HUMAN RIGHTS AND ETHNOCULTURAL JUSTICE*

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Liberal theorists have typically assumed that the protection of individual human rights is sufficient to ensure justice between ethnocultural groups in a multiethnic state. Will Kymlicka discusses three areas where traditional human rights principles are unable to protect national minorities from injustice: (a) internal migration and settlement policies; (b) redrawing the boundaries, or reducing the powers, of internal political subunits controlled by the national minority; and (c) language policies. In each of these areas, a state can effectively disempower a minority without abridging any of the individual civil and political rights of the group's members. To prevent these injustices, traditional human rights principles need to be supplemented with group-specific minority rights. Indeed, in the absence of these minority rights, the enforcement of human rights principles may exacerbate ethnocultural injustice. Kymlicka suggests that debates about the universality of human rights would be improved if they paid greater attention to these issues of ethnocultural justice.

Les théoriciens libéraux assument généralement que la protection des droits de la personne suffit à assurer la justice entre les groupes ethnoculturels d'un état multiethnique. Will Kymlicka traite de trois domaines où les principes traditionnels des droits de la personne ne peuvent protéger les minorités nationales: a) les politiques de migrations internes et d'établissement; b) la redéfinition des limites, ou la réduction des pouvoirs, des sous-groupes politiques internes contrôlés par la minorité nationale; et c) les politiques linguistiques. Dans chacun de ces domaines, un État peut efficacement tenir une minorité à l'écart du pouvoir sans abroger aucun des droits civiques ou des droits politiques individuels des membres du groupe. Pour prévenir ces injustices, il est impératif d'ajouter aux principes traditionnels des droits de la personne ceux de droits minoritaires de groupe – sans quoi l'application des principes des droits de la personne pourrait même exacerber l'injustice ethnoculturelle. Kymlicka suggère que les débats sur l'universalité des droits de la personne gagneraient en qualité s'ils portaient davantage attention aux questions de justice ethnoculturelle.

I. INTRODUCTION

Defenders of human rights often argue that human rights are a shield which protects the weak (individual citizens) from the strong (coercive states). Yet many critics would contend that human rights are a weapon of the strong (Western, bourgeois society) against the weak (non-white, Third World societies and cultures). As Shelley Wright states:[1]

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1 Shelley Wright, "International Human Rights Standards and Diversity in Local Practices" (paper prepared for the Centre for Constitutional Studies, University of Alberta, 1996) at 3-4.

> Any claim that human rights are 'universal and indivisible' must be prepared to answer the assertion of many Third World, non-white and/or feminist international scholars that human rights have a very specific history with particular ties to the politics, economics and social psychology of a white, Euro-centric, male, bourgeois culture that may have little relevance to the needs of people who do not fit within this description. Indeed, some commentators would go further and say that human rights are a direct outgrowth of the capitalist, colonialist history of post-medieval Europe and that they are part of the export of oppressive and, in some cases, genocidal policies of European colonists.

My aim in this paper is not to resolve this dispute, but rather to situate it within the broader context of justice between ethnocultural groups. I will suggest that the value and impact of human rights depend, at least in part, on how these larger issues of ethnocultural justice are addressed. I hope, in the process, to show that there is a certain amount of truth in both these conflicting views.

On the one hand, I argue that respect for human rights is not sufficient to ensure ethnocultural justice, and that where ethnocultural justice is absent, the rhetoric and practice of human rights may actually worsen the situation. In this respect, I agree with those critics of human rights doctrines who see such rights as having contributed to the unjust colonization of minority or non-Western peoples.

However, I do not oppose the idea of "universal and indivisible" human rights. On the contrary, where the larger conditions of ethnocultural justice are met, it is entirely appropriate to demand respect for human rights. Where the relationships between ethnocultural groups are more or less just, indifference to human rights will simply leave the weak vulnerable to the whims of the powerful within their own communities. In this respect, I agree with advocates of human rights, who see such rights as necessary to defend individuals from the abuse of political power.

On my view, then, the impact of human rights depends on the extent to which other principles of ethnocultural justice are met. Unfortunately, these larger issues of ethnocultural justice are often neglected in the debate over the transnational application of human rights which, instead, typically focuses on the intrinsic merits or universal applicability of Western "individualism." Critics often say that human rights theory treats individuals as "context free," and that this "abstract" or "atomistic" view of human beings is either inherently inadequate or, at any rate, inappropriate for more "communal" non-Western societies. Advocates of human rights respond that Western notions of individualism are not "atomistic" and, moreover, that there are important similarities of needs and vulnerabilities between peoples around the world which justify common principles of human rights.

We are all familiar with this debate, but I suggest that the debate may be misplaced, or at least premature. We should not assume that different conceptions of "individualism" are at the root of the problem. The problem may not lie with "individualism," or with "human rights" as such, but rather with the broader context of ethnocultural relations within which issues of human rights are debated.

Put another way, whenever members of a group object to the transnational application of human rights, we should not jump to the conclusion that the source of opposition is some conflict between (communalist) local practices, established for religious, cultural or linguistic reasons, and (individualistic) human rights norms. The problem may instead lie with the larger context within which these international standards are promoted or imposed.

In the first section of the paper, I discuss why human rights are insufficient for ethnocultural justice, how they may even exacerbate certain injustices, and, hence, why human rights standards must be supplemented with various minority rights. In the second section of the paper, I ask whether, if human rights are supplemented with minority rights, we can hope or expect to achieve greater agreement on the transnational application of human rights. I argue that there is, indeed, hope for greater agreement on the principles of human rights, but that there will still be very difficult issues remaining about the appropriate institutions for the enforcement of these rights. I conclude with some suggestions about the need to rethink the relationship between cultural diversity and human rights.

II. INDIVIDUAL RIGHTS AND GROUP RIGHTS

The debate over "individual" versus "group" rights is one place where the focus on "individualism" has been particularly unhelpful. According to the standard view, human rights are paradigmatically individual rights, as befits the individualism of Western societies, whereas non-European societies are more interested in "group" or "collective" rights, as befits their communalist traditions.

Framing the debate in this way may be quite misleading. For one thing, individual rights have typically been defended within the Western tradition precisely on the grounds that they enable various group-oriented activities. Consider the paradigmatic liberal right — namely, freedom of religion — which Rawls argues is the origin and foundation for all other liberal rights. The point of endowing individuals with rights to freedom of conscience and freedom of worship is to enable religious groups to form and maintain themselves, and to

recruit new members. Indeed, according individuals rights to religious freedom has proven very successful in enabling a wide range of religious groups, including many non-Western religions, to survive and flourish in Western societies.

