

## Minority Rights

Concept: Minority Rights

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Description Groups who find themselves marginalized within states — such as, indigenous peoples, territorially-based national minorities, and other non-territorially based minority groups (i.e. immigrant groups) — have increasingly advanced claims for rights and equality. Given these claims, political theorists have highlighted the need to theorize the links between group identity and democratic politics (Kymlicka and Norman 2000). These so-called "group claims" are diverse and exist on a continuum: from general cultural rights (i.e. language rights) at one end, to political claims for self-determination (i.e. self-government rights) at the other. Although these claims are lobbied against the nation-states in which these groups find themselves, the responsibility to respond to these claims is of growing international importance.

Given the diversity that exists in both the types of groups and the forms of claims that they advance, it is not surprising that there has been a lack of consensus on the rights of minorities within international law. Although the League of Nations developed treaties for the protection of minorities following World War I, the United Nations Charter that was adopted following World War II did not include an explicit concept of minority rights (Crawford and Marks 1998). Codifying "human rights" was the central principle guiding the UN Charter, and the protection of individual rights was considered sufficient protection for those belonging to minorities (Hannum 1990). Currently, there is some codification of the rights of indigenous groups in international law, however, there is no general consensus on the rights of substate national groups (Kymlicka 2002).

In response to this general ambiguity in international law, the past decade has witnessed political theorists taking up the challenge to clarify the principles underlying the claims of minority groups. In his seminal work, *Multicultural Citizenship*, Kymlicka (1995) provides a liberal theory in favour of minority rights. Specifically, he argues that liberal democracies must accommodate differences in a morally defensible way and that protecting group-specific rights requires elaborating a concept of "group-differentiated" citizenship. This differentiated citizenship is premised on the argument that specific representation is required for oppressed groups as the privileged groups are already adequately represented (Young 1989). Distinguishing between national minorities (small territorially concentrated nations within states) and ethnic groups (groups that are the result of migration), Kymlicka (1995) argues that national minorities are entitled to a wider range of group-differentiated rights — most notably self-government rights — than ethnic groups. In this work, Kymlicka (1995)

has successfully established a connection between individual and collective rights, made a compelling defense of differentiated citizenship, and disrupted a belief in the state as ethnoculturally neutral (Carens 1997).

More recent multicultural theorists have, however, critiqued Kymlicka on a number of important points. Shachar (2001) highlights the simplistic use of "culture" by Kymlicka and emphasizes that "culture" as a concept also has strategic political implications, while O'Neill (1999) suggests that Kymlicka's argument falls apart when he is not dealing with explicitly liberal groups. Murphy (2001) argues that Kymlicka obscures an important connection between democratic legitimacy and cultural rights and Young (1997) contests the sharp distinction Kymlicka makes between national minorities and ethnic groups, arguing that these categories are best viewed along a continuum. Parekh (1997) additionally contests Kymlicka's "hierarchy of rights" that favours national minorities above all other groups. Importantly, a number of authors (for example, Favell 1998; Carens 1997) emphasize that Kymlicka's theories do not represent a "view from nowhere" but are a characteristically Canadian approach to multiculturalism and one that may not be applicable in different contexts. These critiques of Kymlicka (1995) — one of the few theorists to make a systematic attempt to develop a general theory of minority rights — highlight the difficulties inherent to developing normative political theory across diverse cultural and political contexts. Once context is prioritized, Shachar (2001) suggests it is unlikely that anyone will come up with as elegant a theory as Kymlicka's. Despite these differing interpretations, all recent theorists of multiculturalism do agree that there is an important link between the rights of national minorities and the pursuit of a just society (Shachar 2001). Where these theorists differ, however, is in how precisely to do so.

Given the difficulties political theorists have encountered in attempting to elaborate a general political theory of minority rights, it is perhaps not surprising that codifying minority rights within international law has also been a challenge. Despite these challenges, the impetus remains to develop international laws and policies for minorities. Although national minorities remain under the jurisdiction of nation-states, an increase in intrastate conflict worldwide has prioritized the need for the international protection of minority groups. Toward this end, there is an increasing perception of the rights of national minorities as "democratic" rights (Murphy 2001). In everyday political struggles, minority groups themselves have increasingly framed their claims as democratic ones. In particular, given this tacit link between minority rights and democratic legitimacy, national minorities have strategically lobbied their claims beyond state borders to international bodies, such as the UN, to increase their influence (i.e. James Bay Cree). Although national Supreme Courts have jurisdiction over minority rights, many minorities view these as the "courts of their conquerors" and argue that international bodies should oversee their enforcement (Kymlicka 2001). These national minorities are engaging the decline in sovereignty of the nation-state resulting from globalization to recast the debate over which groups — states or minorities — are

legitimately entitled to self-determination.

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