

Koopmans, Ruud

Working Paper

Cultural rights of native majorities between universalism and minority rights

WZB Discussion Paper, No. SP VI 2018-106

Provided in Cooperation with:

WZB Berlin Social Science Center

Suggested Citation: Koopmans, Ruud (2018) : Cultural rights of native majorities between universalism and minority rights, WZB Discussion Paper, No. SP VI 2018-106, Wissenschaftszentrum Berlin für Sozialforschung (WZB), Berlin

This Version is available at:

<https://hdl.handle.net/10419/194003>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.



Ruud Koopmans

Cultural Rights of Native Majorities between Universalism and Minority Rights

Discussion Paper

SP VI 2018–106

December 2018

Research Area

Migration and Diversity

Research Unit

Migration, Integration, Transnationalization

WZB Berlin Social Science Center
Reichpietschufer 50
10785 Berlin
Germany
www.wzb.eu

Copyright remains with the author.

Discussion papers of the WZB serve to disseminate the research results of work in progress prior to publication to encourage the exchange of ideas and academic debate. Inclusion of a paper in the discussion paper series does not constitute publication and should not limit publication in any other venue. The discussion papers published by the WZB represent the views of the respective author and not of the institute as a whole.

Ruud Koopmans

Cultural Rights of Native Majorities between Universalism and Minority Rights

Discussion Paper SP VI 2018–106

Wissenschaftszentrum Berlin für Sozialforschung (2018)

Affiliation of the author

Ruud Koopmans

WZB Berlin Social Science Center & Humboldt University Berlin

Email: ruud.koopmans@wzb.eu

Abstract

Cultural Rights of Native Majorities between Universalism and Minority Rights

Minorities' claims for rights increasingly clash with majorities who wish to retain and defend "national" cultural and religious traditions. Debates around minarets in Switzerland, burqas in France, Saint Nicolas' companion "Black Pete" in the Netherlands, and about freedom of speech versus respect for minorities in several countries are cases in point. Such issues are highly salient and offer a major mobilization potential for populist parties. However, while publications about minority rights abound, the normative literature is remarkably silent on the issue of the normative legitimacy of rights claims by autochthonous cultural majorities.

The reason for this negligence is the assumption that majorities can, by definition, impose their will by electoral force. But in the postwar rights regime in which protection for minority rights has proliferated, there are many situations in which parliamentary majorities have been trumped by court decisions or obligations derived from international treaties. Moreover, even if electoral majorities prevail, this does not solve the normative problem and leads to situations in which claims of minorities, legitimated by national and supranational minority protection norms, stand against majorities backed by the electoral power of numbers but lacking normative legitimacy. The paper argues that it is this dynamic of "right" versus "might" that is an important structural factor behind the rise of nationalist populism across Western countries. This confrontation has a tendency to polarize and to escalate, because there is no common normative ground on which the legitimacy and limits of majority rights claims can be negotiated. For one side in such debates, majorities have no legitimate right whatsoever to claim privileges for their language or culture over others, for the other side, this right is absolute because in the populist view democratic legitimacy is reduced to whatever the majority decides.

A normative elaboration of the legitimacy and limits of cultural majority claims is necessary to escape from this confrontation that increasingly poisons the political debate in Western democracies. An additional reason to take cultural majority rights more strongly into consideration is that the idea that majority cultures are not in need of any special protection is less and less tenable. In a more and more globalized world where Anglo-Saxon culture has become the norm in many domains, the distinction between "dominant" and "minority cultures" can no longer be exclusively seen as applying to relationships within nation-states, but increasingly also applies to the unequal balance of power between the cultures of nation-states.

Keywords: majority rights, self-determination, immigration, indigenous peoples, populism, multiculturalism

Table of contents

1. Introduction	1
2. Two recent examples from the Netherlands.....	3
3. Universal human rights and the anti-discrimination principle	7
4. Minority rights.....	10
5. The normative foundation for minority rights.....	13
6. Discussion and conclusion: The majority, too, has cultural rights	18
7. References.....	25

1. Introduction

In the context of immigration and associated increased cultural and religious diversity, minorities' claims for rights increasingly clash with sections of majority populations who wish to retain and defend "national" cultural and religious traditions. Debates around minarets in Switzerland, burqas in France, Saint Nicolas' companion "Black Pete" in the Netherlands, and about freedom of speech versus respect for minorities in several countries are cases in point. Such issues are highly salient and offer a major mobilization potential for populist parties. However, while publications about minority rights abound, the normative literature is remarkably silent on the issue of the normative legitimacy of rights claims by autochthonous cultural majorities.¹

