



ORIGINAL PAPER

Cultural Rights and the Politics of Recognition

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Abstract

The universalism of individual human rights confronts today the reality of a social landscape made up of diverse ethnic groups and traditions that survive and claim to be publicly recognized. In the political philosophy of the last two decades, the issue of cultural identity has become more significant than that of social justice. From the beginning, the deontological liberalism of John Rawls has sent the problem of cultural diversity and of identity claims in the private sphere of existence, arguing that the public space shouldn't be governed by values, but according to some neutral, consensual principles. Although later he admitted the pluralism of values and of lifestyles and the opportunity of a partial and overlapping consensus. In the communitarian political philosophy (Charles Taylor, Will Kymlicka), cultural rights have been accepted as collective rights of specific communities (ethnic groups, historical minorities or nations), that implies the normative relevance of inherited identities which are the object of recognition politics. Other philosophers have interpreted the cultural rights as individual rights, expressing the belonging of the individual to a cultural community (Alain Renaut). We intend to analyse the tension between: deontological principles and ethno-cultural membership, universalism of human rights and particularism of cultural rights, chosen identities and the recognition of inherited ones.

Keywords: *cultural rights, ethnic groups, politics of recognition, inherited identities, relativism*

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Deontological liberalism and pluralism of lifestyles

The issue of cultural identity has been the greatest challenge for the political philosophy of the last decade of the last century. The concept extended beyond the limits of sociological analysis, it was no longer applied to a simple social fact, universally acknowledged, but claimed a philosophical evaluation. It had to be assessed the normative relevance of cultural identity, the importance of this notion to formulate identity claims in public space, to understand the tensions between the universalism of human rights and cultural relativism. The social picture of the changing world (complicated by the intensification and diversification of the phenomenon of migration) required the reconsideration of the ethnic identity, its importance for the formulation of the politics of recognition and the acceptance of cultural rights as legitimate norms regulating the coexistence of different ethnic groups in the national states, with an acknowledged ethnic majority, as well as in the multi-national ones.

Methodologically, the philosophical reflection on cultural rights should be based on a preliminary examination of meaning that this expression has in common speech. In common speech, cultural rights are often mistaken for the right of access to culture. Things get more complicated when we realize that cultural rights can be considered both as rights of individuals to express their belonging to a group and as special rights of the groups (be they groups of immigrants or historical minorities). Moreover, cultural rights represent a topic of reflection for contemporary political philosophy, both for the communitarian and for the liberal one.

The first question is: what kind of rights are cultural rights, derivative or *sui generis*? For the advocates of methodological individualism, cultural rights do not exist or are derived. They are the ones who interpret any society as a consensual association: the society is a sum of individuals. Just individuals have ontological reality, only they do exist. That is why, an individualist like Rawls in *A Theory of justice* believes that only individuals may have rights (Martin, 1985). The issue of cultural rights, in an individualistic approach of social arrangements, depends ultimately on whether a special status is granted for the cultural groups or whether they are interpreted like the other human groups as mere voluntary association. The social contract theories (and Rawls' theory is not an exception) are normative theories which, to legitimize the political order who protects individual rights, are forced to postulate a natural state and an initial moment of human association (of contractual kind). If any society is a form of voluntary and consensual association, a form of mutually beneficial cooperation, there is no reason to keep those social arrangements that prove themselves oppressive, restrictive and unfair. The social contract theories legitimize the civil disobedience and represent a theoretical instrument to encourage the change of those forms of social organization which are unjust or institutionally inefficient.

