specifically orientated to single out the singularities regarding minority claims. To this end, we need to add a second criteria: in addition of being rights to certain kinds of public goods, collective rights claimed by

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41 Como señala Réaume: “the publicity of production itself is part of what it is valued –the good is the participation. D. Réaume, (1988, p. 10).
42 Here it should be noted that the Raz’s notion of collective rights appears as a part of a comprehensive theory of rights. His main preoccupation is to argue against the idea that rights, by definition, protect individuals against the common good. More specifically, he thinks that some collective goods are important for individual’s well-being and, therefore, collective rights would protect these interests that individuals share in collective goods. If the rights accrue to the group it is only because collective goods would not even exist without a group of individuals sharing an interest in producing them.
cultural minorities can be qualified as “special rights” in the sense that their inner logic of justification has to do with the fact of people’s belonging to certain identity groups. This idea provides a parameter of distinction of individual rights vis-à-vis collective rights.

Indeed, thinking about the different collective rights that cultural minorities typically claim as “especial rights” permits to highlight some of the main singularities of their demands. On the one hand, the “specialty” resides on the aspiration of some groups to a legal or political status that is distinct from the common or majoritarian within a state. Therefore, at the normative level, recognition of collective rights would result in a non-homogeneous ascription of rights. Thus, these latter rights have a vocation of being generally recognized. The fact that, as individuals, we belong to different sorts of groups (ethnic, religious, national and so on) does not alter this chief aim. Moreover, the remarkable aim of individual human rights is that their recognition and protection should be completely unconnected to that consideration. In order to claim my right to life, or to have my physical integrity guaranteed, I do not need to allege anything else than my condition of being a person. Instead, in the case of collective rights, the reference to the group to which I belong becomes essential to justify my claim (that is why authors as Kymlicka have called these rights “group-differentiated rights”). For the reasons explained, the aggregative aspect of collective rights is not equivalent to utilitarian benefits. Understanding the idea of collective rights only requires to take into account the general civil and political rights recognized by modern constitutions in liberal-democratic states and contrast them with the plus that minorities demand in relation to the common regime of rights. Then, rather than being interested in the formal aspect of the demands at issue (particularly, in how they should
be formally assigned, individual or collectively), we should emphasize their rationality and repercussions for our common assumptions about citizenship.

Here again, it is important to insist in the fact that both the outlined elements do not necessarily impose any threat to the individualism and universalism of human rights. The central trait in the account defended is the fact that there are goods whose production and enjoyment can not exist in isolation. Nevertheless, the importance of all goods keeps being instrumental to the contribution of individual well-being, although the very existence of the interests that are on the basis of collective rights be shared by a group of people. In other words, humanism is compatible with asserting that not only individual goods but also public goods are valuable for human well-being. Neither the ideal of universality is violated by this conception. Nothing precludes us from saying that all human beings belong to identity groups and, as Taylor has more or less said, if we are all concerned with identity, then what it is more legitimate than one’s aspiration to protect it?

What are the advantages of endorsing an alternative conception of collective rights as the one suggested? First of all, the elements described constitute a way of delimiting in a coherent fashion the trends which are commonly present throughout the wide variety of cultural minorities demands while, at the same time, respecting the ethos of the rights discourse within the liberal tradition. Therefore, starting from this conception, it does make sense to examine the moral and political legitimacy of minority rights from the liberal tradition, without neither succumbing to the most extreme version of communitarianism, nor adopting a radically different paradigm regarding the value-individualism thesis lying at the heart of liberal theories.
of rights. In this sense, we do not necessarily have to interpret the recent tendency to the legal recognition of those rights as symptomatic of a crisis of the idea of universal human rights as a legal common heritage of all democratic countries.

On the other hand, the widely spread perception that existing discrepancies over the concept of minority are a grave obstacle in the path of justifying collective rights loses most of its justification. Rather than proving the existence and clear identity of cultural groups, the relevant issue is to discuss why we should regard individual interests in belonging to such identity groups as morally relevant. Consequently, we do not—and should not—presuppose that the root of the problem lies in different conceptions of individualism and human rights, or in a critique to currently valid universal standards of individual rights. As I have been insisting, many of the demands at stake do not aim at questioning these premises. Additionally, we gain some insight defending an alternative notion of collective rights as the best conception to represent the background discussion from which this very language has emerged. We should not forget that, in general, the language of rights is one of the few social tools that oppressed groups have to generate awareness of the situation in which they live.