Based partly on this example of religious tolerance, many commentators have argued that individual rights provide a firm foundation for justice for all groups, including ethnocultural minorities. In fact, this was the express argument given after World War II for replacing the League of Nations' "minorities protection" scheme — which accorded collective rights to specific groups — with the United Nations' regime of universal human rights. Rather than protecting vulnerable groups directly, through special rights for the members of designated groups, cultural minorities would be protected indirectly, by guaranteeing basic civil and political rights to all individuals regardless of group membership. Basic human rights such as freedom of speech, association, and conscience, while attributed to individuals, are typically exercised in community with others, and so provide security for group life. Where these individual rights are firmly protected, liberals assumed, no further rights needed to be attributed to the members of specific ethnic or national minorities:[2]

> the general tendency of the postwar movement for the promotion of human rights has been to subsume the problem of national minorities under the broader problem of ensuring basic individual rights to all human beings, without reference to membership in ethnic groups. The leading assumption has been that members of national minorities do not need, are not entitled to, or cannot be granted rights of a special character. The doctrine of human rights has been put forward as a substitute for the concept of minority rights, with the strong implication that minorities whose members enjoy individual equality of treatment cannot legitimately demand facilities for the maintenance of their ethnic particularism.

Guided by this philosophy, the United Nations deleted all references to the rights of ethnic and national minorities in its Universal Declaration of Human Rights.

There is, of course, much truth in this claim that individual rights protect group life. Freedom of association, religion, speech, mobility and political organization enable individuals to establish and preserve the various groups and associations which constitute civil society, to adapt these groups to changing circumstances, and to promote their views and interests to the wider population. The protection afforded by these common rights of citizenship is sufficient to sustain many of the legitimate forms of group diversity in society.

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[2] I. Claude, *National Minorities: An International Problem* (Cambridge: Harvard University Press, 1955) at 211.

It is increasingly clear, however, that the list of common individual rights guaranteed in Western democratic constitutions, or in the U.N Declaration, is not sufficient to ensure ethnocultural justice,[3] particularly in states with national minorities. By national minorities, I mean groups which formed functioning societies, with their own institutions, culture and language, concentrated in a particular territory, prior to being incorporated into a larger state. The incorporation of such national minorities is usually involuntary, as a result of colonization, conquest or the ceding of territory from one imperial power to another, but may also occur voluntarily, through some treaty or other federative agreement. Examples of national minorities within Western democracies include Indigenous peoples, Puerto Ricans, and Québécois in North America, the Catalans and Basques in Spain, the Flemish in Belgium, the Sami in Norway, and so on. Most countries around the world contain such national minorities, and most of these national minorities were involuntarily incorporated into their current state — a testament to the role of imperialism and violence in the formation of the current system of "nation-states."

Very few if any of these national minorities have been satisfied merely with respect for their individual human rights, and it is easy to see why. I discuss below three examples where individual rights fail to adequately protect minority interests — decisions about internal migration/settlement policies, decisions about the boundaries and powers of internal political units, and decisions about official languages.

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[3] There are now several attempts to define a theory of ethnocultural justice in the literature: see, for example, M. Minow, *Making all the Difference: inclusion, exclusion and American Law* (Ithaca: Cornell University Press, 1990); I. M. Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990); W. Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon Press, 1995). It would take a separate paper to explain or defend any particular one. But for the purposes of this paper we can use a minimalist definition of ethnocultural justice as the absence of relations of oppression and humiliation between different ethnocultural groups. A more robust conception of ethnocultural justice could be developed by asking what terms of co-existence would be freely consented to by the members of different ethnocultural groups in a Habermasian/Rawlsian setting where inequalities in bargaining power have been neutralized. For example, a Rawlsian approach to ethnocultural justice would ask what terms of co-existence would be agreed to by people behind a "veil of ignorance," who didn't know whether they were going to be born into a majority or minority ethnocultural group. Such a Rawlsian approach is likely to produce a more demanding conception of ethnocultural justice than the mere absence of oppression and humiliation, but the main claim of this paper is that human rights are insufficient even to ensure this minimal component of ethnocultural justice.

In each of these examples, and throughout the paper, the term "human rights" is used in an imprecise way. It does not refer to any particular canonical statement or declaration of international human rights, but rather to the constellation of individual civil and political rights which are formulated in Western democratic constitutions, and which many advocates of human rights would like to see entrenched and enforced as transnational standards of human rights. Some of these rights are included in the original Declaration, others in subsequent conventions (for example, the 1966 Covenant on Civil and Political Rights), others are still being debated. In short, I am using the term to refer more to a particular public and political discourse of "human rights," rather than to the actual list of human rights enumerated in any particular document.

A. Internal Migration/Settlement Policies

National governments often have encouraged people from one part of the country (or new immigrants) to move into the historical territory of the national minority. Such large-scale settlement policies often are deliberately used as a weapon against the national minority, both to gain access to the minority territory's natural resources and to disempower them politically, by turning them into a minority even within their own traditional territory.[4]

This process is occurring around the world, in Bangladesh, Israel, Tibet, Indonesia, Brazil, etc.[5] But of course it also has happened closer to home. Recall Sir John A. MacDonald's comment about the Métis: "these impulsive half-breeds ... must be kept down by a strong hand until they are swamped by the influx of settlers."[6] And the same process took place in the American Southwest, where immigration was used to disempower the Indigenous peoples and Chicano populations who were residing in that territory when it was incorporated into the United States in 1848.

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[4] See J. McGarry, "Demographic Engineering: The State-Directed Movements of Ethnic Groups as a Technique of Conflict Resolution" (1998) Ethnic and Racial Studies (forthcoming).

[5] See P. Penz, "Development Refugees and Distributive Justice: Indigenous Peoples, Land and the Developmentalist State" (1992) 6 Public Affairs Quarterly 105, and "Colonization of Tribal Lands in Bangladesh and Indonesia: State Rationales, Rights to Land, and Environmental Justice" in M. Howard, ed., *Asia's Environmental Crisis* (Boulder: Westview Press, 1993) at 37. I discuss these cases in "Concepts of Community and Social Justice" in F. Osler Hampson and J. Reppy, eds., *Earthly Goods: Environmental Change and Social Justice* (Ithaca: Cornell University Press, 1996) at 30.

[6] Quoted in F.G. Stanley, *The Birth of Western Canada: A History of the Riel Rebellions* (Toronto: University of Toronto Press, 1961) at 95.

This is not only a source of grave injustice, but is also the most common origin of violent conflict in the world. Indigenous peoples and other homeland minorities typically resist such massive settlement policies, with force if necessary.[7] One would hope, therefore, that human rights doctrines would provide us with the tools to challenge such policies.