This paper addresses this normative question. The proliferation of minority protection provisions in supranational treaties as well as in national legislation after the Second World War has led to a shift from the pre-WWII centrality of self-determination rights of national majorities to a new rights regime in which universal human rights and rights of cultural and religious minorities are central. This new rights regime has left the cultural rights of majorities largely in a normative void. In the light of the appalling crimes committed against minorities during and between the two World Wars under the hegemony of unbridled majority nationalism, a shift in this direction was clearly called for. However, intentionally or unintentionally, the consequence has been that arguments in defense of the rights of cultural majorities have been largely placed outside the accepted normative order.

Paradoxically, the same universalization of rights that has made it increasingly difficult for nation-states to require assimilation to a national culture, has led to a proliferation of particularistic cultural claims by minority groups backed by a multitude of international treaties and conventions on the rights of minority cultures. As a result, it has become difficult in liberal democracies to set normative limits to the cultural rights of minorities. Even though governments and courts across Europe have in several cases ruled against minority claims, they have usually done so with reference to practical considerations, rather than on principled normative grounds. For instance, limitations on the wearing of the burqa in countries such as France, the Netherlands, and Belgium have been

¹ An exception is Orgad 2016.

legitimized as security measures (fully veiled persons cannot be identified) or with reference to communication (e.g., a kindergarten teacher with full face covering cannot properly communicate with small children).

Clashes between majorities and minorities over cultural and religious rights have become particularly intense where claims by immigrant minorities are concerned. Taking the Canadian philosopher Will Kymlicka's discussion of the different normative basis for rights claims by immigrant and national minorities as a point of reference, I argue that this is not a coincidence. Based on the idea that access to a "societal culture" is a precondition for individual freedom and meaningful choice, he concludes that national minorities should have far-reaching rights to practice and protect their culture, as well as special political representation rights and self-governance. Ethnic groups derived from immigration, by contrast, have waived their right to such far-reaching group rights.

If we accept Kymlicka's normative distinction, by implication national majorities should have equally strong claims to cultural rights as national minorities. If the legitimacy of national minorities' claims for cultural rights is stronger than that of similar claims by immigrant minorities, the same should follow for national majorities. And if national minorities can privilege their language and culture in the institutions and public sphere of their autonomous territories, why should this not apply to national cultural majorities? This implication of the normative literature on minority rights has not received much attention. The reason for this is the assumption that majorities can, by definition, implement their interests by electoral force. But in the postwar rights regime in which protection for minority rights has proliferated, there are many situations in which parliamentary majorities have been trumped by court decisions or obligations derived from international treaties. Moreover, even where minority protection is not strictly legally enforceable and electoral majorities can impose their way, this does not solve the normative problem and leads to a proliferation of situations in which claims of minorities, legitimated by national and supranational minority protection norms, stand against majorities backed by the electoral power of numbers but lacking normative legitimacy. The paper argues that it is this dynamic of "right" versus "might" that is an important structural factor behind the rise of nationalist populism across Western countries. This confrontation has a tendency to polarize and to escalate, because there is no common normative ground on which the legitimacy and limits of majority rights claims can be negotiated. For one side in such debates, majorities have no

legitimate right whatsoever to claim privileges for their language or culture over others, for the other side, this right is absolute because in the populist view democratic legitimacy is reduced to whatever the majority decides.

A normative elaboration of the legitimacy and limits of cultural majority claims is necessary to escape from this confrontation that increasingly poisons the political debate in Western democracies. An additional reason to take cultural majority rights more strongly into consideration is that in a globalizing world the idea that majority cultures are not in need of any special protection is less and less tenable. For instance, the position of smaller languages, even if they are official languages of nation-states, has come under pressure because of the proliferation of English as the dominant language in an increasing number of domains. Master's programs in many European countries – e.g., the Netherlands and the Scandinavian countries – are now predominantly taught in English, and even larger countries such as Germany are now following suit. In the domain of cultural products such as cinema and popular music, the market share of local cultural products has been declining for decades. In the light of this, it becomes increasingly difficult to argue why national minorities such as the French-speaking Canadians in Quebec should have a legitimate right to protect their language and culture, including the use of French language knowledge as an entry criterion for immigrants, whereas attempts by national majorities to do the same are widely regarded as illegitimate. In a more and more globalized world where Anglo-Saxon culture has become the norm in many domains, the distinction between “dominant” and “minority cultures” can no longer be exclusively seen as applying to relationships within nation-states, but increasingly also applies to the unequal balance of power between the cultures of nation-states.