The normative model that Rawls proposes for any just society is based on the distinction between public space and private sphere. It will be right (and fair) that society which derives its rules, procedures and institutions from certain principles that do not arise from a particular vision of the world or over the good. Rawls proposes a mental experiment according to which the constitutive principles of just society are freely chosen and consented by the human individuals as rational agents which perform their choice behind "a veil of ignorance". The veil of ignorance is a metaphor that Rawls uses to depict the epistemic conditions that should exist for the ideal choice of these principles, when the people don't know the benefits and the social positions arising from the social

competition, right after they enter the society. The two principles are: „First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all” (an equivocal principle that corrects the detrimental effects of the competition through an equity theory, in fact by accepting the state intervention). According to Rawls, it will be a fair society the society that will allow forms of coexistence and cooperation that maximizes the individual freedom and will allow the state to intervene through social protection policies and progressive tax system to reduce the negative social effects of inequalities arising from social competition. (Rawls, 1971: 60)

Justice as fairness that Rawls has in mind is a regulative principle of instrumental reason which interprets societies as simple artefacts, as useful constructions of promoting individual rights and interests. In such a perspective, the cultural identity which ethnic groups refer to as the basis of their unity and continuity, is a mere fiction, it is an ideological construct designed to justify the survival of certain historical groups. The belonging of individuals to ethnic groups cannot be invoked along with the principles of justice (as stipulated by the deontological liberalism) to regulate the public space. That is why they are sent to the private sphere of the individual existence or of the elective affinities and tastes shared by the members of civil society. Cultural identity has, according to deontological liberalism of Rawls, the same fate with the values, beliefs, worldviews and the conceptions of the good. They are irrelevant for the regulation of public space. What Rawls wanted to say is that the ethno-cultural membership (as well as the values, the moral beliefs or ideals) should not influence the choice of the principles of justice, the rational and deontological way in which it is necessary to regulate our coexistence.

Rawls's theory already assumes a certain social ontology and a certain philosophical anthropology. The veil of ignorance is a kind of suspension of judgment, a procedural ascesis in order to create the opportunity to think a just society, which does not derive its principles from the moral conceptions. For this, the human individuals as rational agents are designed not just as selfish and interested beings, able to decide voluntarily, consensually, based on a deductive calculation, the optimal form of advantageous social cooperation. They are conceived as beings that shall be defined mainly by the ability to choose and not by what they choose or by the context of their choice. The second principle founding a just society was intended to correct the injustices coming from inequalities of status and wealth that arise in social competition. But it did not manage to solve the inequities that arise in the ethno-cultural co-existence.

The ethnic cultures, which justify the identity claims and the politics of recognition, are founded on what makes people different. What distinguishes them not as individuals but what distinguishes their cultural environments. Human nature doesn’t defy cultures and rooting, or diversity; human nature is cultural and is expressed as difference (Taylor, 1994: 27-28).

Classical liberalism tends to ignore the issue of cultural differences. Because being part in communities and traditions limits the freedom and the associated rights of the individual. In general, the liberal tradition tends to minimize the importance of cultural differences, which it considers irrelevant for the elaboration of cohabitation rules. Nevertheless, the neo-liberal theories applicable to multicultural societies, promote the models of tolerance and integration.

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The capitalist economic development has created the possibility for man to detach himself from the fixed roles and predetermined identities, inherited by tradition, culture, etc. Markets tend to weaken and discard particular identities. In these circumstances, it is desirable to promote a plural and diverse society, but how to maintain social cohesion. One believes that the institution of citizenship, establishing equal rights and duties for all citizens, could achieve this desideratum. The principle of citizenship implies that the state is neutral in relation to cultural differences. In the 90s of the last century, under the conditions of the political transformations that made the transition from national to multinational, the neutrality principle had to be adjusted, adapted to the new circumstances. It now raises the question of the transition from equal citizenship to *differentiated citizenship*, in terms of the recognition of historical minorities and distinct ethnic groups by the state.

This version of citizenship, proposed by Will Kymlicka, is less understood as a system of unitary assignment of rights and duties, but as a political institution where the symbolic goods, the identity markers, the signs of cultural affiliation are redefined and negotiated. And these gain importance in the differentiated allocation (by the state) of material resources and facilities designed to preserve their identity and to make them visible as distinct groups in the public space (Kymlicka, 1995). Kymlicka strives to develop a liberal theory applicable to multicultural societies and to add to the principles of justice as fairness, of social justice the new principles of *ethno-cultural justice*.

