SERIE DOCUMENTOS DE INVESTIGACIÓN

Nuevos Estudios Socio Jurídicos

CULTURAL DIVERSITY AND LIBERAL VALUES
CHAPTER ONE

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DOCUMENTO DE INVESTIGACIÓN No 3
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Abstract
In this chapter, I critically analyze the basic ideas that guide and structure the proposals of Canadian philosophers Charles Taylor, Will Kymlicka and James Tully. The theoretical positions defended by these three authors present the strongest and most complete response offered by contemporary political philosophy to the challenges posed by cultural pluralism in late modern states. The critical study of Taylor, Kymlicka, and Tully allows me to present the fundamental problems that give shape to the contemporary philosophical discussion about multiculturalism and the solutions that the most important contemporary schools of political philosophy offer. In the analysis of their work, I focus on the tension between liberal political values and cultural difference that is at the core of their normative proposals. The fundamental idea that guides my analysis is that Taylor’s, Kymlicka’s and Tully’s normative proposals are, despite all their efforts, unable to recognize and accommodate cultural diversity. Their views, I argue, are only able to recognize culturally diverse liberal communities. From these three authors’ point of view, individual rights and democratic values should always have priority over illiberal communities’ moral and political values. Similarly, hybrid communities should always prioritize the liberal facets of their traditions. For Taylor, Kymlicka, and Tully, illiberal groups should be liberalized and hybrid communities should marginalize their non-liberal values. The descriptive and normative categories that these three authors offer will provide theoretical tools useful to understanding the dynamics of Colombia’s intercultural relations and the legal and political contexts that define their contours and structure. The analysis of these dynamics and contexts will be offered in the following chapters.

Key words: Muticulturalism, liberal values.

What are the principles of justice that should guide the creation and interpretation of the basic political and legal institutions of a society in order for them to recognize and accommodate cultural diversity? This has been one of the most important and difficult questions that academics of various disciplines have tried to answer in the last two decades. Since the late 80’s in North America and Europe, the political and legal

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1 Profesor de la Facultad de Derecho de la Universidad de los Andes
2 In this text I will only examine issues and theories related to the consequences that the non-recognition and false recognition of difference have for cultural justice. However, cultural justice cannot be achieved if problems with the distribution of economic resources are not addressed. The non-recognition or false recognition of difference are evils usually intertwined with the inadequate allocation of economic resources; they reinforce each other. For a very provocative reflection about this topic see Nancy Fraser, Justice Interruptus: critical reflections on the "postsocialist" condition, New York : Routlege, 1997., pp. 11- 40 and 189 – 206.
implications of cultural diversity for the international and national contexts have been widely discussed in academic settings. Bosnia, Rwanda, Kosovo, Quebec, and the tensions within and among the countries of the former Soviet bloc, among other conflicts around the world, made explicit the necessity of a serious philosophical, political and legal reflection about how to accommodate and recognize cultural diversity. The debate between liberals and communitarians provided the initial theoretical context in which the contemporary discussion about the role of culture, ethnicity and nations started. Yet, this discussion rapidly acquired its own dynamics: new questions were asked, old problems were reinterpreted and new descriptive and normative tools were offered.

The works of Charles Taylor, Will Kymlicka, and James Tully have been particularly influential in this contemporary discussion. Their work has set the basic categories through which the problems and opportunities created by cultural diversity have been understood during the last decade. Their views have also determined the theoretical adversary that should be defeated if cultural difference is to be adequately accommodated: liberalism. Although these three political philosophers come from different theoretical horizons and disagree on many important issues, they all try to overcome the limits that liberalism imposes over our imaginations and political institutions for the understanding and solution of the challenges posed by cultural difference. Yet, the objections to liberalism that these three authors offer are aimed at different targets and pursue dissimilar ends.

Taylor questions – from a communitarian point of view – the traditional interpretation of what is broadly accepted as the first and more important liberal principle: the state should treat all its citizens with equal consideration and respect. He argues that the prevalent interpretation of this principle implies that the state must be neutral towards the life projects of its citizens, i.e., that the state should not use its power to favor any of the moral views to which its citizens are committed. Taylor claims that liberalism’s neutrality principle is an obstacle for the satisfaction of the just demands of certain communities that wish their government to promote and protect a particular culture. To justify and put this claim in a historical context, Taylor tracks the origins of individualism (understood as the authenticity ideal) and analyzes its connection with the construction of individual and collective identity and with the politics of recognition. He also offers an account of why the idea of recognition was interpreted as demanding the equal recognition of all individuals, and why it was not sensitive to community and culture. Taylor claims that a government should be able to

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3 Kymlicka’s adversary is not liberalism in itself. His opponents are orthodox interpretations of this political philosophy that claim that cultural rights are incompatible with liberalism’s basic principles.

4 Ronald Dworkin, Liberalism, in XXXX pp. 189 – 191. Dworkin’s characterization of liberalism is of course, not universally accepted. However, this view of liberalism has become, along with Rawls’, the paradigmatic definition of this political philosophy. Taylor and Tully direct their objections specifically at this brand of liberalism and Kymlicka reinterprets it in order to make it compatible with the demands of community and culture.

5 Liberalism is grounded in the Kantian idea that human dignity is fundamentally connected to our capacity to determine in an autonomous way our life projects. This capacity would be drastically limited if the state gives priority to one good – life perspective over the others. In this way, for liberalism each person should have the possibility of choosing a good life project, but each person should also recognize the duty to treat her fellow citizens in an equitable and egalitarian way, whichever moral view they defend.
promote and protect a particular culture if its members consider it a basic good and if the fundamental rights of all individuals belonging to minority cultures are respected.

Kymlicka agrees with Taylor: liberalism's claim that the state should be neutral towards culture is implausible. What for Taylor is a normative claim is for Kymlicka a descriptive claim. He believes that the neutrality principle is just a tool for covering the state protection and promotion of the dominant culture. In his view, the state cannot avoid taking decisions regarding the various cultures that compose it, e.g., the content of curricula in public schools and official languages. Yet, Kymlicka believes that liberalism can be reinterpreted and saved from this critique and from the others posed by communitarians like Taylor. To accomplish this aim, Kymlicka offers a reinterpretation of the liberal tradition. He tries to balance the liberal commitments to freedom and individual rights with the importance that culture has for persons and groups. He argues that if freedom ought to be protected, then the various cultures within which individuals live must be also defended. Freedom is exercised within a cultural framework that offers persons a series of options among which they choose their life projects. Cultural horizons give meaning to these projects. If the culture of the majority were the only one protected by the government, the principle of equality would be violated. The cultural context that determines the moral options of minorities would tend to disappear or would face more difficulties to survive than the difficulties confronted by the culture of the majority. To avoid this injustice and to protect the context in which freedom is exercised, Kymlicka offers a series of group differentiated rights. These are the instruments that would allow minorities to defend themselves from the undue intervention of the majority.

Tully's objections are broader and more radical than those presented by Taylor and Kymlicka. He argues that liberalism is structured around a very narrow range of meanings of terms like people, self-government, nation and citizen. These terms are construed within an overall ambition to render cultural differences politically irrelevant. Furthermore, he claims that in this respect, liberalism, communitarianism and nationalism have no significant differences. Tully believes that these three schools of thought share a set of concepts that are designed to ignore or destroy cultural difference. Tully calls the theoretical common ground shared by these perspectives modern constitutionalism. He claims that if cultural diversity is to be accommodated, modern constitutionalism must be reinterpreted. Moreover, the voices of aboriginal groups and traditionally marginalized scholars who helped build modern constitutionalism should be recuperated. With this aim in mind, Tully offers a historical account of the origins and development of modern constitutionalism, criticizes its strong inclination towards cultural homogeneity, and argues that the values of continuity, consent and recognition should guide any intercultural encounter. These modern but historically marginalized values are in Tully's view the only ones capable of properly accommodating cultural diversity in our contemporary world.

Despite all their efforts, Taylor, Kymlicka and Tully fail to overcome liberalism's weaknesses and thus fail to recognize and adequately accommodate cultural diversity. Trying to solve liberalism's problems, they all become prisoners of a liberal theoretical framework. Their supposedly alternative views are structured by core liberal values that impede the recognition and accommodation of radical difference. For these three political philosophers, democracy and individual rights, implicitly or explicitly, define the theoretical framework that determine the characteristics of the
political and legal institutions that ought to guide the common life of culturally diverse communities or the process through which these institutions should be created. These liberal standards are the common background against which all cultural encounters should be developed; they are the pre-condition for these encounters. The question these three political theorists are trying to answer, then, is not how different cultures can live together in a just way but how different liberal cultures can.

This last question fails to address the fact that many of the cultures of the world are not liberal. Some of the most important cultural conflicts we are living through today originate in controversies between liberal and illiberal communities. Although many non-western cultures have integrated liberal values within their traditions, they have not given them absolute priority over their old views. Liberal and traditional values coexist in tension within these cultures and their members do not agree on how to balance them. The only solutions offered by Taylor, Kymlicka and Tully to these clashes either demand the prioritization of liberal values over the traditional values of non-western cultures or attempt to transform illiberal cultures. Even though these three authors’ perspectives are some of the most sensitive to the demands of community and culture, they cannot overcome the core objections that they themselves present to traditional liberal perspectives.

In this chapter, I will reconstruct the paths that Taylor, Kymlicka and Tully follow in their unsuccessful attempts to recognize and accommodate difference and thus, to overcome the limits of liberalism. I will explore the weaknesses and strengths of their theoretical views and make explicit the conflict of values that structure their arguments and generate their failures. I will divide this analysis in four sections. In the first section, I will study Taylor’s communitarian critique of liberalism as well as his alternative proposal for accommodating cultural difference. Subsequently, I will examine Kymlicka’s efforts to reinterpret liberalism in order to recognize the just demands of cultural minorities and answer the objections presented by communitarians to the political tradition to which he belongs. Then, in the third section, I will analyze Tully’s critiques of liberalism and communitarianism as well as the normative criteria he offers for managing intercultural relations. Finally, in the fourth section, I will present some closing remarks with the aim of synthesizing the core arguments offered in this chapter and the basic structure of the problems discussed. I will reconstruct the dialogue, sometimes implicit, sometimes explicit, that these authors have had about the ways cultural difference should be recognized and accommodated. I will present the conceptual problems that structure this dialogue and the reactions that each author has had to the solutions that the others have offered to solve these conflicts.

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6 See for example the tensions between Western and Muslim countries and between aboriginal groups in South America and the governments of the states to which they belong. See also the conflicts between traditional African customs (like female genital circumcision) and Western values.

7 This is the situation of many aboriginal groups in the Americas. In these communities, for example, there is no clear solution to the collision between traditional undemocratic ways of governing and recently absorbed liberal categories like equality and individual freedom.
Charles Taylor: Multiculturalism and the politics of recognition

Individualism and its degraded forms

Taylor defines individualism as the moral ideal stating that persons have the right to decide their vital projects as well as to revise and abandon them. Individuals have the right to construct themselves, determining who they are and who they want to be without any undue interference. Taylor argues that this ideal has historically been transformed into a self-indulgent moral perspective that values moral decisions only because they are the consequence of the exercise of a subject’s will. In other words, for individualism’s degraded forms the only necessary requirement for a moral decision to be valuable is that it is the product of a person’s free decision. These degraded forms, in Taylor’s perspective, have created self-centered subjects with no other commitments than the satisfaction of their selfish interests. Obligations to community, nature and “the other” are forgotten; they disappear from the moral horizon of individuals.