Unfortunately, there is nothing in human rights doctrine which precludes such settlement policies (so long as individual members of the minority are not deprived of their civil and political rights). There are other elements of international law which might be of some help in exceptional circumstances. For example, UN Resolution #2189, adopted in December 1967, condemns attempts by colonial powers to systematically promote the influx of immigrants into their colonized possessions. But this only applies to overseas colonies, or to newly-conquered territories, not to already-incorporated national minorities and Indigenous peoples. So it is of no assistance to the Métis or Tibetans.

Human rights doctrines are not only silent on this question, they may, in fact, exacerbate the injustice — consider the U.N. Charter which guarantees the right to free mobility within the territory of a state. In fact, ethnic Russians in the Baltics defended their settlement policies precisely on the grounds that they had a *human right* to move freely throughout the territory of the former Soviet Union. It is important to remember that most countries recognized the boundaries of the Soviet Union, and so the UN Charter does indeed imply that ethnic Russians had a basic right to settle freely in any of the Soviet republics, even to the point where indigenous inhabitants were becoming a minority in their own homeland. Similarly, human rights doctrines, far from prohibiting ethnic Han settlement in Tibet, suggest that Chinese citizens have a basic human right to settle there.

To protect against these unjust settlement policies, national minorities need and demand a variety of measures. For example, they may make certain land claims — insisting that certain lands be reserved for their exclusive use and benefit. Or they may demand that certain disincentives be placed on in-migration. For instance, migrants may be required to pass lengthy residency requirements before they are permitted to vote in local or regional elections. Or they may be unable to bring their language rights with them — that is, they may only have access to schools in the local language, rather than having publicly-funded education in their own language. Similarly, the courts and public services

[7] T. Gurr, *Minorities at Risk: A Global View of Ethnopolitical Conflict* (Washington: Institute of Peace Press, 1993).

may be conducted in the local language. These measures are all intended to reduce the number of migrants into the homeland of the national minority, and to ensure that those who do come are willing to integrate into the local culture.

These are often cited as examples of the sort of "group rights" which conflict with Western individualism. They are said to reflect the minority's "communal" attachment to their land and culture. But in fact these demands have little if anything to do with the contrast between "individualist" and "communalist" societies. Western "individualist" societies also seek protections against in-migration. Take any Western democracy. While the majority believes in maximizing their individual mobility throughout the country, they do not support the right of individuals outside the country to enter and settle. On the contrary, Western democracies are typically very restrictive about accepting immigrants into their society. None has embraced the idea that transnational mobility is a basic human right. And those few immigrants who are allowed in are pressured to integrate into the majority culture. For example, learning the majority language often is a condition of gaining citizenship, and publicly-funded education is typically provided only in the language of the majority.

Western democracies impose such restrictions on immigration into their country for precisely the same reason national minorities seek to restrict in-migration into their territory, namely, that massive settlement would threaten their society and culture. The majority, like the minority, has no desire to be overrun and outnumbered by settlers from another culture.

To intimate that the desire of national minorities to limit in-migration reflects some sort of illiberal communalism is therefore quite hypocritical. When the majority asserts that mobility within a country is a basic human right, but that mobility across borders is not, they are not preferring individual mobility over collective security. They are simply saying that *their* collective security will be protected (by limits on immigration), but that once their collective security is guaranteed, individual mobility will be maximized, regardless of the consequences for the collective security of minorities. This is obviously hypocritical and unjust, but it is an injustice which human rights doctrines do not prevent, and may even exacerbate.[8]

[8] It would not be hypocritical to criticize minority demands to limit in-migration if one *also* criticized state policies to limit immigration — ie., if one defended a policy of open-borders. But such a policy has virtually no public support, and is certainly not endorsed by most of the people who criticize minority demands. However, this raises an important limitation on my argument.

I am discussing what justice requires for minorities in the world as we know it — ie., a

B. The Boundaries and Powers of Internal Political Subunits

In states with territorially concentrated national minorities, the boundaries of internal political subunits raise fundamental issues of justice. Since national minorities are usually territorially concentrated, these boundaries can be drawn in such a way as to empower them — i.e., to create political subunits within which the national minority forms a local majority, and which can therefore be used as a vehicle for meaningful autonomy and self-government.

In many countries, however, boundaries have been drawn so as to *disempower* national minorities. A minority's territory may be broken up into several units, for example, so as to make cohesive political action impossible; consider the division of France into 83 "departments" after the Revolution, which intentionally subdivided the historical regions of the Basques, Bretons and other linguistic minorities; or the division of 19th-century Catalonia. Conversely, a minority's territory may be absorbed into a larger political subunit to ensure that they are outnumbered within the subunit as a whole (for example, Hispanics in 19th-century Florida).[9]

Even where the boundaries more or less coincide with the territory of a national minority, the degree of meaningful autonomy may be undermined if the central government usurps most or all of the subunit's powers and eliminates the group's traditional mechanisms of self-government. Indeed, we can find many such instances in which a minority nominally controls a political subunit, but has no substantive power, since the central government has: (a) removed the

world of nation-states which retain significant control over issues of migration, internal political structures and language policies. One could (with difficulty) imagine a very different world — a world without states, or with just one world government. The rights of minorities would clearly be different in such a hypothetical world, since the power of majorities would be dramatically reduced, including their ability to impose relations of oppression and humiliation. My focus, however, is on what ethnocultural justice requires in our world. Also see discussion *infra*, note 17.

[9] See also my "Is Federalism an Alternative to Secession?" in P. Lehning, ed., *Theories of Secession* (New York: Routledge, 1998) at 111-50. In cases where national minorities are not territorially concentrated different mechanisms of disempowerment are often invoked. During the period of devolved rule in Northern Ireland (1920-72), for example, the Catholics were disempowered not so much by the gerrymandering of boundaries (although this occurred), but by the adoption of an electoral system (with single-member constituencies and plurality rules) designed to ensure unity within the Protestant majority while ensuring an ineffective Catholic opposition. This is another example of how a rhetorical commitment to democracy and human rights can coexist alongside the oppression of a national minority.

traditional institutions and procedures of group self-government, and (b) arrogated all important powers, even those affecting the very cultural survival of the group — for example, jurisdiction over economic development, education, language. (Consider the plenary power of the American Congress over Indian tribes in the United States).

