from Multicultural Citizenship by Will Kymlicka

CHAPTER 3

Individual Rights and Collective Rights

A liberal democracy's most basic commitment is to the freedom and equality of its individual citizens. This is reflected in constitutional bills of rights, which guarantee basic civil and political rights to all individuals, regardless of their group membership. Indeed, liberal democracy emerged in part as a reaction against the way that feudalism defined individuals' political rights and economic opportunities by their group membership.

How then can liberals accept the demand for group-differentiated rights by ethnic and national minorities? Why should the members of certain groups have rights regarding land, language, representation, etc. that the members of other groups do not have? To many people, the idea of group-differentiated rights seems to rest on a philosophy or world-view opposite to that of liberalism. It seems more concerned with the status of groups than with that of individuals. Moreover, it seems to treat individuals as the mere carriers of group identities and objectives, rather than as autonomous personalities capable of defining their own identity and goals in life. Group-differentiated rights, in short, seem to reflect a collectivist or communitarian outlook, rather than the liberal belief in individual freedom and equality.

This is a misperception. It rests on a number of confusions which I hope to sort out over the next few chapters. I will try to show that many forms of group-differentiated citizenship are consistent with liberal principles of freedom (Ch. 5) and equality (Ch. 6). But we first need to clear up some popular misunderstandings about the nature of group-differentiated rights.

The various forms of group-differentiated citizenship outlined in Chapter 2 are often described, by both proponents and critics, as 'collective rights'. This terminology can be quite misleading. For one

thing, the category of collective rights is large and heterogeneous. It includes the rights of trade unions and corporations; the right to bring class-action suits; the right of all citizens to clean air, etc. These rights have little in common, and it is important not to lump the idea of group-differentiated citizenship with the myriad of other issues that arise under the heading of 'collective rights'.

More importantly, the terminology of collective rights encourages people to make erroneous assumptions about the relationship between group-differentiated citizenship and individual rights. It is natural to assume that collective rights are rights exercised by collectivities, as opposed to rights exercised by individuals, and that the former conflict with the latter. As we will see, these assumptions do not apply to many forms of group-differentiated citizenship. The relationship between group-differentiated citizenship and individual rights is in fact quite complicated, and we need to find a vocabulary that can capture all its nuances.

1. *Internal Restrictions and External Protections*

Many liberals fear that the 'collective rights' demanded by ethnic and national groups are, by definition, inimical to individual rights. This view has been popularized in Canada by former Prime Minister Pierre Trudeau, who explained his opposition to self-government rights for Quebec by saying that he believed in 'the primacy of the individual', and that 'only the individual is the possessor of rights' (Trudeau 1990: 363–4).

However, this rhetoric about individual versus collective rights is unhelpful. We need to distinguish two kinds of claims that an ethnic or national group might make. The first involves the claim of a group against its own members; the second involves the claim of a group against the larger society. Both kinds of claims can be seen as protecting the stability of national or ethnic communities, but they respond to different sources of instability. The first kind is intended to protect the group from the destabilizing impact of *internal dissent* (e.g. the decision of individual members not to follow traditional practices or customs), whereas the second is intended to protect the group from the impact of *external decisions* (e.g. the economic or political decisions of the larger society). To distinguish these two kinds of claims, I will call the first 'internal restrictions', and the second 'external protections'.

Both of these get labelled as 'collective rights', but they raise very

different issues. Internal restrictions involve *intra-group* relations—the ethnic or national group may seek the use of state power to restrict the liberty of its own members in the name of group solidarity. This raises the danger of individual oppression. Critics of 'collective rights' in this sense often invoke the image of theocratic and patriarchal cultures where women are oppressed and religious orthodoxy legally enforced as an example of what can happen when the alleged rights of the collectivity are given precedence over the rights of the individual.

Of course, all forms of government and all exercises of political authority involve restricting the liberty of those subject to the authority. In all countries, no matter how liberal and democratic, people are required to pay taxes to support public goods. Most democracies also require people to undertake jury duty, or to perform some amount of military or community service, and a few countries require people to vote (e.g. Australia). All governments expect and sometimes require a minimal level of civic responsibility and participation from their citizens.