Finally, perhaps the main merit of changing the approach to the problem of collective rights in the way suggested is to make sense of many of the current practices and institutions that liberal-democratic states have in fact adopted with a view to protecting cultural minorities. Liberal theorists should not ignore

43 In fact, semantic difficulties concerning the notion of minority are similar to the concepts called “essentially contested”, or “interpretative”. See on this point, J. Waldron, 1994; M. Iglesias, 2001).
that the non-homogeneity in the system of rights is becoming more and more a common trend of multinational and multiethnic democratic states. As a matter of fact, several states have adopted federal designs with the specific purpose of recognising their own multiculturalism and, more specifically, to accommodate demands of territorial autonomy of national minorities. Think, for instance, in Spain, Canada, Great Britain or Belgium. Even France is debating the possibility of granting an especial legal and political status to Corsica, and has recently broken its tradition of linguistic uniformity in public schools with a plan that aims at “promoting the different languages of France”. As a theory and as a political model, federalism propose the territorial distribution of power, and that is why it looks as a good instrument for making the achievement of common interests and the autonomy of the different national cultures compatible. Today’s “federalist revolution”, as it has been called, is primarily due to the progressive political recognition of the necessity of accommodating, instead of eradicating, ethnocultural diversity. Regarding the situation of ethnic minorities, although these groups do not use to claim territorial autonomy (probably because of their circumstances of territorial dispersion) in what Walzer classifies as “countries of immigration” intellectual and political elites of second and third generations of immigrants have mobilized to renegotiate the terms of their political integration into the state. The ethnic revival experienced by Australia, United States and Canada during the sixties and the seventies gave rise to the adoption of official “policies of multiculturalism”,
which implied the explicit public support to cultural diversity and the rejection of former parameters of assimilation as the best way of granting integration\footnote{Canada was the first country in adopting officially these policies in 1971. Amongst its purposes, it states the economic support to the cultural development of minorities. Later on, Australia and the United States followed this path. In general, the design of these programs are framed in a normative conception of multiculturalism as a political principle affirming that the government has to act in order to promote and protect the existing diversity. Because this means, in practice, to recognize especial rights and statuses to individuals on the basis of their cultural belongings, the politics of multiculturalism amounts to the break of classical schemes of liberal citizenship. Again, that liberal theory have been unable to make these practices coherent with the principles and ideal that distinguish it supposes, on the one hand, to cede a precious territory to its critics, and, on the other, to leave unexplained important transformations of the practices of many liberal states regarding models of citizenship.}

Summing up, throughout this essay I have tried to offer several reasons why predominant conceptual and normative premises to approach multiculturalism and ideas of collective rights should be revised. I argued that this approach has been widely responsible for the popularity of the incompatibility thesis (between individual rights and collective rights). Therefore, to show the lack of solidity of the premises underlying this conclusion means to overcome a significant barrier to understand the philosophical and political dilemmas states have to face. Obviously, preferring this approach to the conventional one does not mean prejudging the possible conclusions that may be reached concerning the legitimacy of the claims for collective rights raised by different minority groups. There still may be nothing morally valuable in the interest that people show in keeping their identities or their current belongings to nations or cultures. However, this conclusion must be reached through theoretical reflection. So far, the only thesis that has been maintained is that both the progress of the discussion and the coherence of any of the positions upheld concerning collective rights require a revision of the approach in the way suggested. Therefore, the question of the moral legitimacy of collective rights still remains open, but the theoretic attention will focus upon
absolutely different issues. With this asseveration I would like to return to the idea that the debate on collective rights is not a pseudo-debate; say, a debate whose relevance disappears once the disagreements concerning the use of the terms has been cleared up. Contrary to what some of the conceptual discussions examined might suggest, existing disagreements over the justification of collective rights are genuine ones. Moreover, it is not possible to think about the justification of the demands of cultural minorities without revising the interpretation of some of the more basic convictions and principles grounding modern constitutional democracies. With the aim of showing it, the next section focuses on the challenges that the debate over collective rights means for a widely endorsed conception of the ideal of neutrality.

VI. MULTICULTURALISM AND STATE NEUTRALITY

Not just formal reasons but moral arguments have been too invoked against collective rights. I already have referred to the threat to liberal views of universal citizenship that recognition of these rights seem to involve. Thus, on the very basis of liberal theories there is a preoccupation for protecting the individual from the state and for guaranteeing the principle of equal respect. And, even if this starting-point does not necessarily imply rejecting the importance of identity groups for people, as a general rule, liberal theorists are reluctant to provide them with particular statuses or rights. For many commentators, this would imply to sacrifice the principles of equality and neutrality that have inspired movements of emancipation around the world. According to this view, equality requires from the institutions to be blind toward particular identities and cultural attachments of people and universalism means that rights should have a general dimension concerning its application. It would not be possible to understand the democratic impulse
that followed liberal revolutions without mentioning this tendency toward homogeneity. With the purpose of eradicating prior oppression of certain groups and integrating them into the social life, the modern state is built upon the rejection of “personal rights”, defining citizenship only in territorial terms. We can capture the implications of statements as that of Clermon-Tonnerre ahead of the National French Assembly in 1789: “one must refuse everything to the Jews as a nation but give everything to them as individuals, they must become citizens”. This argument entail that the best method to dealt with minority issues consists in applying the principle of non-discrimination (understood as meaning the irrelevance of all identities and affiliations of individuals before the law).