In the same way, “the other” is transformed into a mere instrument for the satisfaction of individual desires and interests and the political sphere is transformed into a mere means for the satisfaction of individual interests. Subjects do not see the public realm as the space where the present and future of the community is collectively decided; they only see it as the area in which they can find the resources for the satisfaction of their interests. The implausible versions of individualism have also promoted the emergence of an extreme self-indulgent relativism that does not allow any significant discussion of moral problems and their possible solutions. Rational debate about morality is radically impoverished since the only valid criterion for judging the moral value of actions and ideas is that they are the consequence of an individual’s free will. The degraded forms of individualism have obscured the power of individualism as a moral ideal as well, that is, they have hidden the idea that individuals should be faithful to themselves.

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9 This ideal is grounded in a profound moral skepticism that questions the possibility of rationally arguing about moral ends. Ethics of Authenticity, p. 38

10 Ibid., p. 67

11 Taylor thinks that this element can easily create “soft tyrannies”; paternalistic governments where subjects worry only that the state's actions will provide them with enough goods for the development of their moral perspectives. Individuals then start suffering what Taylor calls a “heart confinement”. They become immune to the demands of citizenship, solidarity and history. He believes that the best antidote against these paternalistic state forms is the construction of a vigorous political culture that values the participation of its members in defining the future of the community and that attacks the feelings of impotence and isolation that originate when government takes all decisions without consulting its citizens. Ibid., p. 44
The powerful moral perspective concealed by the degraded forms of individualism is the ideal of authenticity. Taylor defines authenticity as the ideal that states that subjects ought to construct a superior way of life by acting in accordance with freely chosen normative standards that do not reflect solely their egotistical wishes but that take into account the interests of community, nature and the other. He believes that the ideal of authenticity rescues the moral power of individualism when it distinguishes between the fact that a moral decision has been taken freely and the content of this decision. Taylor indicates that the ideal of authenticity certainly defends the right of individuals freely to elect their vital projects. But it also indicates that this fact does not imply that good life projects cannot and should not include commitments to community, nature and the other, focusing only on the satisfaction of the selfish interests of the subject electing them. Contrary to the degraded forms of individualism, the ideal of authenticity does not evaluate the worth of a life project by only asking if it was the product of the free will of a subject. It also takes into account the content, the way the life project incorporates (or does not incorporate) community, nature and the other. Thus, a moral project can be implausible because of its content (when it is merely aimed at the satisfaction of selfish desires), although freely chosen by an individual.

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12 The strong ideal of individualism is obscured not only by its degraded forms (that impede the access to the ideal itself) but also by the profound moral relativism in which they are grounded. This relativism precludes any rational discussion about the ideal, keeping it in the shadows.

13 Ibid., p. 51

14 Although there are different philosophical positions towards the ideal of authenticity, it is defended by all western legal systems through rights such as freedom of conscience, freedom of expression and freedom of religion. Some consider this ideal one of the major achievements of modernity, which few would be ready to renounce. Others consider it valuable but unfinished, inasmuch as its realization is structurally limited by the patriarchal conception of family and the hegemonic economic system. Others take an ambiguous position toward the ideal as it prevails when traditional moral orders are set aside. They argue that if it were true that old moral horizons limited human beings in certain aspects, in others they nourished them in notable ways. Those moral structures provided individuals with an ordered interpretation of the universe where their position in the social structure and the rules for social dynamics were clearly stated. The ideal of authenticity then, implies the loss of the heroic dimension of life that structured past moral schemes. The loss of a superior value that is worth fighting and dying for is considered by many as a huge cost that contrasts with "the small and vulgar pleasures that are sought in democratic times"; pleasures that are almost exclusively related to the immediate satisfaction of individual desires. Taylor, however, considers that these critiques do not adequately understand the moral strength of the ideal of authenticity. It is clear that there is presently certain moral laxity but it is also obvious that this is not an exclusive phenomenon of modernity or more specifically of the first years of the XXI century.

15 Taylor believes that the strength of the ideal of authenticity can be seen more clearly if it is explicitly connected to its historical antecedents. Therefore, he develops a historical inquiry that points to Rousseau, who first articulated the ideal, and Herder, who refined and developed it. Rousseau defended the idea that all human beings are equipped with an intuitive sense of what is wrong and right. An interior voice that individuals have to follow to decide their good life projects. To understand good and bad then it is necessary to go through a process of introspection that will enable us to contact the voice of nature anchored inside each individual. Rousseau called this internal voice the sense of existence. Hence, with Rousseau, for the first time in modernity, being in contact with our moral sentiments acquires independent and crucial meaning. Herder argued that each human being has an inner life that distinguishes her from others. This inner life should be the source of morality and thus its demands should guide the individual's election of a vital project. To follow its requirements is to be faithful to one's originality.
The authenticity ideal and the dialogic construction of individual identity

Taylor believes that the ideal of authenticity and the construction of individual identity are closely related. When subjects define their good life projects they are defining what they are and trying to answer the questions: where do I come from? What do I want to be? Where do I want to go? Taylor emphasizes that although authenticity and individual identity construction are tightly connected, it is implausible to say that the latter is built in a monologic, solipsistic way. This view underestimates the dialogic character of human life as well as the power of the horizon of understanding, in which individuals are immersed, in determining their vital decisions. This horizon constitutes the frame that makes individual elections possible. It includes certain options, excludes others and offers a hierarchy of values. Therefore, it provides the criteria to determine what are the most valuable alternatives, what are less valuable and what are not valuable at all. Without this horizon of understanding, individuals cannot exercise their freedom. Individual freedom in the abstract, that is, with no historical context, is an empty concept. Context provides the substantive content within which individuals can exercise their free will.

Within this horizon of understanding, language (understood in a wide sense as including corporal, artistic, and other non-linguistic ways of communicating) plays a fundamental role. For Taylor, individuals can become human beings only through the languages they acquire within the horizon of perspectives that they inhabit. More concretely through the languages that they learn from their significant others. Through language, individuals can comprehend themselves and the world that surrounds them. Thus, from the moment we are born, “the other” plays a fundamental role in the way we see the world and understand ourselves. Persons construct their identity in a dialogic way, in close struggle with the other. Individual identity is built through a continuous process of creation and destruction of meaning of what one is, where the “look” of the other plays a fundamental role. What the other expresses about what I am, implicitly or explicitly, seriously determines the way I comprehend myself. The recognition, non-recognition and false recognition of the other determines, in an important manner, the way people understand themselves. The continuous false recognition or non-recognition of persons can lead them to internalize negative views about themselves that will generate serious self-esteem and self-respect problems. Recognition, then, is a human necessity that when unsatisfied can cause serious harm.

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16 Taylor defines identity as the self-construction process that offers answers to the questions who are we? and where do we come from? See Ethics of Authenticity, Ibid., pp. 70 and 67-76.

17 The consequence of questioning the existence of a horizon of perspectives that tells subjects what is valuable and what is not is a soft relativism that accentuates the importance of the election itself. This relativism legitimates the content of the election inasmuch as it is the result of the free will of the individual; it disregards that things are not solely meaningful because a person has chosen them. If this were true, no alternative would be meaningful because all would be. There would be no independent criterion to evaluate the moral value of the content of the views selected by individuals.

18 Taylor considers that not even the hermit or the solitary artist are capable of totally abolishing the dialogic character of life. The first one keeps God as interlocutor and the second one the possible spectators of his work. See Ibid., p.70
The effects of the idea of recognition in the political sphere: politics of egalitarian recognition

Taylor argues that the idea of recognition in the public sphere produces the politics of egalitarian recognition: A politics that demands the equal recognition of all individuals and cultures and that denounces the non-recognition or false recognition of individuals or cultures as a form of oppression. Taylor believes that the politics of egalitarian recognition has its roots in the principle of egalitarian dignity that appeared with the destruction of the hierarchic social structures of the ancien regime.\(^{19}\) In the ancien regime what the subject was, her identity, depended on the place she occupied in the social scheme and on the honor derived from that position. As a consequence of the decline of honor as a moral and political category, the idea that all individuals are equal inasmuch as they belong to the human species emerged.\(^{20}\) This moral principle allowed the appearance of the modern concept of democracy. The fundamental equality of all human beings necessarily implies a fundamental political equality. Individuals not only have equal value as private but also as public persons.\(^{21}\)

But the political implications of the ideas presented above go beyond the emergence of the politics of egalitarian recognition. Recognition as a relevant moral category, the reinterpretation of what individual identity is and how it is constructed, and the moral principle of egalitarian dignity have generated in the public sphere the political principle of universal dignity and the political principle of difference.\(^{22}\) The former destroys the distinction between citizens of first and second category, granting every individual the same rights and titles. The latter promotes the idea that all individuals have the right to create their own identity; it also defends the thought that the consequences of the application of this right have to be recognized and respected.\(^{23}\) Consequently, the actual identities of persons and cultures have to be valued.\(^{24}\)

Taylor believes that the principle of egalitarian dignity has historically produced a political model commonly known as procedural liberalism with John Rawls and

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\(^{19}\) Multiculturalism: Examining the Politics of Recognition, Ibid., pp. 37-38

\(^{20}\) This does not mean that the dialogic construction of individual and collective identity arose with the ideal of authenticity. It simply means that in other times this phenomenon was not a problem, because identity, as it was said before, was socially derived from unquestioned categories. What arises with modernity, Taylor indicaes, is the idea that recognition can fail. The idea that the other can deny recognizing me. Ethics of Autenticity., pp. 81-82

\(^{21}\) Multiculturalism: Examining the Politics of Recognition, Ibid., p. 27

\(^{22}\) Ibid., pp. 37 - 38

\(^{23}\) Ibid., p. 38 -39

\(^{24}\) The principle of universal dignity defends what is common to all citizens, while politics of difference demands the protection, upon a universalistic base, of what is original in each person. While politics of difference demands the recognition of particularity, what differentiates each subject or people from the others, the principle of universal dignity claims that what all humans share, what transcends the "apparent" heterogeneity of human beings, is what should be recognized. This argument shows us how the principle of difference arises from an interpretation of the principle of universal dignity. Although the latter is a source of the former (in regard to the fundamental equality of men and women) they collide in so far as the principle of difference requires the recognition of what is not universally shared: the differences that compose the identity of persons and peoples. Accordingly, the two principles set a dissimilar position towards the way political discrimination should be avoided. While the principle of universal dignity argues that for protecting equality of all citizens you have to be blind to difference, the principle of difference redefines discrimination, claiming that it emerges when dissimilarities are not taken into account to make decisions in the public domain. Ibid., pp. 37-41
Ronald Dworkin its most important representatives. This type of liberalism defends the separation between the private and the public orbit as a necessary measure to protect the principle of tolerance and the equal dignity of all humans. This discontinuity between morals and politics also guarantees that the state can be neutral before its citizens and treat them with equal consideration and respect. If the state assumes as its own a specific good life project, citizens that do not share it will be treated unfairly. They will not have the same opportunities to choose and materialize a different life project. Therefore, the state must not promote any collective moral end; it must remain neutral towards the vital projects of its citizens. Taylor believes that this model undervalues human diversity inasmuch as it rejects the possibility, wished for in many societies, to organize the political community around the promotion and defense of a particular culture. He also argues that the principle of egalitarian dignity does not necessarily have to result in procedural liberalism.