But some groups seek to impose much greater restrictions on the liberty of their members. It is one thing to require people to do jury duty or to vote, and quite another to compel people to attend a particular church or to follow traditional gender roles. The former are intended to uphold liberal rights and democratic institutions, the latter restrict these rights in the name of cultural tradition or religious orthodoxy. For the purposes of this discussion, I will use 'internal restrictions' to refer only to the latter sort of case, where the basic civil and political liberties of group members are being restricted.[1]

External protections involve *inter*-group relations—that is, the ethnic or national group may seek to protect its distinct existence and identity by limiting the impact of the decisions of the larger society. This too raises certain dangers—not of individual oppression within a group, but of unfairness between groups. One group may be marginalized or segregated in the name of preserving another group's distinctiveness. Critics of 'collective rights' in this sense often cite the apartheid system in South Africa as an example of what can happen when a minority group demands special protections from the larger society.

However, external protections need not create such injustice. Granting special representation rights, land claims, or language rights to a minority need not, and often does not, put it in a position to dominate other groups. On the contrary, as I discuss in Chapter 6, such rights can be seen as putting the various groups on a more equal footing, by reducing the extent to which the smaller group is vulnerable to the larger.

Notice that internal restrictions can and do exist in culturally homogeneous countries. The desire to protect cultural practices from internal dissent exists to some extent in every culture, even homogeneous nation-states. External protections, however, can only arise in multinational or polyethnic states, since they protect a particular ethnic or national group from the destabilizing impact of the decisions of the larger society.[2]

The two kinds of claims need not go together. Some ethnic or national groups seek external protections against the larger society without seeking to impose legally enforceable internal restrictions on their own members. Other groups do not claim any external protection against the larger community, but seek wide powers over the behaviour of their own members. Yet other groups make both kinds of claims. These variations lead to fundamentally different conceptions of minority rights, and it is important to determine what sort of claim a group is making. To foreshadow the conclusions of the next three chapters, I will argue that liberals can and should endorse certain external protections, where they promote fairness between groups, but should reject internal restrictions which limit the right of group members to question and revise traditional authorities and practices.

If a group demands one of the three kinds of group-differentiated rights I discussed in Chapter 2 (self-government rights, polyethnic rights, and special representation rights), are they seeking to impose internal restrictions or gain external protections? It depends. These group-differentiated rights can serve both aims, depending on the circumstances. I will start by showing how they can provide external protections, and then consider how they can impose internal restrictions.

All three types of group-differentiated citizenship can be used to provide external protections. That is, each type helps protect a minority from the economic or political power of the larger society, although each responds to different external pressures in different ways:

- Special group representation rights within the political institutions of the larger society make it less likely that a national or ethnic minority will be ignored on decisions that are made on a country-wide basis.
- Self-government rights devolve powers to smaller political units, so that a national minority cannot be outvoted or outbid by the

majority on decisions that are of particular importance to their culture, such as issues of education, immigration, resource development, language, and family law.

- Polyethnic rights protect specific religious and cultural practices which might not be adequately supported through the market (e.g. funding immigrant language programmes or arts groups), or which are disadvantaged (often unintentionally) by existing legislation (e.g. exemptions from Sunday closing legislation or dress codes that conflict with religious beliefs).

Each of these three forms of group-differentiated rights helps reduce the vulnerability of minority groups to the economic pressures and political decisions of the larger society. Some national and ethnic minorities seek group-differentiated rights solely for this sort of external protection. Such groups are concerned with ensuring that the larger society does not deprive them of the conditions necessary for their survival, not with controlling the extent to which their own members engage in untraditional or unorthodox practices.

Under these circumstances, there is no necessary conflict between external protections and the individual rights of group members. The existence of such external protections tells us about the relationship between the majority and minority groups; it does not yet tell us about the relationship between the ethnic or national group and its own members. Groups which have these external protections may fully respect the civil and political rights of their own members. Indeed, I will argue in Chapter 5 that these measures are not only consistent with the liberty of individual members, but may actually promote it.[3]

Other groups, however, are concerned with controlling internal dissent, and seek group-differentiated rights in order to impose internal restrictions on their members. Both self-government rights and polyethnic rights can, under some circumstances, be used to limit the rights of the members of the minority group.