That comprehension of the ideal of state neutrality as opposed to state interference in the conceptions of the good life and cultural attachments of its citizens is alleged as a central objection to the idea of minority rights. Nevertheless, prima facie, this argument does not need to be seen as implying a radically critic position toward all minorities claims. In fact, authors such as Kukathas and Pogge coincide in asserting that minorities demands should be respected, not because of their collective rights as groups, but simply because people has the right to association. Other authors who have reclaimed the independent value of tolerance in the liberal tradition also think that this is the best response to the demands originated in multiculturalism. According to this view, it is truly essential that, in diverse societies, the state does not come out as an entity that interferes in this collision between majority and minority cultures, encouraging or promoting one or several of them (which is presumably what would occur if there were an official policy of recognition of cultural rights). Kukathas extends this thesis even to illiberal groups, claiming that, as long
as freedom of joining and exiting them is guarded by the state (over all the right to exit), the fact that their internal organization reflect antiliberal values should not be a source of preoccupation for liberals. In his opinion, the only exceptions that may be compatible with this principle are justified because of their purpose of integration, as measures of positive discrimination or corrective justice could be regarded. And, in Pogge’s opinion, some of the rights national minorities claim, as the right to political autonomy or self-determination, are perfectly reducible to individual rights such as, in this case, the right to association.

As can be seen, although they oppose to the idea of collective rights, these authors try to be sensitive to the issues involved in the debate. In particular, their arguments do not imply the denial of the importance of people attachments to their own cultures. What they rather emphasise is that the current framework of individual civil and politic rights together with the ideals of neutrality and tolerance are enough to approach the challenges brought by multiculturalism. This view allows preserving the strong detachment between public and private spheres characteristic of the liberal tradition. Moreover, the central unifying element of Kukathas and Pogge arguments is that the diverse cultural practices would have an equal opportunity to converge and prove their capacity for attracting followers in the civil society arena. Thus, the same model that was successfully applied to answer religious conflict should be useful to cope with multiculturalism: the state must refrain from interfering in individual private interests. Everyone is free to participate in the creation and re-creation of their culture and traditions. As Kymlicka indicates, the basic intuition guiding this approach is that, just as we think that the state has to adopt a policy of “bening neglect” toward religious diversity, the same strategy should be followed to deal with cultural pluralism. On the same
grounds, Galston vindicates a conception of liberalism that has as its central element “a strong system of
tolerance”, involving “a cultural disestablishment, parallel to religious disestablishment”.

In sum, state neutrality is claimed as the best protection, albeit indirect, to face multiculturalism. In
fact, the defence of this ideal use to start from the basis that pluralism is a defining characteristic of
contemporary liberal societies. Champions of liberalism such as Rawls favour state neutrality because they
believe that, given the plurality of ethic, cultural and religious comprehensive ideals, only states situated
beyond the particular worldviews of their citizens will be able to achieve the necessary consensus over
justice and to prevent social fragmentation. In addition, this is often regarded as the only path to achieve
equality between groups. Of course, the scope of this strategy for accommodating cultural minorities is not
exempt of limitations. In particular, it does not enable the integrity of the different cultural groups to be
guaranteed, nor it protects their survival throughout time. Only people perseverance in their co-operative
association towards the upholding and transmitting these values, together with the capacity of attraction
generated by certain ways of life, can achieve this end. In other words, the vitality of cultures will depend
on the associations vitality to promote them, their capacity to attract supporters and skills to transmit the
meaning and value of practices and traditions to successive generations. Actually, supporters of the model
of tolerance give an essential role to this limitation, that is found completely justified: just as it is stated that
social inequality arising from voluntary transactions between the holders of the same rights is fair, cultural
inequality derived from the competition in the “cultural market” would be so too. It is each person who,
while exercising her own autonomy, must be able to choose the option or options that she considers more
attractive. We may regret that the result of multiple individual choices throughout time has lead to the decay of certain cultures. But, to the extent that this consequence results from individual autonomy, it should not be taken as unfair. At the end, the purpose of individual rights is not to promote a multicultural colourful world, but to guarantee equality and freedom for human beings.