Taylor says that a society can at the same time be liberal and defend a collective end through the state if it protects the fundamental rights of its minorities. This perspective, which I will call substantive liberalism, argues then in favor of the continuity between morality and politics and demands that judges, legislators and members of the executive power take into account the collective end of the community in their decisions. Taylor considers that this model is morally defendable when communities and their governments consider axiomatic the survival and flourishing of their traditional culture. In these cases, the community claims that the protection and promotion of its cultural traditions should be considered a political good. The state then, should not be neutral before the life projects of its citizens. It should defend and promote the traditional culture and the life projects it supports. However, the model requires a distinction between essential liberties that could never be violated and immunities and privileges that on occasions, when colliding with the collective aim, could be restricted. Hence, substantive liberalism allows a polity to organize itself around the defense of a good life project without excluding or discriminating against persons that do not share it. In this way, substantive liberalism recognizes that its end may not be a neutral, impartial and atemporal model in which all cultures can peacefully coexist. It explicitly recognizes that its roots are submerged in the Western Christian tradition. It opposes procedural liberalism which, in Taylor’s view, presents itself as a neutral political alternative capable of including all cultures and that is opposable to any rational individual as the best way to understand and develop a political community.

Multiculturalism, politics of egalitarian recognition and the difference principle

The politics of recognition demands the equal recognition of all individuals and cultures and denounces non-recognition and false recognition as forms of oppression. In the same way, the principle of difference defends the potential of each person and

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25 Ibid., pp. 56 - 58
26 Ibid., pp. 58-59
27 Taylor recognizes that during the implementation of substantive liberalism there would be great difficulties and that arbitrary actions would occasionally be taken. But he argues that these actions would not be more serious than those that other interpretations of liberalism have to face when, for example, they give priority to equality over freedom.
28 Ibid., pp. 61-63
culture to define their identity and the concrete consequences generated by this process. But, what are the consequences that these two ideas generate for cultural diversity? Taylor believes that in the first instance these two ideas question any form of cultural imperialism and ethnocentrism. It also means that, in principle, all cultures that have enriched the life of an entire society during a notable period of time have something important to say to other cultures and its individuals. Now, Taylor believes that the latter statement is only an initial hypothesis that invites study of other cultures. It is not a categorical proposition that defends ex ante the equal value of all existent cultures. Such an evaluation would not be a proof of true respect. It would be a questionable concession inasmuch as it would be made without knowing what the other cultures consider valuable, what is important for them. To understand the contributions of other cultures to human history one must widen one’s horizon of comprehension. A fusion of interpretative horizons is necessary. A fusion between the observer and the forms of understanding the world of the culture observed. This fusion will allow individuals to approach the way “the other” comprehends the world; it will also allow them to elaborate new vocabularies to express contrasts among cultures. In this manner, “if and when we ultimately find substantive support to our initial presumption (equal value of all cultures), it is on the basis of an understanding of what constitutes worth that we couldn’t possibly have had at the beginning.”

Taylor believes that the hypothesis from which he departs is controversial. But at the same time he considers that it is reasonable to think that cultures that have given sense to the life of millions of persons, during a long period of time, have something relevant to say to other cultures and individuals. To deny ex ante that presupposition can only be explained as a consequence of immense ethnocentric arrogance. Taylor is not sure that the presupposition of equal value can be required as a right. But this does not worry him since he believes that the problem can be framed through the following question: is this the way we should see others? That is, it can be understood as a strong moral requirement that should guide our relationship with different individuals and cultures.

The limits of Substantive Liberalism

Taylor’s philosophical work constitutes an important contribution for the comprehension and analysis of the phenomena generated by cultural diversity within and among contemporary societies. It is moreover a notable contribution to the transformation of attitudes and/or institutions that do not permit the peaceful and fair coexistence of diverse communities within one state. Taylor’s reflections about the origin and transformation of modern identity, the socio-linguistic construction of morality, the historical origins and demands that the politics of recognition make on both the private and public ambits, and the characteristics of morality in contemporary developed societies are fundamental for understanding some of the main issues concerning cultural diversity as well as for the removal of obstacles that impede its flourishing.

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29 This premise excludes brief periods of a relevant culture (periods of decadence for example) and cultural fragments of a society. Ibid., p. 66
30 Ibid., p. 67
31 Ibid., p. 72
Taylor’s tracking of the sources of modern identity and of the origins of the politics of recognition gives us important elements for understanding why multiculturalism is a common discourse among contemporary women and men. His claim that the non-recognition or false recognition of minority cultures by the hegemonic white culture seriously discriminates against them, opens the space for confronting its hegemony and for fighting for its elimination. In the same way, his invitation to open ourselves to the other, by widening our horizons of understanding, becomes an important element for understanding the richness promised by the conflicts generated over cultural diversity. His invitation to take the other seriously, not as mere condescension but as a stand generated by value judgements born from a concrete approach to the other, is an attractive and strong challenge to all men and women of the twenty-first century.

Despite all its virtues, the perspective defended by Taylor regarding cultural diversity has certain flaws that diminish its power to transform and explain reality. In the first instance, and from a practical point of view, the categories offered by Taylor are insufficient to understand fundamental aspects of cultural diversity or to answer fundamental questions. What are the interests of minority cultures that should be recognized by the state as legitimate? Are individual rights sufficient to protect the interests of minority cultures? If they are not, what other rights could be granted to make ends meet? How would these rights be justified? All these questions are ignored or touched only tangentially by Taylor’s reflections.

The second objection to Taylor’s proposal is related to the political model he defends. Substantive liberalism can be more sensitive to difference than procedural liberalism, but its limits in relationship to the fair accommodation of cultural differences do not take long to appear. Although this model accepts that a collective goal can be defended through the state, it can only be applied in communities in which liberal individual rights are defended and promoted (such as Quebec). In this political model, the state is entitled to give priority to the collective goals of its citizens over their privileges and immunities but never over their fundamental rights. But what happens when the hegemonic culture in a multicultural state is illiberal and wants to protect and promote its culture through the state? What happens when an illiberal minority within a liberal state attempts to protect its culture through its own forms of government? How should the collision between individual rights and legal or political decisions taken to promote a particular culture be decided? None of these questions could be satisfactorily answered with the tools provided by substantive liberalism. The only answer that this model could provide is that any action by a state or by a cultural community that violates the fundamental rights of their minorities is morally questionable and legally proscribable.

Substantive liberalism, as well as procedural liberalism, can only accommodate minority cultures that accept liberal values. Both models declare as their objective to accommodate cultural differences but both end up excluding all visions that do not accept their core values. Is this not a small victory if we take into account that the initial objective was to respond to the different cultures that exist today and not only to those that accept liberal principles? As in XVI century Europe where the prevalent model of religious tolerance was only tolerant towards the different variants of Christianity, both the political models mentioned above are only tolerant to the perspectives defended by any of the variants of liberalism. If in the first case
Muslims, Jews and atheists were excluded, in the second case illiberal cultures are not accepted.

The third critical aspect refers to the liberal character of the model defended by Taylor. Is substantive liberalism really a liberal perspective? Can a model that considers pursuing collective goals through the state be called liberal if in this process it respects fundamental rights of minority cultures? This model violates the principle of equality, central to liberalism, in two ways: first, as a principle of equal consideration and respect; second, as formal and substantive equality. Substantive liberalism permits an unfair differentiation among citizens. There would exist, on the one hand, the citizens of first category, the ones that share the collective goal that the state promotes, and, on the other hand, the citizens of second category, the ones that do not share that goal. Even though they would all enjoy the same fundamental rights, the first group would have at least one more right, that their culture be prioritized over the privileges and immunities of the second group.

Why is it legitimate that the state promote the culture of the majority and not do the same with the culture of the minority? Does this not guarantee a slow but certain disintegration of minority cultures? The promotion of the majority's culture will always impose a cost on minorities. Why not think about a model in which the state impartially defends the cultures that inhabit its territory? That the state privileges one culture over the others, even if it respects the fundamental rights of all citizens, is not an insignificant fact. If, as Taylor himself has pointed out, culture plays a fundamental role in the creation of individual identity and the exercise of liberty, for the state to give secondary status to members of minority cultures will create very problematic results.

The state's non-equal recognition of these cultures will certainly appear as a form of individual and collective oppression. The individuals of minority cultures will be negatively affected in as much as their culture, the one that provides the horizon of perspectives by which these individuals decide on their good life project, is considered secondary by the state and by the members of the majority culture. The spectrum of circumstances that give sense to the way in which the members of the minorities comprehend themselves will not be taken into account with the same consideration and respect by the state, thus generating negative effects for their self-esteem. Communities will be affected as well. The possibility that as collectivities they are excluded from the public sphere is high; and with exclusion, tensions and distrust that impede the creation of ties of solidarity necessary for the realization of collective projects appear. In the same way, apathy towards public debate and participation in the political sphere of the community arises. When communities do not see their cultural ways recognized by the state and taken into account in public debates and political decision-making, they tend to isolate themselves and to feel that they do not belong to the polity.

The violation of formal and substantive equality by substantive liberalism is simply a necessary consequence of the state's defiance of the principle of equal

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32 With this critique I am questioning the possibility of including Taylor's theory within the liberal tradition, that is, I am questioning that Taylor's view includes all the elements necessary to be appropriately called a liberal theory. But I am not questioning (in fact I am arguing), that his views are fully committed to some of liberalism's core principles: individual rights and democracy.
consideration of all cultures. To realize the desire of a majority to protect effectively its culture, the state authorities (the judges and members of the legislative and executive powers) must use this collective goal to make decisions and set policy. In this way, the laws, jurisprudence and administrative procedures will try to promote the majority culture. This will bring as a consequence the inequality of minority cultures before the law (formal equality), which will necessarily produce material inequality when applied.

In sum, Taylor’s proposal does not provide enough tools to understand the dynamics and necessities of culturally diverse communities; they are unable as well to satisfy the demands of non-liberal communities. Taylor’s normative view, although not a full-blown liberal theory, is committed to individual rights and democracy. These values are the language that all cultural communities should speak in order to be able to promote and protect their culture. These, according to Taylor, are the values that should underlie any intra and inter cultural encounter.

2 - Will Kymlicka’s Multicultural Liberalism

Kymlicka too believes that the orthodox liberal view towards culture is unable to accommodate cultural diversity appropriately. He believes that the relationship between cultural communities and state should not be the same as that between state and religious groups, as liberals have traditionally argued. The state cannot be neutral towards the cultural communities as it can be towards religious communities. If it cannot be culturally neutral, liberalism cannot demand that the state become so. However, Kymlicka believes that liberalism can be reinterpreted and saved from the critiques presented by Taylor and other communitarian theoreticians. Since the publication in 1989 of Liberalism, Community and Culture, he has aimed to show that liberalism can and should be sensitive to the demands of community and culture. He has intended as well to present and justify a liberal theory that can give morally defensible and politically viable answers to the problems and opportunities posed by cultural diversity.