This usurpation of power is a clear injustice, particularly when it involves seizing powers or undermining institutions which were guaranteed to the minority in treaties or federating agreements. Yet here again, it seems that human rights doctrines are inadequate to prevent such injustice. So long as individual members maintain the right to vote and run for office, human rights principles pose no obstacle to the majority's efforts to gerrymander the boundaries or powers of internal political subunits in such a way as to disempower the national minority. This is true even if the arrogation of power violates an earlier treaty or federative agreement, since such internal treaties are not considered "international" agreements (the minority which signed the treaty is not seen under international law as a sovereign state, and so its treaties with the majority are seen as matters of domestic politics not international law).

Not only do human rights doctrines fail to prevent this injustice, they may exacerbate it. Historically, the majority's decisions to ignore the traditional leadership of minority communities and to destroy their traditional political institutions, have been justified on the grounds that these traditional leaders and institutions were not "democratic" — they did not involve the same process of periodic elections as majority political institutions. The traditional mechanisms of group consultation, consensus and decision making may well have provided every member of the minority community with meaningful rights to political participation and influence. However, they were swept away by the majority in the name of "democracy" — that is, the right to vote in an electoral process within which minorities had no real influence, conducted in a foreign language and in foreign institutions, and within which they were destined to become a permanent minority. Thus the rhetoric of human rights has provided an excuse and smokescreen for the subjugation of a previously self-governing minority.[10]

[10] A related example is the law which existed in Canada prior to 1960 which granted Indians the vote only if they renounced their Indian status, and so abandoned any claim to Aboriginal political or cultural rights. In order to gain a vote in the Canadian political process (a process they had no real hope of influencing), they had to relinquish any claims to participate in long-standing Aboriginal processes of self-government. This transparent attempt to undermine Aboriginal political institutions was justified in the name of promoting "democracy."

To avoid this sort of injustice, national minorities need rights guaranteeing such things as self-government, group-based political representation, veto rights over issues directly affecting their cultural survival, and so on. Again, these demands are often seen as conflicting with Western individualism, and as proof of the minority's "collectivism." But in reality, these demands simply help to redress clear political inequalities. After all, the majority equally would reject any attempt by foreign powers to change unilaterally its boundaries, institutions or self-government powers. Why shouldn't national minorities seek similar guarantees for their boundaries, institutions, and powers?

In a recent paper, Avigail Eisenberg details how the debate over Aboriginal political rights in the Canadian north has been seriously distorted by the focus on Western "individualism" versus Aboriginal "collectivism." This way of framing the debate misses the real issues, which derive from the ongoing effects of colonization, namely, the political subordination of one people to another, through the majority's unilateral efforts to undermine the minority's institutions and powers of self-government.[11]

C. Official Language Policy

In most democratic states, governments typically have adopted the majority's language as the "official language" — for example, as the language of government, bureaucracy, courts, schools, and so on. All citizens then are forced to learn this language in school, and fluency is required to work for, or deal with, government. While this policy often is defended in the name of "efficiency," it also is adopted to ensure the eventual assimilation of the national minority into the majority group. There is strong evidence that languages cannot survive for long in the modern world unless they are used in public life, and so government decisions about official languages are, in effect, decisions about which languages will thrive and which will die out.[12]

Just as traditional political institutions of minorities have been shut down by the majority, so too have pre-existing educational institutions. For example, Spanish schools in the American southwest were closed after 1848, and replaced

[11] A. Eisenberg, "Individualism and Collectivism in the Politics of Canada's North" (Paper presented at the annual meeting of the Canadian Political Science Association, May 1995). A revised version of this paper will appear in J. Anderson, A. Eisenberg, S. Grace and V. Strong-Boag, eds., *Painting the Maple: Essays on Race, Gender and the Construction of Canada* (Vancouver: UBC Press, forthcoming 1998).

[12] On the necessity of extensive language rights for the survival and flourishing of linguistic minorities, see my book, *Multicultural Citizenship*, *supra* note 3 at c.6.

with English-language schools. Similarly, French-language schools in Western Canada were closed once English-speakers achieved political dominance.

This can be an obvious source of injustice. Yet here again, principles of human rights fail to prevent this injustice (even when, as in the Southwest, there were treaties guaranteeing Hispanics the right to their own Spanish-language schools). Human rights doctrines do preclude any attempt by the state to suppress the use of a minority language in private, and may even require state toleration of privately-funded schools which operate in the minority language. But human rights doctrines are silent about rights to the use of one's language in government.[13] On some interpretations of more recent international conventions which include minority rights, public funding for mother-tongue classes at elementary level may, in some circumstances, be seen as a "human right." But this remains a controversial development.[14] Moreover, mother-tongue education at the elementary level clearly is insufficient if all jobs in a modern economy require education at higher levels conducted in the majority language. Indeed, such a requirement creates a disincentive for minority parents to enrol their children in minority-language elementary schools in the first place.[15]

To redress the injustice created by majority attempts to impose linguistic homogeneity, national minorities may need broad-ranging language policies. There is evidence that language communities can only survive inter-generationally if they are numerically dominant within a particular territory, and if their language is the language of opportunity in that territory. But it is difficult to sustain such a predominant status for a minority language, particularly if newcomers to the minority's territory are able, and encouraged, to become educated and employed in the majority language (for example, if newcomers to Quebec are able to learn and work in English). It may not be enough, therefore, for the minority simply to have the right to use its language in public; it may also be necessary that the minority language be the *only* official language in their

[13] The view that language rights are not part of human rights was explicitly affirmed by the Canadian Supreme Court in *MacDonald* v. *City of Montreal*, [1986] 1 S.C.R. 460; *Société des Acadiens du Nouveau-Brunswick Inc.* v. *New Brunswick Minority Language School Board No. 50,* [1986] 1 S.C.R. 549.

[14] For a comprehensive review of the current status of language rights in international human rights law, see F. de Varennes, *Language, Minorities and Human Rights* (Boston: Kluwer Law International, 1996).

[15] Low enrolment is then often (perversely) cited by majority politicians as evidence that most members of the minority are not interested in preserving their language and culture, and that it is only a few extremists in the minority group who are the cause of ethnic conflict.

territory.[16] If immigrants, or migrants from the majority group, are able to use the majority language in public life, this may eventually undermine the predominant status, and hence viability, of the minority's language.[17] In other words, minorities may not need personal bilingualism (in which individuals carry their language rights with them throughout the entire country), but rather territorial bilingualism (in which people who choose to move to the minority's territory accept that the minority's language will be the only official language in that territory). Yet this sort of territorial bilingualism — which denies official language status to the majority language on the minority's territory — is often seen as discriminatory by the majority and, moreover, as a violation of their "human rights."