2. Two recent examples from the Netherlands

In 2011, the government of the Netherlands proposed a ban on the wearing of garments that fully cover the face, specifically targeting burqas worn by some ultra-conservative Muslim women. The government argued that full face-covering cannot be reconciled with the societal need for open communication, as well as with the equal participation of women in public life. However, in November 2011, the Council of State, one of the country's highest legal authorities, judged that the law proposal contradicts article 9 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). This article

allows restrictions of the freedom of religion in the presence of pressing social needs and a legitimate aim necessary for the functioning of a democratic society. The Council of State argued that the Dutch government had not presented convincing arguments that such pressing needs exist in the case of the burqa. Moreover, the Council argued, “it is not upon the legislator to ban the burqa or niqaab on the basis of an interpretation of the principle of equality that runs counter to the convictions of the women concerned”.² In other words, the government cannot claim, according to the Council, that the burqa is a symbol of gender inequality if the burqa-wearing women themselves claim that this is their free choice and that they do not view the burqa as a symbol of gender oppression. The Council’s ruling was in line with earlier court rulings in the Netherlands against municipal authorities who had cut social welfare benefits of burqa-wearing women because they were de-facto unemployable and thereby violated the requirement of social welfare recipients to undertake reasonable efforts to find paid employment. The courts ruled that such cuts contravened the freedom of religion. An interesting detail is that in the most prominent of these cases, the municipal authority in question was the Social Affairs Alderman of the City of Amsterdam, Ahmed Aboutaleb – currently mayor of Rotterdam – who is himself a Muslim. As a result of these legal defeats, the government has withdrawn its original plan for a general burqa ban and introduced a more limited bill that bans face covering only in public institutions such as schools, hospitals, and courts of law, as well as in contexts where identification is required, such as public transport. The new bill no longer makes any reference to gender equality and instead emphasizes value-neutral aspects such as communication, identification, and security issues. Even though the bill has now passed both Chambers of Parliament and satisfies the legal objections of the Council of State, the authorities of several cities, including the capital Amsterdam, have announced that they will not implement it and will not issue fines for women who defy the ban.³

While discussions on the burqa have also occurred in other countries – e.g., France and Belgium, where general burqa bans have been passed – the second example refers to a particularly Dutch cultural tradition, which has become fiercely contested in recent years. Unlike most other Western countries, which have imported the US-American “Santa Claus”, who brings children presents at Christmas, the Dutch primarily celebrate Saint Nicolas, “Sinterklaas” in Dutch,

² Advice W04.11.0379/I; see <http://www.raadvanstate.nl/adviezen/zoeken-in-adviezen/tekst-advies.html?id=10095>.

³ See <https://www.volkskrant.nl/nieuws-achtergrond/halsema-neemt-niets-terug-het-boerkaverbod-blijft-on-amsterdams~b22e1818/>.

who brings children presents on the eve of his birthday on the 6th of December. Historically, “Santa Claus” is a phonetic derivation of “Sinterklaas”, who was introduced in North America by the Dutch in the 17th century to their New Netherland colony. Both are still old men with white beards, dressed in red-and-white, who deliver their gifts through the chimney, but in other regards they have diverged. Santa rides a reindeer, Sinterklaas a white horse; Santa hails from the North Pole, Sinterklaas from Spain; Santa is assisted by elves, Sinterklaas by “Zwarte Pieten”, “Black Petes” – and that is where the trouble started.