The basic descriptive categories

Kymlicka considers it of central importance to distinguish among different types of cultural minorities so that their distinct characteristics, necessities and interests can be clearly understood. He proposes the following two criteria to differentiate among the diverse types of cultural minorities existent in contemporary states: the way they came to be part of the polity, and the relationship they want to have with it. Applying these criteria, Kymlicka finds two types of minority cultures that cover the great majority of cultural groups: ethnic groups and national minorities. Ethnic groups are composed of voluntary immigrants that wish to integrate themselves into the political

33 Will Kymlicka, Politics in the Vernacular, Oxford University Press, 2001, p. 50
practices of the cultural majority but at the same time claim spaces within the hegemonic society for the expression and promotion of their cultural legacy. Ethnic groups usually associate in evanescent and flexible collectivities for the defense of their interests. National minorities are formed by groups of individuals that constitute a historical community with a common language and culture, inhabit an ancestral territory where they are more or less institutionally complete, and want to maintain themselves as distinct communities. National minorities and ethnic groups yield two other categories when applied to states: polyethnic and multinational states. The former are the states that widely accept immigration of individuals from different cultures and that allow the expression and promotion of their cultural traditions. The latter are those composed of more than one nation. Its creation might be voluntary, through an agreement between two or more nations; or involuntary through the military conquest of one (or various) nation(s) by another (others).

Kymlicka further distinguishes between two types of claims that minority cultures make or could make to protect the stability of their communities: internal restrictions and external protections. The first aims to neutralize dissension within the community in order to protect the cohesion and/or the culture of the group. A minority community might try to accomplish these aims through actions that reduce or deny the civil and political rights of their dissidents. The second intends to limit the impact of economic, political and social decisions made by the hegemonic society on the life of cultural minorities.

The basic normative categories: group differentiated rights

Kymlicka considers that states should respond to cultural diversity challenges by recognizing and promoting individual as well as group differentiated rights. He considers that states should recognize three types of group differentiated rights: self-government, special representation and polyethnic. The first two take into account the characteristics and necessities of national minorities; the second one the claims of both types of minorities; and the third one the characteristics and necessities of ethnic groups. Self-determination rights intend to promote and protect the political and territorial autonomy of national minorities. Their purpose is to relocate jurisdictions into political units controlled by national minorities. Special rights of representation aim to guarantee the participation of national minorities and ethnic groups in the political institutions of the hegemonic culture. Their objective is to ensure that the voice of cultural minorities be heard in the spaces where political decisions that affect them are taken. Polyethnic rights intend to protect the free expression and promotion of ethnic groups’ cultural legacy.

35 The limits between national minorities and ethnic groups are flexible. Although not very probable, an ethnic group, after a long period of time can transform itself into a national minority and vice versa.
36 The United States and Canada are good examples of this type of political organizations.
37 Belgium is an example of a multinational state created by agreement; Peru an example of a multinational state created by violence. It is important to note though, that many states are both polyethnic and multinational (e.g. Australia, Spain and Brazil).
38 There are two empirical assumptions underlying rights of special representation. First, that the political process in the majority of contemporary states is not really representative inasmuch as white, middle class, fully able men dominate it. Second, that the actions taken by political parties to be more inclusive and to “purify” the system to make it more representative are not enough to guarantee the
Kymlicka justifies these rights from a liberal perspective appealing to the relationship between freedom and culture as well as to the equality principle. The structure of the former argument is the following. First, he indicates that liberalism's most important commitment is to autonomy. This concept is understood by Kymlicka as the individuals' right to freely choose, revise and abandon their good life projects. Second, culture is the horizon of understandings where freedom is exercised. Culture offers individuals the spectrum of vital options, as well as its hierarchical organization and evaluation, within which they are able to exercise freedom. In this way, if liberalism wants to protect freedom it should protect societal cultures from structural decadence through the recognition of differentiated group rights. Third, the cost of leaving one's culture is very high for most persons. Kymlicka believes that it is a cost that cannot be justifiably imposed on individuals. Access to one's culture is fundamental for the majority of people. Given the tight relationship between culture and individual identity most individuals will find it difficult to leave their culture.

But this is not the only argument that explains the importance of the relationship between individuals and their culture. Belonging to a tradition adds extra meaning to individual actions. Individuals feel that they are part of a long chain of individual and collective efforts that continually recreate their culture. Persons perceive themselves as transcending their mortality inasmuch as they feel part of a cultural tradition that gets lost in the past and rushes into the future. This cultural chain also enables parents to transmit their cultural tradition to their children in order to create intergenerational bridges. It provides the cultural nourishment for the encounter of different age groups and their different views about what life is and should be. In the same manner, mutual understanding derived from a common cultural identity promotes the solidarity among people that is needed to build collective projects. Without a strong sense of solidarity, for example, individuals will not be willing to support measures required by modern welfare states (i.e., unemployment insurance and health and education benefits). Mutual understanding as a consequence of a common cultural background also increases and consolidates individuals' participation in the political sphere of the community. When persons understand themselves as part of a polity that recognizes political participation of cultural minorities. This category of rights includes political measures such as the reorganization of electoral districts so that minority groups can become the majority in specific areas and reserving for them a number of seats in congresses and assemblies.

Rights against ethnic discrimination, the right to state financial aid for funding cultural practices and the right to a public education that includes the history and world view of ethnic groups are some examples of polyethnic rights.

Note how Kymlicka and Taylor's proposals coincide in this aspect.

Kymlicka believes that obliging people to leave their cultures is similar to obliging them to make perpetual poverty vows. Although some individuals make them, liberalism considers that the wish to own more resources than the ones needed for survival is so normal that it is reasonable not to expect people to renounce them.

A culture that is discriminated against or one in process of disintegration notably reduces the vital opportunities available to their members; they also make the vital opportunities available less attractive and more difficult to materialize. For the Guambianos (an aboriginal group in Colombia), for example, to cultivate land and to adore nature is the most valuable vital project. If their community is disintegrated and their members are incorporated into the majority culture, urban and Catholic, their vital option will be considered not very important and their possibilities of success and self-fulfillment will be notably reduced.
their cultural perspective they feel more inclined to be part of the decision making process that determines its present and its future.

In this way, Kymlicka considers that the type of freedom that liberals should defend is freedom to choose among options offered by the societal culture to which one belongs. It is as well the freedom to question ancestral traditions and to define which of them should be protected and which should be forgotten. Therefore, liberal freedom is not only freedom to transcend one's history and culture but also freedom to autonomously develop one's self within that culture, including the possibility of transforming its ultimate ends. New ideas and experiences, new interpretations of the views and facts known and accepted may reveal to individuals that their good life projects are implausible and thereby make their revision and transformation necessary. The liberal ideal is composed then by a society of free and equal individuals where “society” is understood as one's own culture, where the sense of freedom and equality valued is the one developed within it, and where individuals are ready to renounce a larger freedom in order to assure the survival of their culture.

The second argument, based on the equality principle, is constructed in three steps. First, Kymlicka indicates that states cannot be neutral towards cultural communities. States inevitably take positions towards cultures when they decide issues such as the content of public education programs, the definition of internal frontiers and the determination of official languages. Second, in a democracy the hegemonic community usually uses its power to impose the views to which it is committed. This fact generates an unequal, and thus, unjust treatment of the cultural minorities by the state. Third, differentiated group rights are necessary to end the systematic inequalities produced by the latter fact. They are necessary to grant cultural minorities the same opportunities that the majority has to live in its own culture.

**Liberal Multiculturalism and tolerance**

Kymlicka argues that group differentiated rights are not absolute; they should always be limited by the principles of individual liberty, democracy and social justice. In accordance with this view he believes liberalism should defend and promote external protections, but it cannot accept internal restrictions. The only exception to this principle is if the disappearance of a cultural minority can be demonstrated if internal restrictions are not put into practice. Such internal restrictions must always be temporary and respect the principles of equality and dignity of individuals. This

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43 In this area another chapter of the liberal-communitarian debate is developed. Authors like Michael Sandel consider that it is a mistake to believe, as liberalism does, that it is possible to revise all our ends. Some of them are constitutive of our identity, define who I am, so it does not make any sense to say that they have to be maintained or positively evaluated. In response to this argument, authors like Dworkin and Kymlicka consider that although it is difficult and painful it is possible (and in occasions necessary) to revise our last ends. New experiences and new ideas can reveal to the individual that the chosen vital options are partially or totally mistaken and therefore have to be replaced. See Sandel Michael, Liberalism and the limits of justice, Cambridge, Cambridge University Press, 1982; Dworkin Ronald, La comunidad Liberal, Bogota, Siglo del Hombre Editores-Uniandes, 1996; and Kymlicka Will, Liberalism, Community and Culture, Oxford University Press, Oxford, 1991.

44 The disappearance of a culture generates excessively high costs for their traditional members, all of them related to the strong relation between freedom and culture. The disappearance of a cultural minority also constitutes a great loss for the cultural richness of any state and thus, for the cultural alternatives available to the members of the majority.
implies that Kymlicka’s view cannot accommodate certain illiberal communities and thus that it collides with the liberal principle of tolerance. Kymlicka accepts the former argument but not the latter.

He argues that historically liberal tolerance has meant individual freedom of conscience and not collective freedom of religion. Liberalism was born as a theoretical product of the religious tolerance put in practice to end European wars during the XV century. A view and a practice of tolerance that has been understood historically as the right to choose a confession but also to be a heretic or an apostate. Tolerance therefore, has not been traditionally understood by liberals as requiring to respect all norms that religious traditions have chosen to rule their internal affairs. For Kymlicka then, there is no tension between the proposal he defends and the principle of tolerance. The liberal interpretation of tolerance demands questioning any restriction of basic political and civil rights.

He accepts that his theory cannot accommodate illiberal communities. But he also says that this does not mean that liberals can impose their views on them. Any attempt to do so would be an aggression or a totally questionable form of paternalism. Moreover, it would have no success, for as history has shown over and over again, liberal reforms end up being transitory and generating instability if they are not a consequence of the honest wish of illiberal communities to change. Peaceful negotiations should guide inter-cultural relations. However, if cultural communities do not want to negotiate or if these negotiations fail to produce any agreement, tolerance among the different cultures should be the rule. Intervention by the hegemonic society can only be legitimate if it is aimed to end slavery, genocide, massive expulsions or torture. However, Kymlicka believes that a liberal state should try to promote liberalism among illiberal communities through measures such as political and economic pressure. He distinguishes between coercive and dissuasive measures and argues that liberal countries may legitimately use the latter to transform illiberal communities.

