Chapter 1
On Cultural Rights: Introduction, Research Methodology, and Literature Review

1.1. Introduction

Theorists, academics, policy makers, and citizens have intense discussions about whether government should provide legal rights and exemptions as well as government-sponsored programmes for minority groups. The topic has important empirical implications for states because of the variety and complexity of questions raised by the existence of minority groups. Some minority groups suffer from invidious forms of discrimination resulting in poverty, social injustice, and inequality. Other minority groups aspire to autonomy, independence or secession from the state, which can lead to ethnic conflict and civil war. While not all minorities suffer these circumstances, questions about how minority groups should be recognised and treated have challenged states for over a century.

The normative discussion of political theorists on multiculturalism, a topic which incorporates the issue of minority rights, does not appear to analyse all the literature available that addresses the history of the minorities question. The normative literature on the subject neither provides a clear definition of multiculturalism nor does it adequately address the question of what exactly constitutes a multicultural policy. Political theorists engage in discussions about whether minorities should receive rights, privileges or exemptions from the state. They rarely incorporate the historical and legal background which bears upon the research question. A lengthy history within international law addresses the question of state obligations to minorities. Starting with the League of Nations' minority protection treaty system (1920) and continuing through the United Nations' conventions, declarations and treaties affecting minority groups, the international community has established a substantial body of legal standards that encourages recognition of minority groups. In addition, regional institutions such as the Council of Europe have also established a regime for minority protections. I describe the international evolution of this regime as the minority legal tradition. And, I refer to the various international treaties,
conventions, and declarations that establish standards for the recognition of minority groups as an inclusive minority regime.¹

My research reduces the distance between the political theory on multiculturalism and the large body of literature in the fields of history and international law that recognise the existence of minority groups. Through a qualitative examination of empirical research on the minority regime, I endeavour to address the normative question of whether minority groups actually receive differential or special treatment.

I accomplish the task in four sections. In my first, I provide an introduction to the minority legal tradition. Chapter 1 includes an extensive literature review on the history of minority rights law as well as on the political theory of multiculturalism. It also contains a discussion of the various methodologies I employ to answer the research question. In section two I examine the history and theoretical implications of minority rights within international law. This section covers two chapters which analyse the minority legal tradition beginning with the establishment of the League of Nations’ minority protection treaty system through to the passage of the United Nations’ human rights treaty system. Chapter 2 is a historical chapter that traces the early legal history of the minority regime after the formation of the League of Nations. Chapter 3 researches the development of the minority regime as an aspect of the United Nations’ human rights treaty system and focuses particular attention on two international treaties, namely, the Convention on the Prevention and Punishment of the Crime of Genocide, 1948, and the International Covenant on Civil and Political Rights, 1966.²

Section three incorporates Chapters four and five which deal with my two case studies that are used as empirical research models for the recognition of minority groups. Chapter 4 is my case study about how the minority regime influences Canada’s recognition of Aboriginal peoples. This chapter discusses implications of the increasing political and legal recognition by international institutions of indigenous peoples such as Aboriginal Canadians. Specifically, it examines proceedings

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