These demands for extensive language rights and territorial bilingualism often are described as evidence of the minority's "collectivism." But here again the minority simply is seeking the same opportunity taken for granted by the majority, to live and work in their own language. There is no evidence that the majority attaches any less weight to their ability to use their language in public life.[18]

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[16] This is called the "territorial imperative," and the trend towards territorial concentration of language groups is a widely-noted phenomenon in multilingual Western countries. For a more general theoretical account of the 'territorial imperative' in multilingual societies, see J. Laponce, *Languages and Their Territories* (Toronto: University of Toronto Press, 1987), and "The Case for Ethnic Federalism in Multilingual Societies: Canada's Regional Imperative" (1993) 3 Regional Politics and Policy 23.

[17] This is obviously the rationale given for requiring immigrants to Quebec to send their children to French-language schools.

[18] Here again, it would not be hypocritical to criticize minority demands regarding self-government rights and language rights if one applied the same standard to majorities. For example, one could imagine letting the United Nations determine the boundaries and language policies of each state. Imagine that the U.N., in a free and democratic vote, decided to merge all countries in the Americas (North, South and Central) into a single Spanish-speaking state. If the anglophone majority in Canada or the United States would accept such a decision — if they were willing to abandon their own self-government powers and language rights — then it would not be hypocritical to criticize the demands of Francophone, Hispanic or Aboriginal minorities in North America. But I don't know any English-speaking Canadians or Americans who would agree to amalgamate into a single Spanish-speaking state, even if this merger was supported by most countries in the Americas (and/or by most people living in the Americas). In reality, the anglophone majorities in both the United States and Canada zealously guard their right to live in a state where they form a majority, and their right to have English recognized as the language of public life. This defense of the boundaries and linguistic policies of existing nation-states is as "collectivist" as the demands of minorities for protection of their self-government and language rights.

One could mention other issues where human rights are insufficient for ensuring ethnocultural justice (for example, public holidays, school curriculum, national symbols, dress-codes etc). But enough has been said, I hope, to make the general point. Moreover, it is important to note that the three issues I have examined — migration, internal political subunits, and language policy — are all connected. Each of these are key components in the 'nation-building' programs which every Western state has engaged in.[19] Every democratic state has, at one time or another, attempted to create a single 'national identity' amongst its citizens, and so has tried to undermine any competing national identities of the sort national minorities often possess.[20] Policies designed to settle minority homelands, undermine their political and educational institutions, and impose a single common language have been important tools in these nation-building efforts. There is no evidence that states intended to relinquish these tools when they accepted human rights conventions and, indeed, there is no evidence that states would have accepted a conception of human rights which would preclude such nation-building programs.

Of course, human rights standards do set limits on this process of nation-building. States cannot kill or expel minorities, strip them of citizenship, or deny them the vote. But human rights standards do not preclude less extreme forms of nation-building. And if these nation-building measures are successful, it is not necessary to restrict the individual civil and political rights of the minority. Where nation-building programs have succeeded in turning the incorporated group into a minority within its own homeland, stripping it of its self-governing institutions and language rights, then the group will not pose any serious threat to the power or interests of the majority. At this point, there is no need to strip minority members of their individual rights. This is not necessary in order to gain and maintain effective political control over them.

In short, human rights standards are insufficient to prevent ethnocultural injustice, and may actually make things worse. The majority can invoke human rights principles to demand access to the minority's homeland, to scrap traditional political mechanisms of consultation and accommodation, and to

[19] And, in a different way, in the Communist bloc. See Walker Connor's account of how Communist leaders dealt with the issues of settlement policy, gerrymandering and linguistic policies, all of which were key policy tools in the Communist approach to national minorities, in W. Connor, *The National Question in Marxist-Leninist Theory and Strategy* (Princeton: Princeton University Press, 1984).

[20] For the ubiquity of this process, see E. Gellner, *Nations and Nationalism* (Oxford: Blackwell, 1983).

reject linguistic policies which try to protect the territorial viability of minority communities.

Various critics have argued that, in these and other ways, human rights indirectly have served as an instrument of colonization. I would not agree, however, with those critics who view this solely as a problem of "Western imperialism" against non-European peoples. After all, these processes of unjust subjugation have occurred *between* European groups (for example, the treatment of national minorities by the majority in France, Spain, Russia), and *between* African or Asian groups (for example, the treatment of the Yao minority by the Chewa majority in Malawi; the treatment of the Tibetan minority by the Han majority in China), as well as in the context of Western colonization of non-Western peoples. These processes have occurred in virtually every state with national minorities, and to ascribe it to Western individualism is to seriously underestimate the scope of the problem.

If human rights are not to be instruments of unjust subjugation, they must be supplemented with various minority rights — language rights, self-government rights, representation rights, federalism and so on. Moreover, these minority rights should not be seen as in any way secondary to traditional human rights. Even those who are sympathetic to the need for minority rights often say that we should at least *begin* with human rights. That is, we should first secure respect for individual human rights, and then, having secured the conditions for a free and democratic debate, move on to questions of minority rights. When national minorities oppose this assumption, they are often labelled as illiberal or antidemocratic. But as this paper has attempted to demonstrate, we cannot assume that human rights will have their desired consequences without attending to the larger context within which they operate. Unless supplemented by minority rights, majoritarian democracy and individual mobility rights may simply lead to minority oppression. As history has shown, various forms of oppression can occur while still respecting the individual rights of minorities. As a result, the longer we defer discussing minority rights, the more likely it is that the minority will become increasingly weakened and outnumbered. Indeed, it may over time become so weakened that it will become unable even to demand or exercise meaningful minority rights (for instance, it may lose the local predominance or territorial concentration needed to sustain its language, or to exercise local self-government). It is no accident, therefore, that members of the majority often are loudest in their support for giving priority to democracy and human rights over issues of minority rights. They know that the longer issues of minority rights are deferred, the more time it provides for the majority to disempower and dispossess the minority of its land, schools, and political

institutions. This may reach the point where the minority is in no position to sustain itself as a thriving culture or to exercise meaningful self-government.

This is why human rights and minority rights must be treated together, as equally important components of a just society. Of course, it would be an equally serious mistake to privilege minority rights over human rights. In questioning the priority of traditional human rights over minority rights, I am not disputing the potential for serious rights violations within many minority groups, or the need to have some institutional checks on the power of local or minority political leaders. On the contrary, *all* political authorities should be held accountable for respecting the basic rights of the people they govern, and this applies as much to the exercise of self-government powers by national minorities as to the actions of the larger state. The individual members of national minorities can be just as badly mistreated and oppressed by the leaders of their own group as by the majority government, and so any system of minority self-government should include some institutional provisions for enforcing traditional human rights within the minority community.