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45 Multicultural Citizenship, Ibid., p. 153
46 There is a rich debate about the role and value that the principles of tolerance and freedom have in liberalism. Some authors consider that the fundamental value of this political stream is tolerance while others believe that individual freedom is. This is the debate that has been developing between kantian and modus vivendi liberalism, between enlightened and reformist liberalism and comprehensive and political liberalism. See for example,
47 Kymlicka recognizes that liberal tolerance can also be interpreted as collective freedom of religion and thus as accepting internal restrictions. There are some forms of religious tolerance that defend the right of each cultural community to internally organize in the way it considers more adequately. It does not matter if the elected internal organization goes against liberal principles. The Millet system in the Ottoman Empire is a good example of this type of tolerance.
48 As an example of the imposition of liberal institutions by the hegemonic culture and its consequent failure, see the experience of many African countries during the second half of the XX century.
49 For the cases where the legitimacy of the intervention is not clear Kymlicka proposes four criteria that would help make such a decision. First, the level of consensus within the community about the legitimacy of restricting individual rights. Second, the existence of historical agreements between the state and the cultural minority. Third, the possibility for dissidents to exit the community if they wish, and fourth, the gravity of the rights' violations.
50 Kymlicka offers as example of plausible dissuasive measures the demands that the United States made to Mexico, in the framework of the NAFTA negotiations, to control human rights violations by government's officials.
Kymlicka’s theory then, moves between two levels of analysis. The first one is purely theoretical. On this level he reflects about the elements that should compose a liberal theory about multiculturalism. In this ambit, a liberal theory would be perfect if it accepts differentiated group rights that promote external protections and questions and discourages internal restrictions. The second level is theoretical-practical where he tries to answer the following question: is it legitimate for liberals to impose their principles on cultural minorities that do not accept them? The answer to that question is negative, although liberals can and should attempt to liberalize illiberal communities through non-coercive measures.

The limits of Multicultural Liberalism

Kymlicka’s proposal provides an important number of tools that enable the comprehension and confrontation of challenges and problems arising from the polyethnicity and multinationalism of contemporary societies. Its descriptive categories (national minorities, ethnic groups, multinational and polyethnic states, internal restrictions and external protections) systematize in a plausible way the characteristics and interests of the majority of contemporary minority cultures. In the same way, these categories offer an accurate map of the relationships that most of the cultural minorities have or would like to have with hegemonic cultures. Likewise, the three group-differentiated rights that Kymlicka presents are important instruments for the satisfaction of the historical demands of national minorities and ethnic groups. These rights synthesize and respond to some of the most important claims of minority cultures.

His interpretation of the relationship between freedom and culture opens new possibilities for the comprehension of the liberal tradition, new possibilities where this political philosophy perspective appears more sensitive to the demands and necessities of culture and community. Just as important is Kymlicka’s derivation of the group-differentiated rights from the principle of equality. This argument evinces the fact that the principle of neutrality of the state before culture and ethnicity, widely accepted today, is simply impossible to fulfill. It also makes explicit the necessity that states recognize group-differentiated rights in order to eliminate the systemic discrimination of which the minority cultures have been victim.

Despite its normative and explicative power, Kymlicka’s theory is insufficient to accommodate radical difference. The space opened up by the liberal perspective defended by Kymlicka is still too narrow to accommodate the immense cultural diversity of today’s world. At the core of the problem is the idea, central to the model defended by Kymlicka, that liberalism must promote external protections but must not accept internal restrictions. That is, that liberalism must promote measures that protect minority cultures from the decisions made by the different institutions of the majority or other minority groups, but it must not accept restrictions on the basic rights of their members with the aim of protecting the integrity of their culture. At the root of this argument is the idea that the cultural horizons are (or should be) of interest to individuals in so far as they allow the exercise of freedom. For many cultures this is not the case. Culture is a source of authority; it indicates what individuals should do and it is valued in itself and not as a pre-condition for freedom. For these communities, self-reflection and autonomy are not important values or at least not as important as those of stability, order and deference to authority.
It is true that Kymlicka distinguishes between creating a perfect liberal theory and its imposition on minorities. But how useful is a perfect liberal theory that attempts to accommodate cultural diversity but is only capable of satisfying the demands of the groups that accept its values? It is true that the majority of minority cultures in the world have been influenced by liberal values. However, it is not true, as Kymlicka argues, that the conflicts between minorities and dominant cultures are fundamentally a dispute about how to interpret or apply liberal values to particular conflicts.\footnote{Will Kymlicka, Politics in the Vernacular, Oxford University Press, 2001, pp. 60 - 61} That might be the case for Scots, Flemish, Catalanians and Quebecois, but it is not the case for many aboriginal groups in the West and in the Third World, several states in the Muslim world or the numerous traditional communities in Africa. Within several of these cultures, liberal values coexist in strong tension with traditional illiberal principles and there are not clear and widely accepted criteria for determining which ones should prevail. These tensions generate conflicts not only within the communities but also between them and the dominant culture. Kymlicka’s answer to this problem is just that liberal values should have priority over illiberal ones. How useful is a theory about diversity that requires that all conflicts between individual rights and illiberal values that coexist within many communities should be decided in favor of the former? How useful is a theory about how to accommodate diversity that prescribes that in all conflicts between liberal communities and cultures where liberal and traditional illiberal values coexist, the former should always prevail?

Also problematic is the militant attitude, almost evangelizing, that Kymlicka demands from liberal individuals and states towards communities and individuals that are not liberal. In the international domain, liberal states and individuals must try to transform illiberal states; in a domestic realm the liberal states and its members must try to liberalize minorities. In relationship to this Kymlicka says,

“…there is an important difference between coercively imposing liberalism and offering various incentives for liberal reforms. Again, this is clear in the international context. For example, the desire of former communist countries to enter the EC has provided leverage for Western democracies to push for liberal reforms in Eastern Europe. Membership in the EC is a powerful, but non-coercive, incentive for liberal reform. Similarly, many people thought that negotiations over the North American Free Trade Agreement provided an opportunity to pressure the Mexican government into improving its human rights record. The Mexican desire of a continental free trade agreement provided the United States and Canada with some leverage to push for liberal reforms within Mexico. Obviously there are many analogous opportunities for a majority nation to encourage national minorities, in a non-coercive way, to liberalize their internal constitutions.”\footnote{Multicultural Citizenship, Ibid., p. 168}

However the difference between dissuasive and coercive measures does not seem very clear. As can be seen through the examples offered by Kymlicka, the limits between violence and persuasion are vague. Can economic pressure exercised by the governments of developed countries over third world countries to achieve their liberalization be considered a dissuasive measure? Can the measures that limit financial aid from the state to minorities so that they become liberal be considered dissuasive? It is clear that liberals have the right and the duty of publicly expressing themselves against actions that they considered unjust. It is also clear that they have
the right and the duty to promote the creation of spaces in the national and international domains where the actions of states and of minorities that go against liberal values can be discussed. But it is one thing to question and to discuss illiberal actions by other cultures and states; it is another very different thing to attempt to change them through measures taken from relative or absolute power positions.

Similarly problematic is the fact that the group differentiated rights proposed by Kymlicka are identified and filled with content without the participation of the individuals and communities affected. The articulation and interpretation of these rights rise from what Kymlicka considers their interest and necessities. However, the voice of cultural minorities should actually be heard; states, citizens and academics should be aware of their opinions about which rights would satisfy their interests and what should be their interpretations. Although this requirement is not incompatible with Kymlicka's perspective, the silence and absence of cultural minorities is notable. Related to this point is the fact that Kymlicka's theory refers only to national minorities and ethnic groups. His theory does not say anything about groups like blacks in North and South America, Gypsies and economic and political refugees that cannot be assimilated to either of these two categories. Kymlicka's view does not take into account the characteristics, necessities and aspirations of many cultural minorities around the world.

In sum, Kymlicka's descriptive categories are too limited for understanding the aspirations of the many minorities that do not have the same characteristics as national minorities or ethnic groups. They cannot capture the rich variety of minority groups that exist around the world. Similarly, his normative categories are unable to give just answers to the claims of non-liberal communities or to the tensions existing within cultures where liberal values coexist with traditional illiberal values. These categories are only able to provide normative guidance for managing the relations of communities that already accept liberalism.

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53 James Tully offers a similar objection to what he calls “modern constitutionalism”. Tully claims that nationalism, liberalism and communitarianism – the most important schools of modern constitutionalism – do not take into account the needs and expectations of minority groups. These schools either define minority’s needs and expectations or demand the minorities to articulate them using modern constitutionalism’s descriptive and normative categories. Modern constitutionalism do not hear minorities’ voice; it does not hear minorities’ definition of their needs and hopes. See below pp. XXX
3- Modern Constitutionalism in a Post-Colonial Age

James Tully argues that neither Kymlicka's nor Taylor's theories are able to accommodate appropriately cultural diversity. He argues that the three dominant schools of interpretation of modern political theory – liberalism (including Kymlicka), communitarianism (including Taylor) and nationalism – share various structural characteristics that render them incapable of recognizing cultural difference. Tully, nevertheless, claims that a modern constitution can recognize and accommodate cultural diversity: all members of a political community can agree on a form of constitutional association but only if unnoticed aspects of the historic formation of modern constitutionalism as well as its present limitations are brought to light.54

Origins of the Politics of Recognition and Modern Constitutionalism

Tully believes that the wide theoretical reflection about cultural diversity over the last two decades is a consequence of the political struggles of seven different although related movements and groups: supranational associations, nationalist groups, feminist movements, linguistic and ethnic minorities, intercultural citizens, and aboriginal groups.55 Their actions have brought to the attention of politicians, scholars and common citizens the connections between culture and a healthy life - both private and public - as well as the injustices and conflicts caused by a political sphere that excludes and suppresses cultural diversity. These six groups and movements struggle for the creation of constitutional and legal frameworks in which the diverse cultural traditions of their members can be recognized. Supranational associations, like the European Union and NAFTA, raise questions about the future of the cultures of each of the nations that comprise the association. Nationalist movements fight for the creation of a state of their own or for political autonomy within diverse types of federations or confederations. Feminist movements battle for the constitutional recognition of women’s ways of speaking and acting as well as for their equal participation in political institutions and practices. Linguistic and ethnic minorities demand the constitutional recognition and accommodation of their customs and traditions. Intercultural citizens, exiles, refugees and immigrants claim recognition for the cultures they bring to the states in which they arrive. Aboriginal groups ask for the political and legal recognition of their ancestral ways and traditions.

The differences among the particular objectives of each of the six movements and groups are usually overestimated creating the false impression that they are incompatible and incommensurable.56 Although their aims occasionally collide, they all share a common end: the just political and legal recognition of their own forms of self-rule. They also share the idea that modern constitutional law, institutions and traditions of interpretation are unjust in so far as they are incapable of recognizing cultural pluralism. The six movements and groups commonly defend as well the assumption that culture is a constitutive and irreducible part of politics. For that reason, they believe that constitutions, in order to be just, should be created through processes in which all cultures that compose the political community are heard in their own voices. If a constitutional dialogue of this type is established, the political

55 Ibid., pp. 1-6
56 Ibid., pp. 16-17
institutions produced by it will recognize the different ways and customs of all the people that constitute the polity.