Representatives of the classical liberal tradition believed that respect for individual rights indirectly ensures the specificity of belonging to distinct ethnic groups. They argued that the list of human rights should not be complicated with additional rights. Because otherwise one of the fundamental principles of the liberal tradition would be questioned: that of the state's neutrality with respect to the beliefs of its citizens. If the state does not have to preoccupy with the particular conceptions of the good, it shouldn't be concerned neither with the associated cultural diversity. The conceptions the good are usually correlated to the cultures where they appear. Norms of living together within the cultures are formulated by reference to a conception of good shared among the members of a cultural community.

Cultural diversity as fact and norm

Culture as difference, expressing a distinctive identity, is not just an inevitable anthropological given, is not only a fact, but is also a norm. Herder considered that the humanity expresses itself necessarily as difference, that to be human means first of all to belong to a nation (Volk), to have specific roots, which cannot be compared with the destiny of the other peoples. (Herder, 1774: 509-510). It is true that cultural diversity makes us familiar with other ways of life; but to what extent could they be viable options for us (who we are shaped by the western way and prepared to accept only those cultures that we resemble). We will try to enrich our culture with practices and ingredients of those cultures which are compatible to ours (Parekh, 2000: 165). There are authors that derive the right of human beings to their own culture from the anthropological fact that they are culturally shaped; thus cultural diversity appears as being justified and as a necessary and legitimate result of the exercise of this right. Their argument tells us why the belonging to a culture is important; it doesn't tell us why cultural diversity is good. It shows us that cultural diversity is an unsurpassable fact, but not why it would be desirable, i. e. a value. The formal right to culture doesn't guarantee the effective promotion of cultural diversity.

In many concrete situations, the culture of majority can have a tendency of assimilation; the dominant culture often rewards only those who comply. They will progressively abandon their culture, thereby contributing to erase the cultural diversity (Parekh, 2000: 166). So, the formal guarantee of this right is not enough.

Society must create the conditions for its exercise. The romantics of liberal orientation have brought the aesthetic argument in favour of cultural diversity: it creates, they said, a more pleasant world, aesthetically speaking. But cultures contain normative systems, moral values and cannot be reduced to mere objects of contemplation. We have to point out that diversity has a moral justification, not only an aesthetic one.

The liberal spirit recognizes the importance of cultural diversity since it encourages competition between different ideas and ways of life. Cultural diversity is good because it gives us the opportunity of contact and dialogue, so giving us the possibility to better understand the degree of our cultural conditioning, to what extent our individual identity is constructed, keeping as reference the collective and inherited identity of the culture of belonging. No matter how rich it may be, no culture incorporates all values and the whole range of human possibilities. The principle of cultural diversity should be formulated as follows: other cultures are valuable, even if they are not available options for us. The other cultures are valuable precisely because they don't resemble ours and in so far they don't resemble. The identity that highlights them is the *ipse identity*, the identity through difference. „Different cultures thus correct and complement each other to new forms of human fulfilment” (Parekh, 2000: 167).

Cultural diversity is also a condition of human freedom. Human beings will be able to think critically and exercise their freedom only if they will be able to step out the area of their inherited culture to meet the other cultures. There is no Archimedean point, of neutrality, objectivity and cultural deconditioning from which we can look detached and evaluate all the cultures, but we can come out of our culture when we try to know and understand another. Through this exercise of contact, empathetic dialogue and detachment from the coordinates of our own culture, we come to better understand ourselves, we become aware of the specificity and limitations of our own tradition. As a precondition of freedom and self-knowledge, cultural diversity is an asset that is not derived from individual choices, but makes them possible, is a condition of freedom and human welfare.