This possibility has often been raised in the context of claims for self-government by indigenous peoples. For example, as part of their self-government, tribal councils in the United States have historically been exempted from the usual constitutional requirement to respect the rights listed in the American Bill of Rights. Under the 1968 Indian Civil Rights Act, tribal governments are now required to respect most (but not all) of these individual rights. However, there are still limits on the judicial review of the actions of tribal councils. If a member of an Indian tribe feels her rights have been violated by her tribal council, she can seek redress in a tribal court, but she cannot (except under exceptional circumstances) seek redress from the Supreme Court.

Similarly, Indian bands in Canada have argued that their self-governing band councils should not be subject to judicial review 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.

These limits on the application of constitutional bills of rights create the possibility that individuals or subgroups within Indian communities could be oppressed in the name of group solidarity or cultural purity. For example, concern has been expressed that Indian women in the United States and Canada might be discriminated against under certain systems of self-government, if these are exempt from the usual constitutional requirement of sexual equality. Indeed, the Native Women's Association of Canada, worried about the danger of sexual discrimination on their reserves, has demanded that the decisions of Aboriginal governments be subject to the Canadian Charter.[4]

On the other hand, many Indians insist that this fear of sexual oppression reflects misinformed or prejudiced stereotypes about their cultures. They argue that Indian self-government needs to be exempt from the Bill/Charter of Rights, not in order to restrict the liberty of women within Indian communities, but to defend the *external* protections of Indians *vis-à-vis* the larger society. Their special rights to land, or to hunt, or to group representation, which help reduce their vulnerability to the economic and political decisions of the larger society, could be struck down as discriminatory under the Bill/Charter of Rights.[5]

Also, Indian leaders fear that white judges on the Supreme Court may interpret certain rights in culturally biased ways. For example, traditional Indian forms of consensual political decision-making could be seen as denying democratic rights. These traditional procedures do not violate the underlying democratic principle of the constitution—namely, that legitimate authority requires the consent of the governed, subject to periodic review. However, they do not use the particular method for securing the consent of the governed envisioned by the constitution—namely, periodic election of representatives. Rather, they rely on certain time-honoured procedures for ensuring consensual decision-making. Indian leaders worry that white judges will impose their own culturally specific form of democracy, without considering whether traditional Indian practices are an equally valid interpretation of democratic principles.

Hence many Indian leaders seek exemption from the Bill/Charter of Rights, but at the same time affirm their commitment to the basic human rights and freedoms which underlie these constitutional documents. They endorse the principles, but object to the particular institutions and procedures that the larger society has established to enforce these principles.[6] Hence they seek to create or maintain their own procedures for protecting human rights, specified in tribal/band constitutions, some of which are based on the provisions of international protocols on human rights. Some Indian groups have also accepted the idea that their governments, like all sovereign governments, should be accountable to international human rights tribunals (e.g. the United Nations' Human Rights Commission). What they object to is the claim that their self-governing decisions should be subject to the federal courts of the dominant society—courts which, historically, have accepted and legitimized the colonization and dispossession of Indian peoples and lands.

In short, many Indian groups—even those who object to federal judicial review of their self-government—do not seek to impose internal restrictions. There are, however, some important exceptions. One relatively clear case of internal restrictions amongst self-governing indigenous groups involves the Pueblo, an American Indian tribe, and freedom of religion. Because they are not subject to the Bill of Rights, tribal governments are not required to obey its strict separation of church and state. The Pueblo have, in effect, established a theocratic government that discriminates against those members who do not share the tribal religion. For example, housing benefits have been denied to those members of the community who have converted to Protestantism. In this case, there is little question that self-government powers are being used to limit the freedom of members to question and revise traditional practices.[7]

It is often difficult for outsiders to assess the likelihood that self-government for an indigenous or national minority will lead to the suppression of basic individual rights. The identification of oppression requires sensitivity to the specific situation, particularly when dealing with other cultures. I will return to this, and to questions of judicial review, in Chapter 8.