It is not a question of choosing between minority rights and human rights or of giving priority to one over the other but, rather, of addressing them together as equally important components of justice in ethnoculturally plural countries. We need a conception of justice that integrates fairness between different ethnocultural groups (via minority rights) with the protection of individual rights within majority and minority political communities (via traditional human rights).[21]

III. THE ENFORCEMENT OF HUMAN RIGHTS

Assuming that we can come up with some new theory which combines human rights and minority rights, would the existing level of opposition to transnational human rights standards diminish? Would we then get consensus on the enforcement of international standards of human rights?

One could expect that the elites of some groups will continue to say human rights principles contradict their cultural "traditions." I will return to this

[21] See the related analysis in Bonaventura de Sousa Santos, *Toward a New Common Sense: Law, Science, and Politics in the Paradigmatic Transition* (New York: Routledge, 1996). He argues that attention to the claims of Indigenous peoples and ethnic minorities can help develop a new "non-hegemonic" conception of human rights which would retain its commitment to protecting the weak and vulnerable without serving as an instrument of Western colonialism (at 353).

possibility in my conclusion. But my guess is that much of the current opposition to human rights would fade away. As noted earlier, human rights are not inherently "individualistic," and do not preclude group life. They simply ensure that traditions are voluntarily maintained, and that dissent is not forcibly suppressed. To be sure, self-serving political elites who want to suppress challenges to their authority from within the community will continue to denounce human rights as a violation of their "traditions." This explains the recent criticism of human rights doctrines by the Indonesian and Chinese governments. I would venture that if human rights doctrines are no longer seen as a tool for subordinating one people to another but, rather, as a tool for protecting vulnerable individuals from abuse by their political leaders, such opposition to human rights increasingly will be seen simply as a self-serving defense of elite power and privilege.[22]

So I would hope that we could gain greater international consensus on the *principles* of human rights. But this is not to say that we are likely to get consensus on the appropriate *enforcement mechanisms* of human rights/minority rights, either at the international level or even on the domestic front. There are at least two major difficulties here. First, it is difficult to see how minority rights can be codified at the international level. Minorities come in many different shapes and sizes. There are 'national' minorities, Indigenous peoples, immigrants, refugees, guestworkers, colonizing settlers, descendants of slaves or indentured labourers, Roma, religious groups, and so on. All of these groups have different needs, aspirations and institutional capacities.[23] Territorial autonomy will not work for widely dispersed groups, and even territorially-concentrated groups differ dramatically in the sort of self-government they aspire to, or are capable of. Similarly, language rights (beyond the right to

[22] As a general rule, we should be wary about the claims of elite members of a group to speak authoritatively about the group's "traditions." Some individuals may claim to speak for the group as a whole, and may say that the group is united against the imposition of "alien" ideas of human rights. But in reality, these people may simply be protecting their privileged position from *internal* challenges to their interpretation of the group's culture and traditions. In other words, debates over the legitimacy of human rights should not necessarily be seen as debates over whether to subordinate local cultural traditions to transnational human rights standards, although this is how conservative members of the group may put it. Instead, debates over human rights are often debates over who within the community should have the authority to influence or determine the interpretation of the community's traditions and culture. When individual members of the group demand their "human rights," they often do so in order to be able to participate in the community's process of interpreting its traditions.

[23] For a typology, see my "Ethnocultural Minority Groups" in R. Chadwick, ed., *Encyclopedia of Applied Ethics*, Vol. 2 (San Diego: Academic Press, 1998) at 147-59.

private speech) will not be the same in India or Malaysia (which contain hundreds of Indigenous languages) as in France or Britain.

This is why international declarations of minority rights tend to waver between trivialities like the "right to maintain one's culture" (which could simply mean respect for freedom of expression and association, and hence add nothing to existing declarations of human rights) and vague generalities like the "right to self-determination" (which could mean anything from token representation to full-blown secession).[24] Minorities are not going to accept the lowest common denominator, which even the smallest or most dispersed group seeks, but majorities are not going to give all groups the maximal rights demanded by the largest and most mobilized groups (which may include secession).

There does not appear to be a way to overcome this problem. While minority rights are, indeed, essential, the solution is not to add a detailed list of minority rights to human rights declarations in international law. Instead, we must accept that traditional human rights are insufficient to ensure ethnocultural justice, and recognize the need to supplement them, *within each country,* with specific minority rights appropriate for that country. As will be discussed later, international bodies can play a useful role in adjudicating minority rights conflicts, but this role is unlikely to take the form of adjudicating or enforcing a single codified international list of minority rights.

This leads to a second problem. If human rights and minority rights must be integrated at the domestic level, rather than through a single international code, can we find an impartial body to adjudicate and enforce these rights at the domestic level? Many people naturally will assume that these rights should be listed in a single national constitution which is then adjudicated and enforced by a single supreme court. Certainly most liberals have assumed that the supreme court in each country should have final jurisdiction regarding both human rights and minority rights.

But, in fact, we find strong resistance to this idea amongst some minority groups, even if they share the principles underlying the set of human rights and minority rights listed in the national constitution. Consider the situation of Indian tribes in the United States. American constitutional law protects both

[24] For an acute criticism of existing minority rights declarations, see D. Horowitz, "Self-Determination: Politics, Philosophy and Law" in W. Kymlicka and I. Shapiro, eds., *Ethnicity and Group Rights* (New York: New York University Press, 1997) at 421.

certain minority rights for Indian tribes (they are recognized as "domestic dependent nations" with treaty-based rights of self-government) and also a general set of individual human rights (in the *Bill of Rights*). This could be seen as at least the beginnings of an attempt to fairly integrate minority rights and human rights at the domestic level.[25]

But who should have the power to enforce these constitutional provisions regarding individual and minority rights? American liberals typically assume that the federal Supreme Court should have this power. But many American Indians oppose this idea. They do not want the Supreme Court to be able to review their internal decisions to assess whether they comply with the *Bill of Rights*.[26] And they would prefer to have some international body monitor the extent to which the American government respects their treaty-based minority rights. So they reject the federal Supreme Court as the ultimate protector either of the individual rights of their members or of their minority rights.

Needless to say, Indian demands to reduce the authority of the federal Supreme Court have met with resistance. The American government has shown no desire to accept international monitoring of the extent to which treaty rights of Indians are respected. Indeed, both the Canadian and American governments have jealously guarded their sovereignty in these matters, refusing to give any international body jurisdiction to review and overturn the way they respect the treaty rights, land claims or self-government rights of Indigenous peoples.

