Chapter 2


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1 Introduction: The Interlinkage of Minority and Majority Rights

Discussions of minority rights and indigenous rights often proceed as if all pertinent rights were determined on the basis of ethno-cultural minority status or indigenous status, rather than based on a broader theory of collective interests. A focus on marginalized identities is particularly apparent in the discourses of recognition and of multiculturalism— even where these discourses sometimes contain competing elements. A focus on rights arising from a marginalized minority status is even more particularly apparent in theories of so-called liberal multiculturalism—those theories, offered by the likes of Will Kymlicka, of multiculturalism grounded in liberal egalitarian values. And a

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1 I am grateful for having had the chance to present a draft version of this paper at the University of Liverpool International Symposium on Ethno-Cultural Diversity and Human Rights in May 2016 and for comments there from Peter Jones, Gaetano Pantassuglia, and Alexandra Tomaselli. I am also grateful for conversations related to the paper with Jean Leclair, Michael Plaxton, Luc B. Tremblay, and Han-Ru Zhou and to Gaetano Pentassuglia for his rich comments on an earlier draft of the chapter.


3 Charles Taylor, for example, would subscribe simultaneously to aspects of multicultural recognition and aspects of tradition that could be in competition with multiculturalist claims.

4 W. Kymlicka, supra note 1. See also W. Kymlicka, Liberalism, Community, and Culture (Clarendon Press, Oxford, 1989). On the inability of Kymlicka to provide for majority rights,
focus on rights arising from a marginalized indigenous status is apparent in practical political instruments, such as constitutional provisions on indigenous rights or as the internationally adopted United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),\(^5\) and in much of the theorizing about these instruments.\(^6\)

To the extent that discussions proceed in this way, they are arguably unnecessarily polarizing. Within these discourses, no language acknowledges that majority communities could also hold rights.\(^7\) The assumptions are all that minorities need protections from majorities,\(^8\) that indigenous communities need protections from so-called “settler colonialists”,\(^9\) and that historic or contemporary victimhood is the grounding of significant rights.\(^10\)

At the same time, the political arena sees increasing assertiveness by historical majorities in the face of pressures on their own cultures. Throughout Europe, worries about influxes of immigrants have led to a variety of policy responses

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\(^6\) See e.g. the discussion of UNDRIP at various points in P. Macklem, The Sovereignty of Human Rights (Oxford University Press, Oxford, 2016). Some conceptions of the purposes of UNDRIP are significantly different from the mainstream liberal egalitarian analysis and treat it, for instance, as an instrument of legal pluralism that is recognizing indigenous traditions. These conceptions are not subject to all of my critiques but also have not become as prominent as the liberal egalitarian account. For an example of such a conception, see F. Gómez Isa, ‘Cultural Diversity, Legal Pluralism, and Human Rights from an Indigenous Perspective: The Approach by the Colombian Constitutional Court and the Inter-American Court of Human Rights’, 36 Human Rights Quarterly (2014) p. 722. On the transformative nature of the UNDRIP generally, see M. Barelli, supra note 5.