We should therefore explore if an approach which starts from the idea of tolerance and emphasises the need to take state neutrality seriously is indeed adequate to accommodate the demands of cultural minorities. If this were so, it would not be necessary to review the liberal tradition in order to incorporate a new category of rights. However, in my opinion, the alternative approach suggested fails, basically, because of the following reasons:

First, it fails because it requires to understand liberalism in ahistorical terms, ignoring both the nation-building processes of current democratic states as well as the support of many distinguished liberal theorists to these processes during the XIX century. In fact, it is just not true that the incidence of nationalism has been rare in the process of building Western democracies. More specifically, ethnocultural trends of citizens have not been obviated, nor have they been relegated to a secondary role. On the contrary, these factors have played a central role in the political praxis. Recent contributions to the debate on nationalism and multiculturalism by political and legal theorists such as Kymlicka, Raz, Margalit, Tamir, Taylor or Miller have emphasized this feature. In their works (which are often included under the label of
“liberal culturalism”\textsuperscript{45}, they all coincide in highlighting that culture have actually played an essential role in the politics of Western democratic states.

Indeed, one of the central aspects that this revisionist movement within the liberal tradition has explicitly stated is that, historically, all liberal states have been actively involved in projects of nation-building aimed, almost invariably, at promoting the dissemination and hegemony of a single culture, generally speaking, the majority culture. The lack of recognition of this fact not only explains the tendency, throughout the XX century, to avoid the analysis of nationalism, but shows the inconsistency of some of the most assumed premises of the liberal theory as well. For instance, the implicit assumption of states cultural homogeneity and the idea that the principles of justice that regulate international relations differ from those that should inform state policies. Also, the premise that citizenship in liberal states is a matter of birth rather than of choice, the idea that it is legitimate for a liberal constitution to establish differences between nationals and foreigners, or that the social state primarily distributes the available resources amongst its own citizens. All this strengthens the theory that modern states are something else than contingent associations united under a formal contract whereby the citizens may join or leave in accordance to their will\textsuperscript{46}. In principle, it seems that individuals maintain deep links with their compatriots and that the law implicitly consecrates their legitimacy.


\textsuperscript{46} Y. Tamir, 1993, p. 121.
Traditional doctrines of democratic liberalism have rarely explored the nature of such links. More precisely, the question of how the recognition of the different self-governing states is legitimized—in particular, the repercussion of the phenomenon of plurinationalism under a democratic framework—has been precluded from political theory. Emphasizing the need to explore these issues, which have remained on the “hidden agenda” of liberalism, to use Tamir’s expression, the aforementioned authors have—in my view—successfully showed that the relationships between this theory and nationalism are rather more intricate than is commonly admitted. One of the central theses is that the cultural essence of states has played as a criterion to delimit and maintain the legitimacy of political borders. With the aim of avoiding the questioning of the sovereignty over a territory, most states, both liberal and non liberal ones, have sought to be identified as nations through the diffusion of a single language and culture. The need of a public space that will reproduce the cultural aspects of a national lifestyle would thereby constitute the essence of the right to self-determination. Although nowadays many liberals maintain that nationalism and democracy are incompatible, the original link between both concepts is obvious. The elucidation of the reasons for this link will permit to stress the inexcusability of the neglect of the issue of the definition of the demos by contemporary theories of democracy.

47 Ibid., p. 117
The appearance of ideas of nation and nationalism is inextricably bounded to the increasing conscience of the value of self-government. Supporters of self-government during the French and American revolutions linked the concept of “people” to that of “nation”. Because the purpose of republicans was to defend that all powers originate from the people, it was necessary to delimit the elements that form the relevant nucleus of collective self-identification. Nobody thought that any set of individuals living coincidentally side by side might aspire to self-government. The idea of a nation replaced this need for a deeper group identification, which, in time, would eventually substitute the loyalty towards old local and religious communities. These former loyalties would soon begin to decline as a focus of mutual recognition.

The existence of an empirical substratum prior to the presence of the state was invoked when the most convinced liberals began to question the legitimacy of the authority structures dominating during the ancien régime. When this view concerning the existence of a common origin, language and history struck the minds of inhabitants from different territories, the process of fusion of old loyalties was completed. Individuals acquired the conviction that they were citizens of a single political community, responsible for each other. The idea of nation, as Habermas states, provided a cultural substratum to the constitutional state. Simultaneously, this new form of shared belonging provided the platform from which to demand a radical change in the source of legitimacy of political institutions. From this moment on, an unstoppable

51 J. Habermas, 1999, p. 89.
process of secularization of the State began which would imply the transfer of sovereignty from the monarchy to the people, and the recognition of the rights of citizens.

It is possible, in this sense, to see nationalism as a genuinely modern idea. Moreover, on Gellner’s interesting functional view of the relevance of nationalism, this is not the result of an ideological aberration, but rather it is firmly rooted to the different structural demands of the modern industrial society. Economic transformation needed a period of readjustment where the political borders had to coincide with cultural ones. Therefore, on this view, it is not so much the fact that nationalism imposes homogeneity, but that nationalism reflects the objective need for homogeneity. Feudalism in agricultural societies did not care very much about cultural diversity and religion as long as taxes were paid. In contrast, the feasibility of a modern industrial state requires the development of a standardized and centralized culture. To achieve it, the task of educating is taken out of private hands and becomes one of the most important public functions of the state. This is the basic pre-condition for the dissemination of a practically official culture which, eventually, will be seen as a natural trustee of political legitimacy.