The Sinterklaas and Zwarte Piet tradition is one of the most cherished parts of Dutch culture, and is at the center of kids’ lives for several weeks leading up to the 6th of December. In a nationally televised event, Sinterklaas and the Pieten arrive in mid-November on their steam boat from Spain. Every night, children sing songs for them and put their shoes in front of the chimney and offer drawings for Sint and Piet and hay, carrots and water for the horse. The adventures of Sint and the Pieten while in the Netherlands are televised in a daily Sinterklaas news show. Like the Santa Claus story, the one about Sinterklaas and Zwarte Piet is a fantasy, full of impossible events, unreal characters, and logical inconsistencies. In the past, the only people who have at times objected to it were orthodox Protestants, who saw in it a form of Roman-Catholic idolatry, since Sinterklaas is according to the legend a Catholic bishop. For this reason, there are a few villages in the Dutch Protestant Bible Belt where Sinterklaas is not celebrated. But for hundreds of years, even during the long period during which Roman Catholicism was official banned, bishops were not allowed in the Netherlands and the Dutch Reformed Church was the state religion, no one has ever proposed to alter the tradition to accommodate Dutch Protestants. Tellingly, the only change that has occurred is a much more recent one that occurred to accommodate not Protestant hardliners but Muslims: in Amsterdam and some other cities Sinterklaas no longer has a cross on his bishop’s mitre.

Other than that, the tradition was largely uncontested until 2011, when the artist and activist Quinsy Gario, born on the Dutch-Caribbean island of Curacao, started the campaign “Zwarte Piet is Racism.” According to Gario and other opponents, the Zwarte Piet character refers to the inferior position of blacks during the period of slavery. The campaign was ultimately successful in making this the dominant interpretation, but from an ethnological and historical perspective this is highly contestable. The Saint Nicholas tradition is also

present in many other European countries, e.g., France, Germany, Switzerland, Austria, the Czech Republic, and Italy. In most countries, he is accompanied by a dark figure – named, e.g., “Krampus”, “Knecht Ruprecht”, “Père Fouettard” – who punishes the children who have been “bad” during the preceding year and rewards the “good” children with sweets and gifts. The Dutch “Zwarte Piet” originally also had this function, and carried a sack in which bad children were supposedly taken to Spain. Nowadays, only the positive function as a gift-giver remains. In the Sinterklaas story, two reasons are given for why Piet is black: first, he delivers presents to children’s homes by climbing through the chimney; second, because Sinterklaas comes from Spain, Piet is a Moor. Indeed, Piet’s looks bear a close resemblance to the image of the Moor in European heraldry, e.g. in the flags of the Mediterranean islands of Corsica and Sardegna, and in several family weapons across Europe. All these date from the Middle Ages and predate the age of colonialism and slavery.

In 2013 the debate intensified as a result of an intervention by the Jamaican Professor Verene Shepherd, chairwoman of the UN “Working Group of Experts on People of African Descent.” Based on reports by Gario and other activists, the Working Group has started an investigation and had asked the Dutch government in a letter to clarify the matter. Before the investigation had even begun or the letter to the government had been answered, Professor Shepherd stated in a television interview that she could not understand “why the Dutch refuse to see that this is a return to slavery and that in the 21st century this celebration has to stop”. And, she added, “why do you people need two Santa Clauses anyway?”

In July 2014, the Amsterdam Court retroactively annulled the permit that the City of Amsterdam had given to the Sinterklaas parade of 2013. The Court’s argument was that in deciding on the granting of the permit the City should have taken into account article 8 of the European Convention and Human Rights, which refers to the right to protection of the private sphere. Referring to the *Aksu v. Turkey* case, the Court ruled that the negative stereotyping of “black people” can have serious consequences for the latter’s private lives. As proof, the Court referred to a survey from the year 2012 by the Amsterdam Bureau of Statistics, which showed that respectively 27, 18 and 14 percent of the Surinamese, Antillean and Ghanese Amsterdammers regard Zwarte Piet as discriminatory. It remained unclear why the Court did not find it relevant that not only 93 percent of all Amsterdammers but also large majorities of respectively 73, 82 and 86 of black Amsterdammers of Surinamese, Antillean

and Ghanese descent felt differently. It is further remarkable that the Court rejected the claim by the plaintiffs that Zwarte Piet also violates the anti-discrimination clause (article 1) of the Dutch constitution, because the Court found that there was no evidence of discriminatory intention or “that the event resulted in the unequal treatment of different groups.” On appeal, the Amsterdam court ruling was overturned, but this has not ended the controversy over Zwarte Piet.