Human rights and cultural relativism

There is the risk that the atomistic individualism to generate a levelling and homogenizer vision on the social life. The antidote was the emergence of the ideal of authenticity, with the correlative effect of pluralism. An important role in formulating this ideal was played by the Romanticism, which revalue the inwardness cultivated in the Christian tradition, giving new meaning to subjectivity. When they are in harmony with nature, feelings are recognized as having also creative power. In general, the Romantic Movement considers spontaneity, imagination, creativity or intuition as virtues that favour the authenticity and the power of expression, a comprehensive cognitive attitude, aiming the synthesis and accepting ambiguity and diversity.

Modernity rejected the organic model of social organization - considered as an impediment to human emancipation (the idea that man can accomplish only as an individual - vs - that it can accomplish itself only within a community, within a specific cultural tradition). The identity that I understand to assume is not fully satisfied unless it is recognized by the other. If the tradition and the past prevent the emancipation of man,

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it means they are seen as illegitimate, they cannot establish the modern way of people's life, nor their identity.

The typical modern attitude favourable to emancipation transformed gradually the ideal of autonomy into the one of independence, which implied the rejection of all roots and of all inherited social ties. The emancipation movement overlaps the ideology of progress, which consists in the devaluation of the past, the appreciation of the future and in the imperative to cut with the past. The emancipation is seen as the release (i.e., the achievement) of the true human potential, providing the detachment of individual from the birth circumstances (which are understood as accidental, not constitutive). Therefore it implies the denial of the limiting affiliations, which restrain the freedom if they are interpreted as constitutive ingredients of individual identity.

The detachment from the context of belonging is sustained simultaneously with the assertion of the fundamental resemblance of people. The progress and the emancipation are understood not as recognition of singular identities, but as their assimilation into a dominant model. If the classical ideal meant accordance with the order of things, with nature, the modern liberal ideal, that is the detachment from customs, traditions, the denial of belonging to a particular humanity, the challenge of the inherited organic links in a certain community (*Gemeinschaft*) means the imperative to overcome the natural order of things. Because the natural order of things means diversity; for the new modern universalistic ideal, it cannot fulfil anymore a regulatory function to justify, to legitimize the relations between people; therefore it doesn't deserve to be discovered, respected and followed.

The portrait of the social space changes accordingly: the society appears as a sum, as an addition of individuals who are defined by intrinsic qualities like freedom or reason, people acting without any *a priori* compulsion, which are susceptible to choose their own goals and values that will guide their actions. The ideal of emancipation contains implicitly a plus of rationality. The disengaged reason considers that only a society of this kind is legitimate. The deontological liberalism ignore the empirical circumstances of the people's existence and try to find the conditions of possibility for a just (i.e. rational) society.

According to this interpretation, the rights and liberties unite people, but their visions of the good, their finalities and interests separate them. It becomes difficult to come to a consensus regarding the formulation of the common good. In this ideological landscape, the private sphere (defined by lineage, belonging, inherited ties, kinship, elements which have no significance for structuring the public space) is rigorously separated from the institutional order (that of sociability, where we define ourselves as citizens with interchangeable political capacities). That's why the public space, directed by formal, neutral and impersonal law, is a space of non-distinction in identity terms.

Paradoxically, the identity differences are located in the private sphere, but the proper place of their recognition is the public sphere. Given that modern mentality has endeavoured to discredit programmatically the hierarchical values, the belonging to the traditional communities and their specific ways of life (related to habitat, profession, social environment and the specific social role attributed in the past to men and women), given that globalization has extended the process of non-distinction to the perimeter of the private sphere (that of filiation), the search for authenticity was a natural reaction to the tendencies of fragmentation and homogenization. The frequency with which human rights are invoked today seems to be rivalled only by the frequency with which the cultural

relativism is invoked when someone performs a lucid and objective evaluation of the relationship between ethnic and religious groups in the current social landscape.