It is also possible for polyethnic rights to be used to impose internal restrictions. Immigrant groups and religious minorities could, in principle, seek the legal power to impose traditional cultural practices on their members. Ethnic groups could demand the right to take their children out of school before the legally prescribed age, so as to reduce the chances that the child will leave the community; or the right to

continue traditional customs such as clitoridectomy or compulsory arranged marriages that violate existing laws regarding informed consent. There have been cases of husbands who have beaten their wives because they took a job outside the home, and who have then used the fact that wife assault is acceptable practice in their original homeland as a legal defence. More generally, there are fears that 'multiculturalism taken to its logical extreme' could justify allowing each ethnic group to impose its own legal traditions on its members, even when these traditions conflict with basic human rights and constitutional principles (Abu-Laban and Stasiulus 1992: 379).

The threat to individual rights from such internal restrictions is real enough. But it is a mistake to suggest that allowing such oppressive practices is the 'logical' extension of current 'multiculturalism' policies in the major immigrant countries. Existing policies are intended to enable immigrants to express their ethnic identity, if they so desire, and to reduce some of the external pressures on them to assimilate. It is perfectly logical to accept that aim, while denying that groups are entitled to impose practices on members who do not wish to maintain them. The model of polyethnicity underlying public policy in Canada, Australia, and the United States supports the ability of immigrants to choose for themselves whether to maintain their ethnic identity. There is no suggestion that ethnic groups should have any ability to regulate individuals' freedom to accept or reject that identity. As such, public policy (quite consistently) endorses some external protections, while rejecting internal restrictions (Government of Canada 1991*b*: 11).

Moreover, there is little support for the imposition of internal restrictions amongst the members of minority groups themselves. Very few of the mainstream immigrant organizations within Western democracies have sought such policies.[8] Most demands for polyethnic rights are defended in terms of, and take the form of, external protections against the larger community.

Of course, some groups do demand internal restrictions. This is particularly true of religious communities, rather than immigrant groups *per se*. For example, the United States exempts the Amish, a centuries-old Christian sect, from laws regarding the mandatory education of children. Canada provides a similar exemption to a number of other long-standing Christian sects (Mennonites, Doukhobours, Hutterites). Members of these sects can withdraw their children from schools before the legal age of 16, and are also not required to teach the usual school curriculum. Parents worry that if their children received this broader education, they would be tempted to leave the

sect and join the wider society. These groups may also put severe restrictions on the ability of group members to leave their group.[9]

It is worth noting that these internal restrictions are not the result of the recent shift toward a more 'polyethnic' immigration policy. The legal exemptions accorded Christian sects long pre-date that policy, and recent immigrant groups have not received such exemptions. For example, Western democracies have firmly rejected the idea that immigrants from Arab or Asian countries should be able to continue traditional practices which involve restricting the basic rights of their own members, such as compulsory arranged marriages, or sexual discrimination in education or family law. The idea that Muslim law regarding family status should be legally recognized is occasionally floated, particularly by Muslim leaders in Britain. But there has been no movement towards giving legal recognition to *talaq* divorces, or towards exempting Muslims from civil laws regarding the equitable division of marital property.[10]

So there are some cases of ethnic and national groups demanding internal restrictions. In these cases, a group has sought the legal power to restrict the liberty of its own members so as to preserve its traditional religious practices. These groups are seeking to establish or maintain a system of group-differentiated rights which protects communal practices, not only from decisions made outside the group, but also from internal dissent, and this often requires exemption from the constitutional or legislative requirements of the larger society.[11]

I return to these demands in Chapter 8, and discuss whether liberal states should be more 'tolerant' of them. But for now, it is important to note that such demands are rare, and rarely successful. Most of the demands for group-specific rights made by ethnic and national groups in Western democracies are for external protections. Those few groups which have demanded the power to impose internal restrictions have generally been rebuffed. While most liberal democracies have, over the last twenty years, made some efforts to accommodate ethnic and national differences, this shift towards a more 'multicultural' public policy has almost entirely been a matter of accepting certain external protections, not internal restrictions.