In 2017, the debate got an interesting twist when the nationally televised arrival of Sinterklaas took place in the town of Dokkum in the Northern province of Friesland. The Frisians are a previously independent ethnic group with their own language, who have in the 20th century obtained minority language rights and who cherish a range of cultural practices and a strong regional identity that set them apart from their historical rivals, the “Hollanders.” As a predominantly agricultural region, famous for its dairy products, Friesland has few immigrants, and the Sinterklaas and Zwarte Piet tradition had remained locally uncontroversial. In 2017, however, anti-Zwarte Piet activists from Amsterdam and other cities in “Holland,” i.e. the urbanized Western part of the Netherlands, announced they would come to Dokkum to demonstrate on the day of the arrival of Sinterklaas. Angry Frisians prevented the arrival of the busses carrying the activists by blocking the highway. In 2018, several of the Frisians were convicted to up to six weeks of community service and in one case a suspended prison sentence. Outside the courthouse, supporters of the defendants waved Frisian flags and sang the Frisian national anthem. Thus, the Zwarte Piet controversy also became a conflict between representatives of black immigrant minorities and their Holland-Dutch supporters, on the one hand, and the Frisian-Dutch national minority, on the other.

3. Universal human rights and the anti-discrimination principle

In the heyday of nationalism there was very little that protected cultural minorities against a restriction of their rights by the majority. In several treaties concluded after the First World War with new nation-states such as Poland, Hungary and Turkey, provisions were included to protect the rights of minorities, but, partly because of the weakness of the League of Nations, their implementation left much to be desired. Normatively, it was seen as self-evident that Germany was there for the Germans, Poland for the Poles, etc. As a result of the catastrophes of the Second World War and the Holocaust this previously

hegemonic way of thinking entirely lost its legitimacy – at least in Western liberal democracies – and is nowadays only voiced by politicians of the extreme right.

In order to make a tyranny of the majority impossible in the future, two legal instruments proliferated after World War II: universal human rights and minority rights. The first group includes the Universal Declaration on Human Rights of 1948, the European Convention on Human Rights (1950), and the International Convention on Civil and Political Rights (1976). The various human rights treaties encompass explicit anti-discrimination clauses that commit the signatory states to guarantee fundamental rights to all persons residing on their territories, regardless of their race, ethnicity, belief, language, gender or political convictions. Specific treaties, such as the International Treaty on the Elimination of All Forms of Racial discrimination (1969), augment this anti-discrimination principle. For liberal democracies, human rights and the principle of non-discrimination are also key elements of their self-definition and identity, often laid down in national constitutions.

This universalization of rights and the attendant normative taboo on making distinctions of a cultural nature set narrow boundaries to the possibilities of liberal-democratic nation-states to emphasize and protect their cultural specificity. As the German sociologist Christian Joppke puts it:

“nation-states, of course, continue to exist but national particularisms can no longer be enforced through their membership policies. To the degree that references to things ‘national’ still appear in these policies, they only appear as local versions of the liberal-democratic creed of equality and individual rights.” (Joppke 2005: 44-45)

The same applies to the trend in various West European countries to introduce binding integration courses and exams for immigrants. Such laws have often been introduced in response to the electoral pressure of right-wing populist parties, who demand the assimilation of immigrants to the national culture (Koopmans, Michalowski en Waibel 2012). However, in practice, these integration requirements consist mostly of knowledge of universal values such as democracy, freedom of expression, non-discrimination, and the separation of church and state (see also Michalowski 2011):

“The turn to civic integration is indeed driven by the attempt to commit and bind newcomers to the *particular* society that is receiving them, notionally making them familiar with the ‘British’ or ‘Dutch’ values and ways of doing things. But, if

one looks closer, these particularisms are just different names for the universal creed of liberty and equality that marks *all* liberal societies – there is nothing particularly ‘British’ or ‘Dutch’ about the principles that immigrants are to be committed to or socialized into” (Joppke 2004: 253).

The only significant exception is knowledge of the national language, but the normative legitimation given here is not the particularistic argument that this is the language of the native population to which immigrants need to assimilate, but the universalistic argument that there needs to be a common language for communication in the public sphere. Nonetheless, even language requirements for immigration or naturalization are highly contested. In the Netherlands, for instance, many legal experts argue that such requirements, as well as the fact that immigrants are themselves responsible for the costs of learning the language, violate international treaties (for instance Groenendijk 2012; Advice W04.11.0232/I of the Council of State, 2011).

While the universalization of rights thus makes it increasingly difficult for nation-states to require assimilation to the national culture, these same universal rights have led to a proliferation of particularistic claims by minority groups. According to the British-Turkish sociologist Yasemin Soysal:

“the universal right to ‘one’s own culture’ has gained increasing legitimacy, and collective identity has been redefined as a category of human rights. What are considered particularistic characteristics of collectivities – culture, language and standard ethnic traits – have become variants of the universal core of humanness or selfhood” (Soysal 2000: 6).