And the demand to have internal tribal decisions exempted from scrutiny under the *Bill of Rights* is widely opposed by liberals, since it raises the concern in many people's minds that individuals or subgroups (for example, women) within American Indian communities could be oppressed in the name of group

[25] It is, at best, an imperfect beginning, in large part due to the plenary power which Congress arbitrarily asserts over Indian tribes. See R. Kronowitz et al., "Toward Consent and Cooperation: Reconsidering The Political Status of Indian Nations" (1987) 22 Harv. C.R.-C.L. Rev. 507.

[26] Indeed, tribal councils in the United States have historically been exempted from having to comply with the federal Bill of Rights, and their internal decisions have not been not subject to Supreme Court review. Various efforts have been made by federal legislators to change this, most recently the 1968 *Indian Civil Rights Act*, which was passed by Congress despite vociferous opposition from most Indian groups. American Indian groups remain strongly opposed to the 1968 Act, just as First Nations in Canada have argued that their self-governing band councils should not be subject to judicial review by the Canadian Supreme Court under the *Canadian Charter of Rights and Freedoms*. They do not want their members to be able to challenge band decisions in the courts of the mainstream society.

solidarity or cultural purity. They argue that any acceptable package of individual rights and minority rights must include judicial review of tribal decisions by the American Supreme Court to ensure their compliance with the *Bill of Rights.*

Before jumping to this conclusion, however, we should consider the reasons why certain groups are distrustful of federal judicial review. In the case of American Indians, these reasons are, I think, obvious. After all, the federal Supreme Court has historically legitimized the acts of colonization and conquest which dispossessed Indians of their property and political power. It has historically denied both the individual and treaty rights of Indians on the basis of racist and ethnocentric assumptions. Moreover, Indians have had no representation on the Supreme Court, and there is ample reason to fear that white judges on the Supreme Court may interpret certain rights in culturally biased ways (for example, democratic rights). Why should Indians agree to have their internal decisions reviewed by a body which is, in effect, the court of their conquerors? And why should they trust this Court to act impartially in considering their minority and treaty rights? For all these reasons, the assumption that supreme courts at the national level should have the ultimate authority over all issues of individual and minority rights within a country may be inappropriate in the case of Indigenous peoples and other incorporated national minorities.[27] There are good reasons why American Indians do not trust federal courts to uphold the minority rights needed for ethnocultural justice between majority and minority, or to determine whether the minority is respecting human rights internally.

It is quite understandable, therefore, that many Indian leaders seek to reduce the role of federal judicial review. But at the same time they affirm their commitment to the basic package of human rights and minority rights which is contained in the U.S. constitution. They endorse the principles, but object to the particular institutions and procedures that the larger society has established to enforce these principles. As Joseph Carens puts it, "people are supposed to experience the realisation of principles of justice through various concrete institutions, but they may actually experience a lot of the institution and very little of the principle."[28] This is exactly how many Indigenous peoples perceive

[27] See also the analysis in D. Schneiderman, "Human Rights, Fundamental Differences? Multiple Charters in a Partnership Frame" in G. Laforest and R. Gibbins, eds., *Beyond the Impasse* (Montreal: Institute for Research on Public Policy, 1998) at 147-85.

[28] J. Carens, "Citizenship and Aboriginal Self-Government" (Paper prepared for the Royal Commission on Aboriginal Peoples, Ottawa, 1994).

the Supreme Courts in both Canada and the United States. What they experience is not the principles of human dignity and equality but, rather, a social institution which has historically justified their conquest and dispossession.

What we need to do, therefore, is to find impartial bodies to monitor compliance of both human rights and minority rights. We need to think creatively about new mechanisms for enforcing human rights and minority rights that will avoid the legitimate objections which Indigenous peoples and national minorities have regarding federal courts.

What would these alternative mechanisms look like? To begin, many Indian tribes have sought to create or maintain their own procedures for protecting human rights within their community. Some of these procedures, specified in tribal constitutions, are based on the provisions of international protocols on human rights. It is important to distinguish Indian tribes, who have their own internal constitution and courts which prevent the arbitrary exercise of political power, from ethnocultural groups which have no formal constitutions or courts, and which therefore provide no effective check on the exercise of arbitrary power by powerful individuals or traditional elites. We should not ignore or denigrate these internal checks on the misuse of power. Indeed, to automatically assume that the federal courts should replace or supersede the institutions which Indians have themselves evolved to prevent injustice is evidence of an ethnocentric bias — an implicit belief that "our" institutions are superior to "theirs."[29]

Indian tribes also have sought to create new transnational or international procedures to help monitor the protection of their minority rights. The international community can play an important role, not so much by formulating a single list of minority rights that applies to all countries (for that is impossible), but rather by providing an impartial adjudicator to monitor the extent to which domestic provisions regarding minority rights are fairly negotiated and implemented.

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[29] To be sure, some Indian tribal constitutions are not fully liberal or democratic, and so are inadequate from a human rights point of view. However they do represent a form of constitutional government, and so should not be equated with mob rule or despotism. As Graham Walker notes, it is a mistake to conflate the ideas of liberalism and constitutionalism. There is a genuine category of non-liberal constitutionalism, which provides meaningful checks on political authority and preserves the basic elements of natural justice, and which thereby helps ensure that governments maintain their legitimacy in the eyes of their subjects. See G. Walker, "The Idea of Non-Liberal Constitutionalism" in *Ethnicity and Group Rights*, *supra* note 24 at 154.

From the point of view of ethnocultural justice, these proposals might be preferable to the current reliance on the federal Supreme Court. But it would be even better to establish international mechanisms which would monitor *both* the individual and minority rights of Indian peoples. While the internal courts and constitutions of tribal governments are worthy of respect, they — like the courts and constitutions of nation-states — are imperfect in their protection of human rights. So it would be preferable to subject all governments, both majority and minority, to international scrutiny.

Many Indian leaders have expressed a willingness to accept some form of international monitoring of their internal human rights record. They would be willing to abide by international declarations of human rights, and to answer to international tribunals for complaints of rights violations within their communities. But they would only accept this if and when it is accompanied by international monitoring of how well the larger state respects their treaty rights. They accept the idea that their tribal governments, like all governments, should be accountable to international human rights norms (so long as this is not in the court of their conquerors). But they want this sort of external monitoring to examine how well their minority rights are upheld by the larger society, not just to focus on the extent to which their own decisions respect individual human rights. This appears to be a reasonable demand.