This functionalist approach to the phenomenon of nationalism enables us to understand why the building of a modern state could not ignore culture. Likewise, it explains the need for a certain cultural homogeneity without the usual resource to emotional or natural sources of the nation’s origin. Of course, the effective permeation of the “national conscience” into the system of individual values must have taken

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52 E. Gellner, 1988, p. 53.
Panel 4: The Internal Integrity of Rights

a long time. In this sense, although nationalism fulfilled the effect of a catalyst in the democratic transformation, these changes did not took place overnight. So, how the consummation of this evolution towards the identification between nation and state was achieved? What elements defined the entity which, according to the liberals, was doomed to be constituted as the primary subject of political legitimacy?

Actually, the term “nation” did not arise in the period of liberal revolutions either. A rather more than a brief terminological digression would be needed to capture the profound and complex transformations that the meaning of this term has suffered throughout history. Notwithstanding, it should be taken into account that the term “nation” comes from the Latin word *natio*, the past participle of the verb *nasci*, which means to be born. From Roman times, “nation” did not refer to politically organized groups, but rather to culturally and geographically integrated communities with common origins. However, the transformation of nationality into a political principle grew into the progressive loss of importance of these objective characteristics in favor of subjective beliefs: nations exist when its members are mutually recognized as compatriots. Although common history, future collective plans, the language, religion, ethnicity or territory are, potentially, significant elements, none of them is indispensable. Borrowing Anderson well-known term nations were to be essentially “imagined communities”53. What is most outstanding, therefore, is not so much the invention of a new word but the transformation of its meaning at a later historic moment. As Miller observes, ideas of national character and so forth were long-standing.

53 B. Anderson, 1983, pp. 6-7. With this expression, Anderson wants to stress, not that a nation is something completely invented, but the idea that its existence depends upon acts of collective imagination which are mediated through cultural devices..
What was new was the belief that nations could be regarded as active political agents, the bearers of the ultimate powers of sovereignty. Liberal revolutionaries accepted that nations were the natural candidates for political self-govern. And democratic states deliberately promoted their identification with an official language and culture often using highly coercive means. The multiethnic, multicultural trends of societies were avoided in favor of the recreation of a single culture and identity.

Indeed, it was notoriously false that there existed a real cultural homogeneity both in France and America at the time of the liberal revolutions as intellectuals as Jay, Hamilton, or Sieyés asserted. Asseverations in this sense could just have been done by ignoring a massive part of the population (blacks, women, linguistic minorities, and so on). But empirical facts were never taken into account as an obstacle to the assimilationist public policies. As Schain writes, despite of the different models of integration adopted by France and the US, the idea of the “meting pot” was not so different to the republican one. Against the dominant version of the spontaneous mixing of all cultures “the pot into which everybody has been supposed to melt is white, Anglo-Saxon, protestant, male”. Ethnos and demos have never been radically separated, even in those countries, such as France and the United States, where the separation forms part of the official myth. A similar view would be applicable to most democratic states. In particular, all of them have intended, at some point, to eliminate minority nationalisms, promote assimilation, and avoid discussing any alternative options for immigrant integration. We should not forget the strong ethnocentric and racist views of liberal philosophers such as Mill.

54 D. Miller, 1995, p. 31.
In conclusion, the element of free will that Renan considered central in his definition of a “civic” nationalism has been absent in most democratic states. In this sense liberalism should start a sincere process of recognition of its own history as a political tradition.

However, a previous objection to both the theoretical and practical relevance of the former thoughts: it could be suggested that the process described is history and that, regardless of the national states’ achievements or failures concerning cultural homogeneity, this no longer represents a priority for the present-day democracies. If it were so, collective rights of cultural minorities would have, in any case, a corrective function. That is, they may serve as a remedy to rectify, when possible, past injustices, compensating the descendants of those who suffered the consequences of state nationalism. Note that this is an argument concerning compensatory justice to which the national minorities themselves resort frequently to justify their claims.