The politics of cultural recognition that has marked the public life of our age is not an entirely new phenomenon. It is deeply rooted in modern constitutionalism’s commitment to anti-imperialism. During the last four centuries modern political theory has struggled against different imperial systems for the recognition of all citizens within states and for the equality of independent, self-governing nation-states. This theoretical commitment gave rise to three different political movements. In Europe, during the XVIII and XIX centuries, it activated and justified the opposition to the papacy and to the Holy Roman Empire as well as the concomitant process of nation-state creation that followed. Once these new nation-states built imperial systems over the non-European world, modern constitutionalism provided the theoretical tools for the political emancipation of colonies. It encouraged their efforts for independence and for the creation of new states where the traditions of the native peoples could be recuperated and where all citizens could be recognized as equal. Finally, the politics of recognition was born as a consequence of the battle for the recognition and accommodation of the peoples excluded and discriminated against by the first two anti-imperialist movements. There are two elements then that cut across these three anti-imperialist waves. On the one hand a language of imperial opposition and liberation and on the other hand the wish of individuals and communities to govern themselves by their own ways. In this manner, there is no radical break between today’s politics of recognition and yesterday’s decolonization process; and between this struggle and the creation of the first European nation-states two centuries ago. Therefore, the politics of recognition and the political movements that are its cause are not a consequence of the rise of a post-modern constitutionalism. They are one more link in the modern political struggle against cultural and political imperialism.

Questioning modern constitutionalism

Modern constitutionalism is not a monolithic structure. It is composed of different traditions of interpretation. Unfortunately, the anti-imperialist commitment of modern constitutionalism has been obscured by a strong tendency towards cultural homogeneity. The language and traditions of interpretation that have become hegemonic in modern political and legal thought are designed not only to exclude and assimilate cultural diversity but also to justify homogeneity. This fact might be difficult to grasp in as much as the language of liberalism, nationalism and communitarianism is the language in which we think about political and constitutional issues. Through it we articulate the political and legal questions of our time and the range of their possible answers. This language determines the horizon in which the political and legal imagination moves, it constitutes our habits of thought and informs the political and legal institutions that are created through them. It is not strange then that this language seems natural and incontestable for the majority of activists, scholars, politicians and common citizens. No doubt on certain occasions the categories of modern constitutionalism are questioned and transformed, but these

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57 Ibid., pp. 15-17
debates and alterations are always done against a stable background of customary agreements on the authoritative character of modern political thought.

Tully believes that the language of modern constitutionalism is composed of a narrow range of uses of terms like people, self-government, citizen, rights, equality, recognition, nation, and popular sovereignty. The long hegemony of liberalism, nationalism and communitarianism within modern political thought has made us believe that the meanings they give to these terms are natural and unquestionable. Specifically, Tully claims that the hegemonic uses of the language of modern constitutionalism have seven features that are designed to eliminate cultural diversity and to attain cultural homogeneity and uniformity. First, modern constitutionalism identifies popular sovereignty with a culturally homogenous community or group of individuals that reach an agreement on a constitutional association through a hypothetical or historical deliberative process. Culture is therefore considered irrelevant or a factor that can be easily transcended.

Modern constitutionalism is defined against ancient constitutionalism. Two elements of this tension produce the second and third features of modern political and legal thought. On the one hand, while ancient constitutionalism reflects the customs of the community, modern constitutionalism critically reflects on the traditions held by the people recognizing only the ones it considers just. As pre-modern communities are held prisoners by traditions when they merely recognize the way they are already constituted, modern communities free themselves from customs when they create a new political association through an act of will and reason. This difference between ancient and modern constitutionalism is caused, modern political thinkers argue, by the different stages of socioeconomic development of the cultures to which these political and legal perspectives belong. Modern constitutional theorists believe that cultures are internally uniform and relative to a socioeconomic stage of development. For them, the self-imposed modern European political and legal institutions are a product of a high level of development while the colonies' customary political and legal institutions are a consequence of their low degree of social and economic evolution.

58 Ibid., pp. 36-38
59 Ibid., p. 58
60 Ibid., p. 39
61 Ibid., pp. 63-70
62 Ibid., pp. 63-64
63 There are some variations of this concept that depend on the political ideas and values prioritized by each of the three dominant schools within modern constitutionalism. For liberalism a sovereign people is a society of equal individuals in a state of nature that creates a uniform political association in an ideal speech situation or an original position. The concept of sovereign people is otherwise sometimes construed by liberal thinkers as a society of equal individuals in modern level of historical development that accept as authoritative modern European institutions and traditions of interpretation. Inside the boundaries of these political institutions individuals discuss the concrete meaning of their political values and choose a particular type of constitutional association. For nationalists and communitarians the sovereign people is a community bound by an implicit substantive common good that includes European institutions and traditions of interpretation. Within them the people articulate and develop the common good and express it in a constitutional and legal framework.
64 Ibid., pp. 64-67
On the other hand, while ancient constitutional systems are a multiform assemblage with overlapping legal and political jurisdictions incorporating the different customs of the peoples that constitute a state, modern constitutional systems are understood as uniform and centralized political structures where equal citizens are treated equally, not equitably. Modern theorists consider the "irregularity" of ancient constitutionalism the principal cause of political instability and war. The second feature of modern constitutionalism that threatens cultural diversity is then its progressive view of human history and the third one the centralization and uniformity of the political and legal structures that it defends. The former determines a unique standard for evaluating cultures, a series of supposedly neutral stages, that all societies should follow in order to evolve but that actually expresses only the socioeconomic and political history of European societies. The latter prevents the possibility of the organization of constitutional associations with a non-centralized and non-uniform distribution of legal and political power.

The fourth feature of modern constitutionalism that menaces cultural pluralism is the way its theory of progress recognizes custom. Social and economic progress undermined ancient constitutionalism and yielded the process of consolidation and centralization characteristic of modern constitutional states. Consequently, the argument goes, modern constitutionalism does not disregard ancient customs and traditions it simply recognizes the elements constitutive of modern society. This line of reasoning obscures the fact that modern constitutionalism chooses to recognize modern society's customs among many others and masks the partiality of this decision. This is not a neutral choice. It is determined by the problematic thought that modern ideas, traditions and institutions are superior to any other in as much as they are the natural consequence of a higher social and economic development.

The fifth characteristic is the idea that the socioeconomic development of modern Europe converges in a specific set of political and legal institutions that is the only one appropriate to represent a sovereign people. Modern constitutional thinkers believe that the rule of law, separation of powers, individual freedoms, standing armies and the separation between private and public spheres are the necessary, sufficient and unique conditions for the creation of a state representative of the people.

The sixth characteristic refers to the fact that since the French and the U.S. revolutions each state is identified, and identifies itself, with one nation. Since the late XVII century, a nation has been defined as an imaginary community to which all citizens belong and where they all have equal dignity as members of the polity. Modern political thinkers believe that the identification of each state with one nation generates a sense of belonging and alliance, represented in its name, its public symbols and historical narratives. The seventh and last attribute of modern political thought is the idea that constitutions are created at a foundational moment and constitute the pre-conditions for democratic politics. Constitutions are agreed on at one time for all time. They are not part of democracy; they constitute the untouchable framework within which democratic politics develops.

65 Ibid., p. 67
66 Ibid., pp. 67-68
67 Ibid., pp. 68-69
68 Ibid., pp. 69-70
In sum, the hegemonic language of modern constitutionalism excludes and suppresses cultural diversity when it defines the sovereign people as a culturally homogeneous community or group of individuals that by an act of will and reason create a constitution. Modern constitutionalism also ignores pluralism when it argues that constitutions are created in foundational moments and that political charters are a pre-condition for democracy but not a part of it. Modern constitutional thought overlooks cultural diversity as well when it argues that the political and legal institutions it defends are a consequence of a specific, higher stage of human social and economic development, and when it identifies each state with one and only one nation that has a central and uniform authority for the sake of its political stability and order.69

Reinterpreting modern constitutionalism

Tully argues that a reconceived modern constitutionalism can recognize cultural diversity. This conceptual transformation can be achieved if light is shed on long obscured aspects of the historical construction of modern legal and political thought. Within Anglo-European political and legal thought of the last 400 years, there are two perspectives: a modern European, male, white view and a common-law view, sensitive to cultural diversity. Unhappily, Tully argues, the former has obscured the latter. For Tully, if the constitutional arrangements between aboriginal groups and European imperial agents are studied, new interpretations of the language of modern constitutionalism will be found. Tully sees here an intercultural dialogue where sovereign citizens negotiate agreements over forms of associations in accordance with the conventions of mutual recognition, consent and continuity.70

These three conventions constitute the core normative criteria of common-law constitutionalism. The convention of mutual recognition demands that the parts of a constitutional discussion see each other as equals in the common process of designing the political and legal institutions that will rule their life. Consent requires that all decisions made in the constitutional dialogue should be the product of free will. Continuity commands that, if no agreement is reached, the cultures of the participants in the constitutional conversation should not be transformed. For common-law constitutionalism, shaped by the intercultural encounters between Europeans and aboriginal people, there is no meta-narrative that can supplant the narratives of each of the cultures that enter into the constitutional dialogue. Each culture that participates in the conversation should be able to speak its own “language”; it commits to and identifies with the constitutional association in so far as its perspectives are recognized and reflected within it. Progress then, is achieved when intercultural dialogues are actually celebrated and when what these dialogues create recognize and accommodate cultural diversity.71

Along with these three conventions, the common law interpretation of modern constitutionalism argues that cultures are not closed and homogeneous entities. It maintains that cultures are overlapping, interactive and internally negotiated bodies. Cultures crisscross each other, are densely interdependent for their formation and the

69 Ibid., pp. 70-82, 85-96
70 Ibid., pp. 30, 116
71 Ibid., pp. 117-157
construction of their identity and are not internally uniform.72 History has clearly shown that any effort directed to isolate a culture and/or to homogenize internally is always confronted with strong opposition. Cultures constitute therefore a labyrinth of intertwining cultural differences and similarities, and not a system of fixed, independent and incommensurable worldviews.

Four objections and Tully’s replies

Tully notes that four objections have been presented to the reinterpretation of modern constitutionalism he offers.73 Nationalists and communitarians claim that common law constitutionalism can destroy the integrity of the nation and/or that it does not allow the cultural purification of the community.74 Liberals maintain that it can be a serious obstacle for the protection of individual freedom and the dignity of all citizens in both the private and the public orbits; common law constitutionalism can be used to eliminate dissen: within cultures and protect the position of traditional elites.75 Some nationalist, communitarian and liberal authors claim that it leads to the disunity of the people (although not necessarily to the desintegration of .76 Tully answers nationalists and communitarians saying that their objection rests on the empirically false assumption that there are culturally pure nations. There is no nation completely homogeneous from a cultural point of view. Nations are internally diverse; within them inhabit various cultural perspectives that continuously overlap and interact. Tully concedes that nationalists and communitarians are correct if what their objection means is that common law constitutionalism conflicts with the idea that nations should be purified, that is, that culturally diverse people should be expelled or assimilated. Tully has no problem in accepting that common law constitutionalism is incompatible with ethnic nationalism, a political view that recognizes as members of the polity only those that belong to a specific cultural community.