This distinction between internal restrictions and external protections, like the distinction between nations and ethnic groups, is not always easy to draw. Measures designed to provide external protection often have implications for the liberty of members within the community. Minimally, these measures often cost money to administer, and so may require increased taxation of members. But sometimes the implications can be more serious.

For example, the Salman Rushdie affair has led some British Muslims to propose group-libel laws that would provide the same protection to religious groups that hate-speech laws provide to racial groups. In the case of hate-speech laws, the motivation was to provide a form of external protection—that is, to protect blacks and Jews from racist elements in the larger society. Group-libel laws are often similarly defended as a way of protecting Muslims from the virulent 'Islamophobia' of Western countries. But group-libel laws can also be used to restrict the spread of blasphemy or apostasy within a religious community. Indeed, as the example of Rushdie himself suggests, there is reason to think that some Muslim leaders seek such laws primarily to control apostasy within the Muslim community, rather than to control the expression of non-Muslims.[12] Laws that are justified in terms of external protection can open the door to internal restrictions.

Another example involves indigenous land rights. The survival of indigenous cultures throughout the world is heavily dependent on protection of their land base, and indigenous peoples have fought tenaciously to maintain their land. Indeed, as I noted earlier, indigenous struggles over land are the single largest cause of ethnic conflict in the world (Gurr 1993: viii). But this land base is vulnerable to the greater economic and political power of the larger society. History has shown that the most effective way to protect indigenous communities from this external power is to establish reserves where the land is held in common and/or in trust, and cannot be alienated without the consent of the community as a whole. This is consistent with traditional notions regarding land amongst indigenous peoples, but one of the most common strategies that European settlers used for breaking open indigenous lands for settlement was to replace traditional communal ownership with individualized title, against the will of the indigenous peoples themselves. Once land is divided and alienable, it becomes possible for the wealthier members of the larger society to buy up the land and other resources on which the community depends. Moreover, individualized alienable land is also more vulnerable to expropriation by governments.

So the establishment of reserved land provides protection against the economic and political power of the larger society to buy out or expropriate indigenous land. Yet one by-product of common ownership of reserved land is that individual members of an indigenous community have less ability to borrow money, since they have less alienable property to use as collateral. While this is not a violation of a basic civil or political right, it is a significant restriction on the

liberty of individual members. Unfortunately, it seems to be a natural by-product of the external protection provided by indigenous land holdings.[13]

In so far as internal restrictions are present, they are often defended in this way as unavoidable by-products of external protections, rather than as desirable in and of themselves.[14] There is little enthusiasm for what we might call 'pure' internal restrictions—that is, protecting the historical customs or religious character of an ethnic or national group through limitations on the basic civil liberties of its members.

This distinction between internal restrictions and external protections is often ignored by both proponents and critics of group-differentiated rights. Thus we find liberal critics who assume that all forms of group-differentiated citizenship are 'affected by an inherent deficiency in that they place the group over and above the individual' (Tomuschat 1983: 978–9). While this is a relevant objection to internal restrictions, it is not valid for external protections, which do not 'place the group over and above the individual'.

The same mistake is also made by proponents of group-differentiated citizenship. For example, some Aboriginals in Canada have argued that their right to external protections against the larger society entails the right to limit the basic liberties of their own members. This was evident in two recent court cases in Canada. The first case involved the special fishing rights of Aboriginal peoples, which are a form of external protection. Fishing is an important aspect of some Aboriginal cultures, and guaranteed fishing rights ensure that they are not outbid or outvoted by the larger society on decisions regarding access to fishing. These external protections were upheld by the Canadian Supreme Court. The second case involved an Indian man who was literally kidnapped by members of his band and forced to undergo an initiation ceremony which involved assault, battery, and unlawful imprisonment. The defendants argued that the earlier Supreme Court decision supporting group-specific Aboriginal fishing rights proved that the 'collective rights' of Aboriginal peoples take precedence over individual rights in the Canadian constitution. The Court rejected this reasoning, and rightly so, since there is no reason to assume that external protections and internal restrictions stand or fall together.[15]

Rather than granting an unqualified priority to collective over individual rights, or vice versa, we should instead distinguish external protections and internal restrictions. Far from standing together, I will argue in Chapter 5 that the very reasons we have to support external protections are also reasons to oppose internal restrictions.