Human rights, more specifically understood as inalienable and imprescriptible natural rights of human individuals, pass into the public eye as unproblematic acquisitions of the political and legal modernity, that defy any attempt to re-discuss their ontological status and normative relevance. These rights are invoked to counteracting any oppressive or discriminating policy against individuals or minorities. Since they form the insurmountable texture of any political and legal debate, being the supreme regulative instance of the relations among people, the rights are treated as self-evident and endowed with a substantial reality. Initially conceived as fine regulative criteria, they have become imperceptibly, because of their long application and invocation, substances, constitutive ingredients of human nature.

The problem is therefore to sustain simultaneously both natural and universal human rights and cultural relativism, for example. I met people who claim the both theses without feeling embarrassed about the obvious inconsistency when they state simultaneously and under the same criterion the two positions. Even more strange is that they accept that the human rights theory is based on a theory of human nature, where natural rights would have the status of universal anthropological invariants, like reason or language. But to treat generic man (which is actually a postulate, a mental experiment necessary to formulate the theory) as real man in flesh and blood, it is just one step. It is fair and legitimate to ask the question: which are essential for the understanding of man, the natural universal features or the particular cultural determinations? A cultural relativist would notice first that the generic man and its natural and universal rights are just some theoretical postulates.

For the consistent relativist, it is clear that these normative exigencies are just simple conventions useful to support certain social practices and policies of protest, specific to a particular era and culture. Any universalism tends to ignore and even erase the differences. In its canonical form, the theory of human rights appears itself not very inclined to acknowledge the cultural diversity for two reasons: first, because of its essential individualism and because of the abstract manner in which it conceives the individual possessing such rights; then, because of its historical privileged and preferential connections with the Western culture, or at least with one the constituent traditions of this culture. The human rights discourse was constantly confronted with the human diversity expressed by the plurality of religious traditions and of the cultural values. It inevitably raises the question of the compatibility of the discourse with the values, if assuming the diversity wouldn't lead somehow to the annihilation of either discourse or values.

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Kymlicka offers an argument to justify the differentiated rights of ethnic groups by making appeal at the value of cultural diversity. By culture, Kymlicka understands societal culture and interprets it like this: „The sort of culture that I will focus on, however, is a societal culture—that is, a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres” (Kymlicka, 1995: 76). According to this argument, cultural diversity is important because it increases the cultural resources and diversifies the lifestyles available to society. Different cultural groups incorporate alternative ways to make life meaningful and provide different approaches of adaptation at unforeseen circumstances.

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Cultural rights have been discussed starting with the debate on cultural diversity. The Declaration concerning cultural diversity and cultural rights elaborated by the group of Fribourg put the debate on the trail of that about human rights. Wishing to cover a large range of issues, the Declaration created the confusion between the rights of access to symbolic goods (the cultural identity) and the rights of claims. Cultural rights are defined by comparison with individual fundamental rights. A quite satisfactory definition of the ethno-cultural community is counterbalanced by the article which states that people have the right to choose the culture that represents them. „Le terme «culture» recouvre les valeurs, les croyances, les convictions, les langues, les savoirs et les arts, les traditions, institutions et modes de vie par lesquels une personne ou un groupe exprime son humanité et les significations qu'il donne à son existence et à son développement” (Art 2, a) (Meyer-Bisch, 1998: 5) Cultural identity is also acknowledged, it becomes an essential ingredient of individual dignity - which is a value sustained by the Enlightenment ideology of human rights.