However, leaving aside the value that arguments concerning compensatory justice might have, this objection is groundless. Actually, the intense debate over the “liberal culturalism” is due to the fact that this school of thought has proved the fundamental importance that states continue granting to the cultural substance of the national community. Such relevance is reflected in the political reasoning that justifies the legislation in matters of immigration and naturalization, education curricula, official language, and other policies (financial assistance for preserving the cultural heritage, cultural projects and research, etc.). The power of symbols should not be underestimated either. Through them, cultural forms are invested with an intersubjectively-shared meaning. Politicians strategically resort to symbols in their discourses with the
purpose of managing the processes of social interaction. Although it may only be indirectly, symbolic structures have a cognitive dimension: they contribute to structuring the way people think about social life. Hence, the monuments, flags, “national” hymns, the tombs of the unknown soldier, the celebration of commemorative festivals concerning foundational historical events; all this is used to transmit the same message: states are historical communities with collective projects.

The opinion of minorities will have hardly any influence on decisions regarding the cultural sphere. In a democracy, except for individual rights, the majority decides all the other matters of public importance. Hence, in this century, the nationalism of minorities that have not been assimilated has been essentially defensive or “of resistance”. Claims for collective rights are proposed to counter the state’s unfairness in the configuration of the cultural elements that underlie government policies. This has been the aspiration of the nationalist movements in places like Quebec, Catalonia, Flanders or Scotland where, on the other hand, nationalism has not been linked to the will of preserving certain traditional values, nor to the ethnocentric affirmation of their superiority over the rest of cultures. As Taylor explains regarding the case of Quebec, the new nationalism which appeared in the sixties did not aim for the isolation of this Canadian province, nor to defend a civilization based on the special value of the French language, or on the set of religious values of Catholicism. The purpose was to restore the importance of the Quebecois in the transformation and modernization of their society. The economic, social, linguistic and legal rules were being set out by the English-speaking community, who were both financially and politically dominant outside and inside the

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province. Under these circumstances, the lack of identification with the state, its perception as an alien institution, facilitates the development of a strong sense of community among the members of the minority who oppose the attempts of assimilation. As regards the United States, the historical demands made by the Mexicans in the South West and by Puerto Ricans have been primarily aimed at preventing the impact of the Anglo-Saxon cultural and financial imperialism. The recent debate concerning the political status of Puerto Rico constitutes another blatant display of the extent that the interest in “Americanization” through language is still an essential objective in the United States. The dilemma keeps being the same: either the Island is linguistically assimilated or it separates. The idea of accommodating cultural claims through a special constitutional status implying collective rights is completely out of place in this debate.

Obviously, despite the abundant evidence that liberal states have neither been, nor are, neutral as regards to culture, it may still be alleged that this does not affect to the moral ideal at stake at all. So, examples such as the above mentioned would only prove what has been said, i.e., that states have never been neutral, which does not mean that they shouldn’t be so and that, therefore, the policies and arguments which have been cited are, quite simply, unjustifiable. In this way, the pertinent question would be whether what is desirable from a moral point of view is a neutral reconstruction of the state in the sense which supporters of the tolerance approach propose.

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56 Ch. Taylor, 1993, pp. 11.
However, if one understands “neutrality” as meaning non-intervention by the state in the cultural sphere, this argument raises a false dilemma. It is impossible for the modern state not to take decisions in the cultural ambit, so the ideal of state neutrality is an unattainable illusion. This is a central point. Kymlicka is one of the authors who have better explained why the analogy between religion and culture is unfortunate. In short, although it is possible to imagine a completely secular state, no political structure is completely “acultural”: the decisions concerning the contents of education, the language which must be taught (and which the government and the public media use), the decisions concerning immigration, the requirements for obtaining citizenship, the distribution of electoral boundaries, public holidays, public symbols, and so on, must be taken one way or the other. When the criterion for taking decisions is the majority’s interest, which normally happens given the political pressures and financial incentives for this to be so, minority’s demands would easily end up being ignored. Unlike ethnic origin or, perhaps, religious beliefs, cultural and linguistic habits always require a social interrelationship. Under these circumstances, freedom to opt for a minority language, for instance, cannot be guaranteed through policies of anti-discrimination. It is not just that the requirements which a “free cultural market” would require are not met (not all languages would compete in equal conditions) but that its articulation in the way that the supporters of the neutrality want is impossible. Separating state (or law) and culture is unfeasible. Politics has an inescapable cultural dimension that should be recognized. The term non-intervention is, therefore, misleading: it strengthens the myth that, if this principle were strictly complied with, cultural minorities would

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have the chance to survive without the need to establish any relationship with the state. If this were so, perhaps there would be no need for a theory of collective rights, nor for a model of multicultural citizenship.