2. *The Ambiguity of 'Collective Rights'*

We can now see why the term 'collective rights' is so unhelpful as a label for the various forms of group-differentiated citizenship. The problem is partly that the term is too broad, and partly that it fails to distinguish internal restrictions from external protections. But a deeper problem is that it suggests a false dichotomy with individual rights.

On one natural interpretation, 'collective rights' refer to the rights accorded to and exercised by collectivities, where these rights are distinct from, and perhaps conflicting with, the rights accorded to the individuals who compose the collectivity. This is not the only possible definition of collective rights—indeed there are hundreds of definitions in the literature—but almost everyone agrees that collective rights are, by definition, not individual rights.

Yet many forms of group-differentiated citizenship are in fact exercised by individuals. Group-differentiated rights can be accorded to the individual members of a group, or to the group as a whole, or to a federal state/province within which the group forms the majority.[16]

Consider minority language rights. The right of francophones in Canada to use French in federal courts is a right accorded to and exercised by individuals. The right of francophones to have their children educated in French schools is slightly different: it is exercised by individuals but only 'where numbers warrant'. The special hunting and fishing rights of indigenous peoples, on the other hand, are usually exercised by the tribe/band. For example, an Indian tribal/band council will determine what hunting will occur. An Indian whose hunting is restricted by her council cannot claim that this is a denial of her rights, because Indian hunting rights are not accorded to individuals. The right of the Québécois to preserve and promote their culture, affirmed in the existing system of federalism, is yet a fourth case: it is exercised by the province of Quebec, whose citizens are predominantly Québécois, but also include many non-francophones.[17] These are all group-differentiated rights, since they are accorded on the basis of cultural membership. But some are accorded to individuals, some to the group, some to a province or territory, and some where numbers warrant.

The fact that certain minority language rights are exercised by individuals has led to a large (and largely sterile) debate about whether they are really 'collective rights' or not. This debate is sterile because the question of whether the right is (or is not) collective is morally unimportant. The real issue in evaluating language rights is why they

are group-specific—that is, why francophones should be able to demand court proceedings or education in their mother-tongue at public expense when Greek- or Swahili-speakers cannot. The answer, I have suggested, is that language rights are one component of the national rights of the French Canadians. Since immigrant groups are not national minorities, they are not accorded similar language rights. (I discuss whether this is justified or not in Chs. 5–6.)

The fact that French Canadians are a national minority is essential to understanding why individual francophones have a right to a trial in French, and why a group of francophone parents can demand a French school where numbers warrant, and why the province of Quebec has jurisdiction over education under the federal division of powers. These variations in who actually exercises the right are largely a matter of administrative convenience which does not affect the underlying justification based on the recognition of the French as a national minority. Since Greeks, for example, are not a national minority in Canada, they are not granted either individual or collective rights regarding the official recognition of their mother tongue.

The case of Indian hunting rights also shows that what matters is not whether the right is 'collective' (as opposed to individual), but that it is group-differentiated. Many non-Indians in the United States, Canada, and Australia object to the fact that Indians have special hunting and fishing rights. But they would not be appeased if these rights were accorded to individual Indians rather than to the band. They object to the fact that rights are accorded on the basis of group membership, thereby giving Indians special rights and special status. Whether these group-specific rights are attributed to individual Indians or Indian bands/tribes is, for critics, largely irrelevant.[18]

So describing group-differentiated citizenship in the language of collective rights is doubly misleading. Some group-differentiated rights are in fact exercised by individuals, and in any event the question of whether the rights are exercised by individuals or collectives is not the fundamental issue. The important issue is why certain rights are group-differentiated—that is, why the members of certain groups should have rights regarding land, language, representation, etc. that the members of other groups do not have.[19]