The dignity of man is incomplete if it doesn't include the expression of cultural identity: „l'expression «identité culturelle» est comprise comme l'ensemble des références culturelles par lequel une personne, seule ou en commun, se définit, se constitue, communique et entend être reconnue dans sa dignité” (Art 2, b) (Meyer-Bisch, 1998: 5) In the absence of public recognition, cultural identity will be perceived and interpreted as a serious form of oppression comparable to the violation of universal rights, of freedom of conscience and expression. In the current context, the respect for the dignity of human individuals includes the recognition of their dimension of concrete historical beings, which owes their own way of life to specific traditions, ethnic groups and culture of origin. Culture as collective identity involves communion, sharing of certain determinations (qualities and practices), and will always engage the community; that is why culture also means a *cultural community*: „par «communauté culturelle», on entend un groupe de personnes qui partagent des références constitutives d'une identité culturelle commune, qu'elles entendent préserver et développer” (Art 2, c) (Meyer-Bisch, 1998: 5) If we take this sense into account, it becomes problematic to choose the culture. Deontological liberalism creates the illusion of mobility of human subjects against the cultural determinations, the illusion of autonomy and disengagement.

The social anthropology of Rawls' theory postulates a separation of the self from its goals and values; these are interpreted as a simple object of individual choice: „The priority of the self over its ends means that I am not merely the passive receptacle of the accumulated aims, attributes and purposes thrown up by experience, not simply a product of the vagaries of circumstance, but always, irreducibly, an active, willing agent, distinguishable from my surroundings, and capable of choice” (Sandel, 1982: 19). It's a normative theory endowed with power of seduction: for expressing a right that meets unanimous consent creates the illusion of an effective possibility of social choices. In the spirit of this theory, the expression of cultural rights defines and describes cultural right as a right of free choice of cultural references (of those who best represent people) as an extension of individual rights, in particular as an extension of the right to free expression (of beliefs, lifestyle, etc.).

Anyone, be it alone or in common, is entitled „de choisir et de voir respecter son identité culturelle dans la diversité de ses modes d'expression; ce droit s'exerce dans la connexion notamment des libertés de pensée, de conscience, de religion, d'opinion et d'expression” (Art 3, a) (Meyer-Bisch, 1998: 5)

The deontological, procedural vision doesn't understand that man is made of values and contexts, that they are its constituents, that cultural identity is important in a different way than freedom of expression or the right of access to cultural resources: „To identify any set of characteristics as *my* aims, ambitions, desires and so on, is always to imply some subject 'me' standing behind them, and the shape of this 'me' must be given prior to any of the ends or attributes I bear.” (Sandel, 1982: 19) To support human dignity, it is now necessary to recognize identity as a differentiated identity, and the ethno-cultural factor plays a major role in this respect; There are two lines of thought and political action: „ For one, the principle of equal respect requires that we treat people in a difference-blind fashion. The fundamental intuition that humans command this respect focuses on what is the same in all. For the other, we have to recognize and even foster particularity” (Taylor, 1994: 43).

The politics of equal dignity accuses the politics of difference that it violates the principle of non-discrimination by giving up that essential dimension of the liberal belief that the state should ignore the differences in order to treat everyone the same.

The politics of difference reproaches the policy of equal dignity that it tends to assimilation, denying in fact any distinctive identity, imposing the homogeneity of individuals and groups and not adapting to the representations they have made about themselves. Consequently, the politics of difference has to define non-discrimination, taking the differences between citizens as the basis of differentiated treatment.

Cultural rights create the normative framework for individuals to be entitled to have access to a good and meaningful life in their cultures of belonging. Anthropologically, these cultures can provide their existential landmarks and values, in order to give their lives a meaning and to make them feel fulfilled. On the other hand, preserving these cultures is possible only if their identity is recognized, the fact that they provide a distinct anthropological experience. The politics of recognition is the condition of possibility for the cultural rights. For the non-recognition of the distinctive identity of the other (ethnic group, minority) leads to the denial of one's own identity; and identity (the one that gives meaning to life) is as important as negative freedom, giving its content. Only by recognizing in the public space the alterity, the distinctive identity of the ethno-cultural groups, of the historical minorities or of the majority in the national states, the cultural rights are respected and create social effects.

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