He answers liberals, arguing that common law constitutionalism does not allow the creation of illiberal enclaves in as much as the principles of recognition, continuity and consent are applicable not only to encounters among nations or ethnic groups but also to encounters among individuals and the nations or ethnic groups to which they belong. Common law constitutionalism demands that communities recognize individuals in their differences, include their opinions in any decision affecting them, and claims that any change in communities’ cultural ways should be a consequence only of individuals’ free will. Common law constitutionalism does not allow the existence of illiberal enclaves but opposes them and provides the theoretical tools to confront them. Furthermore, Tully argues, these undemocratic communities cannot resist the pressure generated by the character of sovereignty in the contemporary world. Sovereignty is no longer identified with a single locus of power that obeys nobody and is obeyed by all. The interdependence of the different nations in the world, the idea that the people and only the people legitimize political power and the checks and balances of the different political entities within a community are factual.

72 Ibid., pp. 10-11
73 Ibid., p. 187
74 Ibid., pp. 187-188
75 Ibid., pp. 188-195
76 Ibid., pp. 195-198
elements that have transformed our concept and our practice of sovereignty. But
nations have not disappeared, rather they have transformed themselves into more
fluent and porous factual and conceptual realities that incorporate the latter three
characteristics of our world.

Tully argues as well that contemporary constitutionalism does not question the
dignity of all citizens and that it is not an obstacle for the exercise of individual
freedoms. Culture is the pre-condition for self-respect and for the exercise of
freedom. Thus, to protect culture is to protect the most valuable good for liberalism.
Freedom is exercised within a cultural horizon that provides the options from which
individuals can choose. There is no exercise of freedom in the abstract. Self-respect,
Tully says, is the sense of one’s own value, the feeling that what we are and what we
have to say has worth. This feeling of self-respect is strongly connected to the culture
people belong to. What they are and what they think is in an important part
determined by the cultural horizons provided by the community to which they belong.
Consequently, the decay or the condescending treatment towards a culture generates in
its members a feeling of inferiority that harms them. The members of these
communities feel that they have nothing to contribute to the polity, they see their
political participation as meaningless. Tully also claims that the protection of cultural
diversity can be compatible with the liberal principle of neutrality. The concept of
neutrality though, has to be reinterpreted to achieve this aim. Tully says that the
traditional indifference of liberal theories towards cultural diversity has really meant
the covered promotion of dominant cultures by the state. Hence, if liberalism wants to
avoid cultural imperialism, neutrality should mean the state recognition and
accommodation of the cultures of all citizens.

Tully answers the last objection to his alternative interpretation of modern
constitutionalism by saying that the appropriate recognition and accommodation of
cultural diversity by a state does not lead to disunity. On the contrary, he argues,
people that see their cultural ways and traditions acknowledged by the constitution
will be committed to it and will be inclined to participate in the decision-making
process that determines its development by the legislative and executive powers. Any
effort to create unity through cultural homogenization will clearly generate, as history
has continually shown us, opposition, distrust and confrontations within the
community.

The limits of Common Law Constitutionalism

Tully’s contributions to the debate about how to accommodate and recognize
cultural diversity are important. His objections to modern constitutionalism create a
valuable critical distance from the language we use today to articulate our political and
constitutional intuitions, which allows us to see its limits for adequately answering the
questions and problems generated within and among culturally diverse states. Tully’s
genaeology of modern constitutionalism brings to light views that helped build it but
that were obscured by the hegemonic schools of interpretation of modern
constitutionalism. He convincingly explains how the contributions of aboriginal
groups and some traditionally marginalized modern scholars allow us to understand

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77 Note that Kymlicka and Tully’s arguments with respect to this issue are exactly the same.
78 Ibid., p. 191
the modern legal and political enterprise in a different way. He shows us that the emancipatory project of modernity can be interpreted in a way in which it can protect and promote cultural minorities. Freedom and culture are not necessarily in contradiction.

Similarly, Tully's understanding of culture, strongly questions the plausibility of the hegemonic view that describes it as a homogeneous, closed and static entity. Cultures are dynamic bodies in constant change, continuously interacting among each other and constantly defining and redefining their identity. The conventions of recognition, consent and continuity show us an alternative way for dealing with encounters among culturally diverse communities and individuals. They provide plausible tools for developing contextual dialogues that take into account the variability of inter and intra-cultural conversations. There are no detailed rules for guiding these dialogues; their development and achievements depend on the particular views, interests and hopes of the individuals and groups interacting. Tully's interpretation of what intra and inter-cultural encounters should be are far away from any hypothetical dialogues, his normative criteria are concrete tools for real conversations among flesh and bone people of our time.

However, Tully's proposal takes a problematic turn when he argues in favor of applying the three conventions of common law constitutionalism to individuals. He claims that continuity, recognition and consent are not only applicable to cultural communities but also to individuals. Individuals within communities should be recognized as equals, all relevant decisions and rules should have their consent, and in case this consent is not given, they should have the right to ignore them and to act in accordance with the views they agree on. In this turn, Tully passes from a thin to a thick normative theory about how to accommodate cultural diversity. Trying to protect minorities within minorities he seems to include too much in his proposal. The three conventions do not mean what he initially asserted but seem now to imply a defense of democracy and individual rights. Tully argues then that all cultures have to accept these liberal values as normative criteria not only for guiding inter-group encounters but also for guiding intra-group dialogues. Apparently therefore, aboriginal groups that helped create common law constitutionalism were and are liberals without even knowing it; they are part of the wide family composed of the different types of liberalism.

From the idea that encounters among aboriginal groups and Europeans were and should be guided by the conventions of recognition, consent and continuity it does not follow that the encounters between individuals and groups belonging to any other non-Western minority should also be guided by these conventions. There is no inconsistency in applying the three conventions among groups and nations but not within them. Relationships among states and nations have characteristics not shared by relationships among groups or individuals within them. Hence, Tully determines as a pre-condition for dialogue the acceptance by all its parts of core liberal principles. All cultural communities should defend and promote democracy and individual rights, although the concrete meaning of these concepts and the practices they generate will be determined by the specific circumstances affecting each culture.

Tully's problematic inclusion of liberal principles within his theory can be seen as well in the second part of his answer to the liberal thinkers' objection to contemporary
constitutionalism. The protection of cultural diversity that the three conventions advocate, Tully indicates, does not conflict with individual rights and the idea of human dignity. On the contrary, the protection of cultural diversity promotes and protects freedom and self-respect, core liberal values. Culture is protected as a way of protecting the horizon within which individual freedom is exercised and to avoid the public and private isolation created by the lack of personal and collective self-respect. Therefore, it would be a contradiction to restrict freedom in order to protect and promote cultural diversity. Tully’s proposal then, is in this respect, not different from Kymlicka’s. Although expressed in different conceptual languages and justified by appealing to different traditions, both theoretical perspectives favor external protections (measures to promote justice among groups) but not internal restrictions (measures that limit individual rights within cultural communities).

The presence of liberal principles within Tully’s proposal can be also seen in the claim that the three conventions of contemporary constitutionalism are able to answer the demands for recognition of “individuals, women, linguistic minorities and intercultural citizens”80. He argues that consent, continuity and recognition would be useless tools if they were not able to achieve this aim. As a plausible example of how these conventions should be applied to protect the demands for recognition of minorities, he cites the American and Canadian Supreme Courts’ tests for determining the constitutionality of legislative restrictions over fundamental rights. Tully states that this test is particularly valuable for the protection of cultural diversity in as much as its standards are flexible and they are designed to take into account the particular characteristics of each case under analysis.

The Courts’ test is composed by two standards. First, the legislature can only limit individual rights if the objective pursued with the restriction is of sufficient importance and is motivated by a pressing and substantial concern. Second, the restriction imposed over the right should be proportionate to the aim pursued. For the American and Canadian Courts this means that the measures taken should be rationally connected to the objective they are aimed at and that they should limit the right as little as possible. It also means that restrictions should not be so strong as to make the aim they are directed to, less important than the harm generated by the abridgement of the rights. As excellent illustrations of how this test should be applied to protect the rights of cultural minorities Tully names Thomas v. Morris81, Quebec v. Ford et. A82 and Regina v. Sparrow83. He says that in these cases,

79 Ibid., pp 188 - 191.
80 Ibid., p. 166
81 In this case the British Columbia Supreme Court decided that the authorities of an aboriginal community couldn’t force one of its members to participate in a dance of initiation. The Court ruled that the violence used to force the individual to participate in the religious rite and the violence used in the rite itself infringed his constitutional rights. The aboriginal authorities argued that they were trying to help the individual to regain peace with his spirit, to be in harmony with his wife and reintegrate into the community. They also argued that the “violence” used in the rite was a necessary part of it aimed to purify the individual and to achieve an ecstatic trance. The individual was hit with tree branches, obliged to jump into very cold river and confined for four days, period within which he did not receive any food. Thomas v. Morris
82 In this case the Supreme Court of Canada ruled that the law proscribing the use of English in commercial signs enacted by the government of Quebec as a means to protect and promote the francophone culture of the province was unconstitutional. The Court said that this law violated the
"...the question the justices ask is how to apply rights even-handedly so they do not discriminate against citizens’ identity-related differences that can be shown to be worthy of protection. If rights were applied without taking these cultural differences into account, the result would not be impartial. The dominant culture would in fact be imposed in each case. Therefore, there are no grounds for complaint from a defender of rights, for rights are rescued from being a tool of cultural domination. Conversely, a critic of rights has no reason to complain, for the alleged blindness to cultural differences has been corrected, yet without abandoning rights." 84

What this quote shows is that Tully’s supposed radical defense of cultural diversity is reduced to the demand that government officials take into account cultural difference when balancing rights in conflict. A standard practice in judicial systems as different as the Canadian, the Colombian and the American none of which have achieved a good balance in favor of the just accommodation of cultural diversity. 85 Adjudicating within a liberal framework, judges have tended plainly to privilege individual rights and democratic values over other possible solutions more sensitive to cultural diversity. Tully might oppose some of the specific decisions issued by the Courts using this test but he accepts the theoretical framework that encompasses it. He acknowledges that conflicts among different cultures should be understood and evaluated through a structure where individual rights and democratic values are already part of the equation. Moreover he accepts that in principle, individual rights should always prevail over other rights. Let’s remember that he proposes as criteria for guiding judges in the balancing of rights process the conventions of recognition, consent and continuity and that these conventions should apply not only to inter-group but also to intra-group conflicts. This could be a plausible interpretative structure if the case analyzed presents a clash between two internally diverse liberal communities. But it is not adequate to understand the conflicts between an illiberal and a liberal community or between groups within a non-liberal community.

4- Concluding Remarks

Taylor, Kymlicka and Tully’s work overlap in many areas. These three authors have maintained an explicit or implicit dialogue where each reacts to the descriptive and normative views offered by his colleagues. In these exchanges, each philosopher has nurtured some of the concepts offered by his rivals and distanced himself from the ideas that he believes are an obstacle for recognizing cultural difference. At the same

83 In this case the Supreme Court of Canada decided a conflict between fishing rights of an aboriginal community and fishing rights of non-aboriginal individuals. A member of the Musqueam Indian Band was caught using a net longer than the one permitted by the fishing license given to the Band. The Court ruled that fishing is a fundamental part of the way of life of the aboriginal community and thus, that its fishing rights cannot be limited in the same way as they are for non-aboriginal persons. Regina v. Sparrow, 1990, 3, Canadian Native Law Report (Supreme Court of Canada) 160 - 188

84 Ibid, p. 172 173.

85 See for example cases
time, each of them has presented a model that is aimed to overcome the weaknesses that limit the work of his adversaries.