In addition, this view completely ignores another two fundamental aspects. The first is that, normally, cultural and ethnic minorities do not complain that a state have restricted their negative freedom, prohibiting them from developing their interests and convictions privately. On the contrary, in the words of Addis, they complain that “they ought not to be seen as special, narrow, and private interests while the culture and the ethnic affiliation of the majority is viewed implicitly or explicitly as representing the general interest”\textsuperscript{59}. The issue is not whether an immigrant of Muslim origin in Spain should be allowed to dress her daughter in traditional clothes, sing songs in her language, or attempt to keep their original language in private. The relevant issue is whether that child may wear the foulard in public schools, whether she will be entitled to receive part of her education in her mother tongue, whether her mother will be entitled to organize her working time to comply with certain precepts of her religion, whether town halls should subsidize cultural and religious activities of this community etc. As regards national minorities, the issue is not whether their members may explain and transmit their history, language, traditions and culture in the private sphere either, but whether public education, access to state institutions, or certain control of the media can be guaranteed, for instance, in their vernacular languages, whether they have the right to select their own public symbols (names of streets, flags, monuments) and so on. Obviously, freedom of speech protects the woman who sings traditional songs; the right of privacy allows her to wear as she wants.

\textsuperscript{59} A. Addis, 1997, p. 125.
home, and freedom of belief to worship her God. Likewise, nothing prevents citizens from speaking the languages they want in private, or from organizing ethnic festivals through civic associations. Tensions arise when individuals wish to see their cultures reflected in the public sphere. However, from the perspective of the proponents of the tolerance approach, there is no reason for liberal democracies to regard the accommodation of this type of demands as an issue of justice or rights.

Secondly, it is important to emphasize that; in the type of group we are dealing with, the idea of choice plays a marginal role. This is another important shortfall affecting the model of tolerance. Contrary to what its defenders presuppose, national and ethnic identities are not initially chosen. Normally, they are acquired from birth and kept throughout all life. This is why, as Raz and Margalit state that “membership is a matter of belonging not of achievement”\textsuperscript{60}. This does not mean that there is no way in which these identities can be changed; people can cross this sphere and reassess and revise their cultural ties\textsuperscript{61}. However, why should minorities have to undertake such difficult choice? Would not be unfair to obligate members of cultural minorities to pay the costs of changing some circumstances that were not initially chosen?

In conclusion, I believe that the prevailing understanding of the ideal of state neutrality as implying non-interference is incoherent. A better interpretation of this principle could be to relate it to the idea of impartiality or “consequential neutrality”; that is, as Raz puts it, “to do one’s best to help or hinder the parts

\textsuperscript{60} J. Raz, A. Margalit, 1993 p. 132.
\textsuperscript{61} Y. Tamir, 1993, pp. 33, 49; W. Kymlicka, 1995, pp. 92-93.
in an equal degree. If the majority has an interest in controlling immigration, in that education and other public services be provided in their language, in regulating the contents of education, in the designation of public holidays, or in choosing the national symbols in accordance with its history and traditions, why must minorities be denied access to the same instruments of cultural diffusion? This is a paradigmatic case in which true equality requires a differentiated treatment. And, in any event, the charge of proving the opposite is on those who maintain the opposite. As Isaiah Berlin believed, equality does not need reasons, only inequality does.

VII. CONCLUSION: SOME OPEN DILEMMAS

In this paper I have maintained that the dominant approach to the problem of collective rights of cultural minorities is wrong and that we need a deep revision of its assumptions in order to become aware of the real challenges that multiculturalism and minority rights represent for traditional liberal views on citizenship and equality. In general, I believe that there are good reasons to advocate that certain
conceptions of ideals as the state neutrality leave minorities in an unfair position and that, to remedy this disadvantage we should think seriously about the notion of collective rights.

Of course, a lot of questions remain unanswered, and I would like to finish pointing out the more important ones:

Some people would object the whole approach I took alleging that the claims at stake are nothing else than mere preferences or secondary desires. From this view, although individuals may have an interest in belonging to their own cultures and keeping their identities alive, not every interest have the same economical costs nor must be satisfied through rights. In general, we tend to think that we can respect people interests by alternative ways as negotiating. Therefore, following Rawls, cultural minorities demands could be regarded as “expensive tastes” which individuals have the responsibility to control and even renounce if necessary. In essence, this reasoning presupposes that cultural belonging is not a good as fundamental or primary as to be particularly regarded when evaluating a particular scheme of resources distribution. Remind that it is an essential part of the notion of human rights that these rights are called upon to protect basic goods. In other words: the imposition of duties derived from these rights is only justified with the aim of guaranteeing our most urgent interests. Moreover, for authors such as Garzón Valdés, this is precisely the very aim of morality. In this sense, the justification of collective rights will depend, on last instance, of having powerful reasons to assert the moral relevance of cultural belonging. Otherwise,

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collective rights will be just façon de parler. Although states may adopt them for prudential reasons they should not proclaim them in their constitutions. These are, undoubtedly, the kind of issues that any theory of collective rights should respond to. However, notice that the character of the questions is normative: is there a reason why cultural goods, or the development of one’s own cultural identity, are so important as to justify the recognition of collective human rights? Or, taking up Raz’s idea of rights, why does the individual’s belonging to a cultural group constitute a fundamental legitimate interest for individual welfare? Likewise, in the event that collective rights of cultural minorities are recognised, how can we ensure that we are not allowing these groups to treat some of their members unfairly? In the end, every culture has its own internal dissidence.