Such minority claims include exemptions from existing laws (e.g., regarding dress requirements or the slaughtering of animals), support for the maintenance of minority cultures (e.g., special media or school programs in minority languages) and affirmative action for minority group members in various institutions. These are legitimized by referring to the anti-discrimination principle and to the right to “one’s own culture” and “identity”, which have been included in various international conventions, such as article 27 of the International Treaty on Civic and Political Rights:

“In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.”

Universal legal norms not only form the basis for claims for positive rights, but also for demands that limit the freedom of expression of others, whose utterances or behavior are seen as discriminatory, hurtful, sacrilegious or insulting for specific minority groups. When belonging to a certain ethnic, racial or religious group is seen as a core component of personal identity, such expressions can be interpreted as affecting people's private sphere and the dignity of their personhood and thereby as an infringement on basic universal rights – as in the discussions on the Danish Mohammed cartoons.

4. Minority rights

In the context of universal human rights, ethnicity and culture become relevant in an indirect way, by way of the anti-discrimination norm and through the connection that is made between individual dignity and personhood and belonging to a certain group. Next to this, there has been an expansion since the Second World War of direct and explicit group rights for minorities. This includes international treaties such as the United Nations Declaration on the Rights of People Belonging to National, Ethnic, Religious and Linguistic Minorities (1992), the Framework Convention on the Protection of National Minorities (1995) of the Council of Europe, and the United Nations Declaration on the Rights of Indigenous Peoples (2007). On the national level, many countries have strengthened the rights and autonomy of regional minorities (e.g., in Catalonia, Scotland, and Quebec), as well as those of indigenous “First Nations” (for instance the autonomous area of Nunavut for the Canadian Inuit).

Definitions of indigenous peoples and “minorities” are lacking in these treaties. The most often-referred to circumscription of the notion of indigenous peoples is the one of Martinez Cobo, Special Rapporteur of the UN Sub-Committee on Prevention of Discrimination and Protection of Minorities:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on their territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.

.... This reserves for these communities the sovereign right and power to decide who belongs to them, without external interference.”⁴

As this definition indicates, indigenous peoples can claim far-reaching rights, including the right to their own legal system and the autonomous definition of the criteria of group membership. This can include rules which would, were they to be found in nation-states, be regarded as serious infringements on universal human rights. For instance, the membership rules of many Native American tribes are based on blood relationships and assign differential rights on members depending on their degree of “tribal blood.” Regular membership in the Laguna, one of the Pueblo tribes of the South Western United States, is for instance reserved to those who can claim at least 50 percent Laguna blood. Individuals with more than 25% Laguna blood can become members by way of naturalization, but they do not have the same rights as regular members.⁵ Other tribes withhold membership to the children of women who have married someone from outside the tribe.⁶ The Pueblo de Cochiti of New Mexico have a theocratic form of government that would not make a bad figure in Iran, with a spiritual leader at its head, assisted by a council of elders consisting only of men.⁷

The most authoritative definition of the notion of “minorities” has been provided by another Special Rapporteur of the UN Sub-Committee on Prevention of Discrimination and Protection of Minorities, Francesco Capotorti:

“A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language” (United Nations 2010: 2)

This definition shares with the one of indigenous peoples that the desire of the group in question to maintain its cultural traditions and its non-dominant status are emphasized, but differs in that there is no reference to a historical connection to a specific geographical territory. As a consequence, the definition encompasses both so-called “national minorities” (such as the Scots), and ethnic groups that have resulted from recent immigration (such as Sikhs in the United

⁴ UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1–4.

⁵ See <http://www.lagunapueblo-nsn.gov/Enrollment.aspx>.

⁶ See http://en.wikipedia.org/wiki/Santa_Clara_Pueblo_v._Martinez.

⁷ See <http://www.pueblodecochiti.org/government.html>; see also Carpenter 2012.

Kingdom). States commit themselves in these various treaties to not only tolerate the languages, religions, and traditions of minorities, but to also actively support their maintenance. The example of the UN Declaration on Minority Rights illustrates this:

“States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity” (article 1); “Persons belonging to national or ethnic, religious and linguistic minoritieshave the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination” (article 2); “States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.....” (article 4).