The dialogue between these authors started with Taylor's critique of individualism's understanding of how the moral subject is created, which is at the base of liberal political theory. He questions the solipsistic way in which individualism understands the construction of the subject and claims that it would be much more appropriate to describe this phenomenon as dialogic. Persons, Taylor argues, do not create themselves in an isolated way but in constant dialogue with the other and with the cultural horizon that both inhabit. Who a person is, how she understands herself, depends in an important manner on the way others perceive and react to her — perceptions and reactions that are conditioned by the cultural views that are available and constitute both the other and the self. It also depends on a great number of decisions taken by the individual regarding the good life project that she wants to pursue. However, these decisions, Taylor argues, are not taken in the abstract, they are taken within a particular cultural framework that contains a scale of values defining which alternatives are meaningful and which are not. For Taylor, freedom can be exercised only within a culture that gives context and value to the decisions made by the individual.

Taylor's critique of the solipsistic understanding of the person is followed by a critique of procedural liberalism's neutrality principle. He argues that this principle, designed to protect individuals' right to choose their life projects free from the undue interference by the state, is insensible to the legitimate wish of some communities to protect and promote the cultural heritage of the majority using state resources. Taylor believes that the state is entitled to protect the culture of the majority if an only if the individual rights of the minorities are respected. Yet, if those rights are respected, there is no reason to limit the community's understanding of the public good.

The conversation continued with Kymlicka's reactions to Taylor's critiques to liberalism. Kymlicka agrees with Taylor that the construction of the moral subject is dialogical and that freedom can only be exercised within a particular cultural context. However, he disagrees with Taylor's claim that that liberalism is necessarily committed to a monological understanding of the subject's construction and to a political practice that exiles cultural recognition to the domain of the private. Kymlicka concurs in Taylor's view that liberalism's most important commitment is to individual autonomy, i.e., the right that persons have to define, revise and reject their life projects. But he also believes, against Taylor, that liberalism should be committed to a culturally bound notion of individual autonomy, i.e., that liberalism is committed to defend the right of individuals to choose freely among the options offered by the culture to which they belong.

Kymlicka also agrees with Taylor's claim that liberalism's principle of neutrality is not plausible. Yet, while Taylor would allow the state to defend a particular cultural tradition that it considers a fundamental good, Kymlicka would not. He understands both the neutrality principle and Taylor's non-neutrality to violate liberalism's commitment to equality. Since the state cannot avoid making decisions related to culture (e.g., regarding official languages and the curriculum in public schools), the principle of neutrality is inapplicable in practice and thus, just a tool employed to mask the majority's use of state resources to promote its cultural tradition. Taylor just makes explicit what the liberal state inevitably does. For Kymlicka both give an unjust
advantage to the majority who can protect and advance their cultural legacy in ways not available to minorities. As an alternative political model, Kymlicka offers multicultural liberalism. He claims that liberalism’s commitment to freedom and equality is compatible with group-differentiated rights. Moreover, he claims that freedom and equality demand granting these rights to minorities. Group-differentiated rights are the only instruments that allow minorities to defend their cultural legacy from external pressures and therefore, the only way in which their members’ autonomy can be protected.

Tully’s objections to the philosophical traditions to which Taylor and Kymlicka belong, nurtured and gave continuity to the dialogue. Tully would say (he has not say it explicitly) that Taylor and Kymlicka’s work illustrate perfectly the limits that liberalism and communitarianism have for recognizing and accommodating cultural difference. He would have to acknowledge that Taylor and Kymlicka’s theories are much more sophisticated and open to diversity that the views that dominate their respective schools of thought. Contrary to the prevalent view within modern constitutionalism, Taylor and Kymlicka do not define the sovereign people as culturally homogeneous. Nor do they believe that constitutions are created in foundational moments by an act of will and reason of a group of individuals or that constitutions are untouchable documents that constitute the precondition of democracy. Kymlicka and Taylor are not committed to the idea that there is one nation for each state or that modern legal and political institutions are the consequence of a higher stage of human, social and economic development.

Yet, Tully would say that Taylor and Kymlicka’s perspectives are, in the end, as insensible to cultural difference as any other views within modern constitutionalism. The normative political models offered by these two authors do not seriously take into account the other. What Kymlicka and Taylor suppose are the necessities and claims of cultural minorities are articulated through the descriptive and normative categories of their political philosophies that they defend. The actual claims of minorities that cannot be articulated through these categories (or that collide with them) are just ignored or marginalized. The political arrangements offered by these authors, then, do not really accommodate cultural minorities viewpoints. For Tully, to create a plausible alternative to Kymlicka’s liberal perspective and Taylor’s communitarian view we should learn from the treaty negotiations processes held by Native Americans and the British and American governments during the XVII and XVIII centuries. Tully believes that only a dialogue guided by the conventions of mutual recognition, consent, and continuity can generate a political arrangement able to recognize and accommodate cultural diversity.

Kymlicka, Taylor and Tully’s conversation is an intense, rich and complex overlapped exchange of ideas in which each author believes that he is overcoming the descriptive or normative weaknesses that affect the work of his interlocutors. Yet, all of them fail in their attempt to accommodate radical difference. The most difficult problem is not how to recognize cultures that, although different in some aspects, share our core values. The most demanding challenge is the one posed by cultures that disagree with our central moral and political standards. The three authors require in one way or another the acceptance of liberal values by all cultures that are to be fully recognized and accommodated. In different manners and grades, they claim that all cultures should accept certain liberal principles. Taylor claims that communities that
want to defend a cultural view through the state should always respect the fundamental rights of their minorities; Tully argues that the conventions of continuity, recognition and consent should guide any intra and inter-cultural dialogue, and that these conventions demand that all parties in these encounters should respect a thin interpretation of democracy and individual rights; Kymlicka defends the whole theoretical body of liberalism interpreted in a way in which culture is recognized as a necessary element for the exercise of freedom and where the historical claims of cultural minorities are answered in accordance with the principles of this political and philosophical perspective.

Taylor, Kymlicka and Tully each try to achieve equilibrium among values that the West has historically considered fundamental and the importance that cultural traditions, nations and ethnicity have for many communities and persons in this and other parts of the world. In this balancing process, they establish individual rights and democracy as a common and minimum standard that should never be violated by persons and communities. The problem is that not all cultures believe what the majority in the West believes. Democracy and individual rights are not neutral political perspectives that all rational human beings should accept. There is no metalanguage that can be a common denominator among cultures. Liberalism is one among many different theoretical and practical alternatives to describe and normatively guide the life of political communities. I am fully committed to these values but I am also committed to the idea that these are our values and that we should be very suspicious of any attempt to present them as the ideals that every human being and every culture should embrace in order to be just. We should also be very suspicious of the attempts, motivated by the supposed universality of liberalism, to export indiscriminately (and sometimes coercively) liberal principles and institutions to other cultures.

To accept individual rights and democracy is to accept a series of assumptions in which these concepts are based. Individual rights are founded in the belief that all human beings are free, rational and equal individuals. They are also founded in the idea that all persons enjoy the same dignity. Each human being is an original and absolute entity. At the same time, individual rights imply that community is simply the sum of individuals. Community does not have a different objective than to pursue the interests of the persons that compose it. Moreover, individual rights imply an opposition between persons and community. They are the iron shield designed to protect human beings from the undue intervention of community, and more particularly, from the state. Community and state are seen with suspicion; the power they possess can be easily used to restrict or ignore the freedom, equality and dignity of persons.

Individual rights also imply the separation between the private and the public spheres and the neutrality of the state before the different life projects of its citizens. The private orbit is the space where the individual chooses autonomously his or her

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life project; the public is the space of the political, where individuals participate in the design of the basic public institutions of the community. Individual rights should protect the autonomy of persons in the private realm and guarantee the equal opportunity to participate in the public sphere to all of them. They can only be restricted to achieve a balance within the system of rights that guarantees their application to all individuals. Underlying the concept of individual rights is also the idea that society is a non-hierarchical order founded on the sum of equal individuals who come together to achieve objectives that they would not be able to attain alone. Within the various objectives that they might have, the most important one is to guarantee the respect of the basic rights of all human beings.

The conceptual burden behind individual rights is then, heavy. Not all cultural communities share these interpretations of the individual and his relationship to the community and the state. Some communities give more importance to duties than to rights; they see individuals bound to each other and to society by a complex system of reciprocal duties that create unity and solidarity. Others justify the existence of society in God’s will or in myths of origin and they give ontological, legal and political priority to community over individuals. Some do not recognize the principle of neutrality of the state and a strong separation between the public and the private spheres. It is true that within the majority of communities today the discourse of individual rights and democracy coexists with traditional views that conflict with them. In these cases, these liberal values are already part of the community. However, it is very important to distinguish questions about how to justly accommodate cultural diversity and whether or not the acceptance of individual rights and democracy should be the pre-condition for any inter and intra cultural dialogue, from the query about how to balance liberal and non-liberal values within a community that already accepts both.

The tensions between liberal principles and cultural difference, at the core of the theories previously studied, leave us with a serious dilemma. On the one hand, if we commit to liberalism we see that the space for cultural difference is radically restricted. Cultural communities will only be recognized and respected if they accept the core values of liberal political theory. On the other hand, if we commit to cultural difference we can find ourselves defending traditions that violate some of our central political and moral values. What should liberal governments do, activists, politicians and academics anxiously ask themselves, if they encounter at the national or international level a cultural community that, for example, embraces patriarchy or that

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88 For an interesting view of the tension between the role community plays in "Asian values" and their tension with individual rights see Bihari Kausikan, Asia’s Different Standard, 92 Foreign Policy 24 (1993); Yash Ghai, Human Rights and Governance: The Asia Debate 15 Austral. Y. Bk. Int. L. 1 (1994) and Fareed Zakaria, Culture is Destiny, Foreign Affairs, Volume 73 No. 2 (1994).

does not recognize freedom of religion or freedom of speech? Should they try to transform it? If so, how should they do it? Should this be a government-only enterprise? Should private citizens and institutions participate? Should they leave the decision of transforming or not the cultural community to its members?

The tension between liberal values and cultural difference seen in Taylor, Kymlicka and Tully’s work can be found as well at the core of the 1991 Colombian Constitution. This conflict of values, along with the tension between the constitutional values of political unity and political autonomy, define the framework within which the political and legal discussion about how to recognize and accommodate cultural minorities in Colombia has been held during the last 11 years. In the following three chapters, I will use the theoretical tools above examined to analyze critically the basic structure of these conflicts of values within the Constitution, the proposals presented during the National Constitutional Assembly that generated the conflicts, and the Constitutional Court’s jurisprudence that attempts to give them a solution.