This conflation of group-differentiated citizenship with collective rights has had a disastrous effect on the philosophical and popular debate. Because they view the debate in terms of collective rights, many people assume that the debate over group-differentiated citizenship is essentially equivalent to the debate between individualists and collectivists over the relative priority of the individual and the

community. Individualists argue that the individual is morally prior to the community: the community matters only because it contributes to the well-being of the individuals who compose it. If those individuals no longer find it worthwhile to maintain existing cultural practices, then the community has no independent interest in preserving those practices, and no right to prevent individuals from modifying or rejecting them. Hence individualists reject the idea that ethnic and national groups have any collective rights.

Collectivists, by contrast, deny that a community's interests are reducible to the interests of the members who compose it. They put collective rights on a par with individual rights, and defend them in a parallel way. Theories of individual rights begin by explaining what an individual is, what interests she has *qua* individual, and then derive a set of individual rights that protect those interests. Similarly, collectivists begin by explaining what a community is, what interests it has *qua* community, and then derive a set of community rights that protect those interests. Just as certain individual rights flow from each individual's interest in personal liberty, so certain community rights flow from each community's interest in self-preservation. These community rights must then be weighed against the rights of the individuals who compose the community.

This debate over the reducibility of community interests to individual interests dominates the literature on collective rights.[20] But it is irrelevant to most group-differentiated rights issues in liberal democracies. The claim that communities have interests independently of their members is relevant to internal restrictions—it might explain why members of a community are obliged to maintain cultural practices. But it cannot explain external restrictions—that is, why some rights are unequally distributed between groups, why the members of one group have claims against the members of another group. The idea that groups are prior to individuals, even if true, cannot by itself explain this asymmetry between groups.

Collectivists and individualists disagree about whether communities can have rights or interests independently of their individual members. This argument over the primacy of the individual or the community is an old and venerable one in political philosophy. But it should be clear, I hope, how unhelpful it is for evaluating most group-differentiated rights in Western democracies. Most such rights are not about the primacy of communities over individuals. Rather, they are based upon the idea that justice between groups requires that the members of different groups be accorded different rights.

Does justice between the members of different groups require

group-differentiated citizenship? I believe it does, and Chapters 5 and 6 will explain why. Before we explore these arguments, however, I want to fill in some of the historical background. My arguments will challenge some deeply rooted liberal beliefs about freedom and equality, and so it is important to see how those views became so deeply rooted in the first place.

CHAPTER 4

Rethinking the Liberal Tradition

We now have a clearer idea, I hope, of the types of groups and the types of claims which underlie the 'politics of multiculturalism'. How should liberals respond to these claims? Contemporary liberal thinkers are of little help in answering this question. Few contemporary theorists have explicitly discussed the rights of ethnic and national minorities, or developed any principles for evaluating claims to language rights, for example, or federal autonomy.

It was not always this way. For most of the nineteenth century and the first half of the twentieth, the rights of national minorities were continually discussed and debated by the great liberal statesmen and theorists of the age. As I will show, they disagreed about how best to respond to multination states, but they all took it for granted that liberalism needed some or other theory of the status of national minorities.

Contemporary liberals, by contrast, have been surprisingly silent about these issues. There are very few discussions of the differences between nation-states and polyethnic or multination states, or of the demands associated with each form of ethnic or national diversity. And when contemporary liberals have addressed these issues—often in brief pronouncements or parenthetical asides—they have tended to recite simplistic formulas about 'non-discrimination' or 'benign neglect', formulas that cannot do justice to the complexities involved.

In this chapter, I will trace the origin of contemporary liberal attitudes towards minority rights. I will first explore some of the historical debates about national minorities (s. 1), then consider some of the reasons why this issue virtually disappeared from view after World War II (ss. 2–4), and conclude with a brief discussion of the role of minority rights in the socialist tradition (s. 5).

In the process, I hope to correct some common mistakes about the liberal tradition. It is widely believed that liberals have always