Another fundamental question to elucidate is which would be the basis of social unity in a multicultural state that recognizes collective rights to its diverse cultural groups? Now, even if the most common official versions of the history of the distinct nation-states are biased, it may be that there exist solid reasons to reconstruct the past so that the illusion of unity prevails over difference, accentuating the positive events, and relegating into the collective amnesia the shaming episodes. In the recent history of Spain, for instance, it is possible that the suspension of the memory of a civil war and of forty years of dictatorship were indispensable to begin the democratic path with some guarantees. In France, once World War II was over, De Gaulle refunded the nation over the myth of resistance. Vichy period became a component of the unmentionable. Everybody had been part of the resistance; nobody had collaborated with the Nazis, nor truly wanted that Jews in French territory were deported to Auschwitz. At the beginning of her novel,
Memorias de Adriano Marguerite Yourcenar puts in the emperor Hadrien lips the following words to reveal his origin that reflect the idea that I am trying to outline:

“The official fiction wants a Roman emperor to be born in Rome, but I was born in Italica….Fiction has its positive side, it shows that the decisions of the spirit and the will prevail over the circumstances.” 65 (my translation)

If we admit that fictions may indeed have a positive side, to reject the role of national identities in moral and political thought on the basis that the processes of nation-building, as they are often explained, are incapable of resisting a rational revision is perhaps precipitated 66. However uncomfortable it might be for intellectuals to explain the importance of emotions in the reasons for action (not the irrational but the non-rational 67), their influence is crucial to give a proper account of some common practices of all democratic states. For instance, the willingness to risk one’s own life in moments of crisis clashes with the most powerful interest of human beings in survival. And, regarding social justice, establishing and maintaining a welfare state requires a high degree of trust and solidarity among the citizens. The wide co-operation which implementing social schemes require depends very much upon them.

Thirdly, those who would defend collective rights as fundamental rights should deal with the difficult problem of the limits of cultural pluralism and, in particular, on how to resolve potential conflicts between individual and collective rights. Of course, some cultural minorities claim collective rights for reasons that have nothing to do with autonomy and equality, This is a conflict that can be seen represented in the famous

65 M. Yourcenar, 1984, p. 29.
Wisconsin v. Yoder case (resolved by the US Supreme Court in 1972). There are many views regarding which is the right treatment that illiberal groups deserve but, leaving them aside here, we should recognize that, in a multicultural society, deliberation over the justification of internal practices of the groups plays a crucial role. I agree with Waldron in that any individual should expect that her practices be protected because they are those of the group to which she belongs, or because they conform her identity.68 Nevertheless, what often happens is that deliberation is excluded because certain groups are demonized simply because they dissent from the conception of the good life endorsed by the majority. The prohibition of polygamy seems to me an example of this. The idea that I am trying to point out here is that, in a multicultural society, there is a strong duty of deliberation, so that public institutions have the responsibility to make whatever efforts are necessary to converse and try to understand other cultural practices before banning them. Just because most of our liberal democratic states still contain lots of illiberal and fundamentalist practices (as the prohibition of homosexual marriages, for instance), we should not be too quick at establishing a clear distinction between “us” and “them”. Moreover, we should neither not assume that every conflict between cultures, and every decision we have to make, involves a tragic dilemma, a clash of civilizations, of no rational solution. It is possible that reason does have limits, or that the thesis of the commensurability of all values is too ambitious. Even so, we do not have other means of finding it out but to deliberate. And, when we engage ourselves in this activity, as Drown would say, we need to rely on the power of reason to find out a right –at least justified– answer.

68 J. Waldron (2000)
Of course, when we deliberate on how to solve certain conflicts, it is quite possible that we do need to look back into the past. My emphasis throughout this paper on arguments of distributive justice—above historical reasons—does not aim at avoiding the fact that many of the present injustices are no more than reminiscences of the past. But the past, is built from the present, not just on the grounds of what we were, but on what we want to be. It is legitimate to allege that we do not want to be accomplices to the perpetuation of injustices that can still be corrected. Those who keep alive the memory of terrific crimes may refuse to accept the constitutional compromises of the present. “Only redeemed humanity belongs to the past”, wrote Walter Benjamin. His Angelus Novus of the historical consciousness, that he saw symbolised in the famous painting by Paul Klee, remains suspended in the air turning the back to the progress, looking at the horrors of the past. Because it is not possible to look at the future without rescuing first the victims of the History, especially, if they are still among us. Perhaps collective rights may serve to make amends but, over all, as a tool of progress, to prevent new grievances.
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