On this view, the appropriate forums for reviewing the actions of self-governing Indigenous peoples may skip the federal level. Many Indigenous groups would endorse a system in which their self-governing decisions are reviewed in the first instance by their own courts, and then by an international court, which would also monitor respect for minority rights. Federal courts, dominated by the majority, would not be the ultimate adjudicator of either the individual or minority rights of Indian peoples. These international mechanisms could arise at the regional as well as global level. European countries have agreed to establish their own multilateral human rights tribunals. Perhaps North American governments and Indian tribes could agree to establish a similar multilateral tribunal, on which both sides are fairly represented.

The aim here is not to defend any particular proposal for a new impartial body to monitor the protection of individual rights and minority rights, rather, it is to stress again the necessity of treating individual rights and minority rights together when thinking about appropriate enforcement mechanisms. On the one hand, we need to think about effective mechanisms which can hold minority governments accountable for the way individual members are treated. I see no justification for exempting minority self-government from the principles of human rights — any exercise of political power should be subject to these

principles. But we need to think simultaneously about effective mechanisms for holding the larger society accountable for respecting the minority rights of these groups. As argued in section II, above, minority rights are equally important as individual human rights in ensuring ethnocultural justice, and so should be subject to equal scrutiny. Moreover, focusing exclusively on the latter while neglecting the former is counter-productive and hypocritical. Minority groups will not agree to greater external scrutiny of their internal decisions unless they achieve greater protection of their minority rights. And since existing institutional mechanisms are typically unable to meet this twin test of accountability, we need to think creatively about new mechanisms that can deal impartially with both individual human rights and minority rights.

IV. CONCLUSION

Our aims should be two-fold: (a) to supplement individual human rights with minority rights, recognizing that the specific combination will vary from country to country; and (b) to find new domestic, regional or transnational mechanisms which will hold governments accountable for respecting both human rights and minority rights.

If we manage to solve these two (enormous) tasks, I believe the commitment to universal human rights need not be culturally biased. Indeed, if we resolve these issues satisfactorily, the idea of human rights can become what it was always intended to be, namely, a shield for the weak against the abuse of political power, not a weapon of the majority in subjugating minorities.

If the arguments in this paper are at all valid, then it suggests a number of new avenues for future research — avenues which would depart dramatically from the existing patterns of inquiry and debate. At the moment, wherever there is a conflict between "local practices" and "transnational human rights standards," commentators tend to locate the source of the conflict in the "culture" or "traditions" of the group, and then look for ways in which this culture differs from "Western" culture. This tendency is exacerbated by the rhetoric of a "politics of difference" or a "politics of identity," which encourages groups to press their demands in the language of respect for cultural "difference."

My suggestion, however, is that we should not jump to the conclusion that cultural differences are the real source of the problem. Rather, in each case where a group is objecting to the domestic or transnational enforcement of human rights principles, we should ask the following questions:

(a) Has the majority society failed to recognize legitimate minority rights? If so, has this created a situation in which the implementation of human rights standards contributes to the unjust disempowerment of the minority? I have discussed three contexts or issues where human rights standards can exacerbate ethnocultural injustice if they are unaccompanied by minority rights, but it would be interesting to come up with a more systematic list of such issues;

(b) Is there any reason to think that the existing or proposed judicial mechanisms for adjudicating or enforcing human rights are biased against the minority group? Have these judicial mechanisms treated minorities fairly from a historical perspective? Is the minority group equally represented on the judicial bodies? Were these judicial mechanisms consensually accepted by the minority when it was incorporated into the country, or is the imposition of these judicial mechanisms a denial of historical agreements or treaties which protected the autonomy of the group's own judicial institutions?

My guess is that in many cases where minority groups object to transnational human rights standards, it will be for one of these reasons, rather than any inherent conflict between their traditional practices and human rights standards. Where these problems are addressed, I expect that many minority groups will be more than willing to subscribe to human rights standards.

This is not to deny the existence of illiberal or antidemocratic practices within minority communities or non-Western societies. But it is important to note that, at least in some cases, the existence of such practices is itself the consequence of some prior ethnocultural injustice. That is, many minorities feel compelled to restrict the liberties of their own members because the larger society has denied their legitimate minority rights. As Denise Réaume has noted, part of the "demonization" of other cultures is the assumption that these groups are naturally inclined to use coercion against their members. But insofar as some groups seem regrettably willing to use coercion to preserve group practices, this may be due, not to any innate illiberalism, but to the fact that the larger society has failed to respect their minority rights. Unable to get justice from the larger society, in terms of protection for its lands and institutions, the minority turns its attention to the only people it does have some control over, namely, its own members.[30]

[30] D. Réaume, "Justice between Cultures: Autonomy and the Protection of Cultural Affiliation" (1995) 29 U.B.C. L. Rev. 121.

This tendency does not justify the violation of the human rights of group members, but it suggests that before we criticize a minority for imposing such restrictions on its members, we should first make certain we are respecting all of its legitimate minority rights. In short, the current conflict between local practices and transnational standards may not be the result of a deep attachment to some long-standing "tradition" in the local community but, rather, the (regrettable) result of some new vulnerability which has arisen from the denial of their minority rights.

To be sure, there will be cases where members of a group really do object to the very content of the human rights standard on the grounds that it is inconsistent with their cultural traditions. Even if we solve the problem of minority rights and enforcement mechanisms, we still will find some people rejecting "western" notions of human rights. They will assert that restricting the liberty of women or suppressing political dissent is part of their "tradition," and that human rights theories reflect a biased "Eurocentric" and "individualistic" standard.[31] These claims may come from minority groups, or indeed from large and powerful majority groups or governments, as in Indonesia or China.

I do not want to enter into that debate, and the issues of cultural relativism which it raises. As I said earlier, we are all too familiar with that debate, and I have little to add to it. My aim, rather, is to insist that this is not the only debate we need to have. On the contrary, we may find that such conflicts are fewer once we have properly dealt with the issues of ethnocultural justice.

[31] As I said earlier, I do not think that the substantive interests protected by human rights doctrines are either individualistic or Eurocentric. However, it may well be that to talk of these interests in terms of "rights" is a specifically European invention which does not fit comfortably with the discourse or self-understandings of many cultures. I don't think we should get hung up on "rights talk." What matters, morally speaking, is that people's substantive interests in life and liberty are protected, but we should be open-minded about what institutional mechanisms best provide this protection. There is no reason to assume that the best way to reliably protect people's basic interests will always take the form of a judicially enforceable constitutional list of "rights." For a critique of the language of rights as Eurocentric, see M. E. Turpel, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences" (1989) 6 Can. Hum. Rts. Y.B. 3. On ways to protect the substantive human interests underlying human rights without using the language of "rights," see T. Pogge, "How Should Human Rights Be Conceived" (1995) 3 Jahrbuch für Recht und Ethik 103.