On the national level, such minority rights are linked to the discourse of multiculturalism. Empirical research shows that since the 1970s in Western countries there has been a strong expansion of rights, both for indigenous, national minorities, and for ethnic groups derived from recent immigration (Koopmans et al. 2012; Banting en Kymlicka 2013). The notion of “multiculturalism” has in many countries arguably lost some of its appeal since the early 21st century, but the rights and policy principles that it has inspired have largely been maintained and are now legitimized by new terminologies, such as “diversity policies”, which in practice largely amount to the same thing (Vertovec and Wessendorf 2010; Banting and Kymlicka 2013; Koopmans 2008).

In the case of immigrant minorities these multicultural rights include in the Netherlands for instance exemptions from burial and animal slaughtering laws, state subsidies and political consultation rights for ethnic organizations, special programming for ethnic target groups in the public media, affirmative action in the state sector, the toleration of religious apparel (particularly the Islamic headscarf) in almost all public functions, as well as the already mentioned court rulings in favor of burqa wearers. In addition, immigrant religious minorities have been able to claim extensions to them of special rights that had been granted to indigenous religious groups, enabling Muslims and Hindus to acquire

full state funding for their own denominational schools, as well as for Islamic and Hindu religious classes in public schools.

The most important Dutch example of national minority rights are the language rights of Frisians in the province of Friesland. Frisian is, next to Dutch, an official language of the province and Frisian is an obligatory part of the school curriculum (albeit with exemption clauses for a few regions in the province where Dutch is the majority language). Inhabitants of the province have the right to communicate with the provincial and municipal authorities in Frisian. In other countries national minority rights may go much further. In the Canadian province of Quebec, for instance, French is the only official language, even though a significant part of the province's population is English-speaking. Knowledge of French is a precondition for access to jobs in the public sector, as well as for admission to several professional groups. All private businesses with more than 50 employees must have French as their working language. Knowledge of French also plays an important role in the point system that regulates access of labor migrants to Quebec. Basic knowledge of French is a necessary requirement and extra points are awarded for better levels of French proficiency, as well as for knowledge of the "history, culture, geography, society, and values of the Province of Quebec." In regard to language requirements for labor migrants Quebec does not differ much from the rest of Canada, where knowledge of English is a similarly important selection criterion.

5. The normative foundation for minority rights

The normative literature in political philosophy on minority rights and multiculturalism is extensive and includes both outspoken opponents (e.g., Barry 2002), and outspoken advocates (e.g., Young 1990). The most influential theory on minority rights, the one of the Canadian philosopher Will Kymlicka, takes a differentiated intermediary position. His ideas have been influential in shaping Canadian multiculturalism, which in its turn has influenced debates in other countries and is often cited by proponents of multicultural policies as an example to be followed.

Kymlicka views himself as a liberal for whom individual choice and personal development are primary. In his opus magnum "Multicultural Citizenship" (1995) he argues that rootedness in what he calls a "societal culture" is an essential precondition for personal development: "a societal culture ... is a culture which

provides its members with meaningful ways of life across the whole range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language” (1995: 76). Meaningful individual choices are only possible within such a cultural framework: “freedom involves making choices amongst various options, and our societal culture not only provides these options, but also makes them meaningful to us To understand the meaning of a social practice, therefore, requires understanding of this ‘shared vocabulary’ – that is, understanding the language and history which constitute that vocabulary” (1995: 83).

Kymlicka proceeds by making two important distinctions. The first is the one between “national minorities,” on the one hand, and “ethnic groups” derived from immigration, on the other. He defines national minorities as “historically settled, territorially concentrated and previously self-governing cultures whose territory has become incorporated into a larger state” (Kymlicka 1999: 100). Based on the idea that access to a societal culture is a precondition for the liberty and personal development of the individual, Kymlicka concludes that national minority groups should have the rights to practice their culture freely, to active protection of that culture against assimilation by the majority culture, as well as to special political representation rights or political autonomy. Ethnic groups derived from immigration, however, have in the eyes of Kymlicka voluntarily given up their claim to such far-reaching rights: “people should be able to live and work in their own culture. But like any other right, this right can be waived, and immigration is one way of waiving one’s right” (1995: 96). This, he argues, even applies to refugees, even though their migration has not been voluntary: “refugees suffer an injustice, since they did not voluntarily relinquish their national rights. But this injustice was committed by their home governments, and it is not clear that we can realistically ask host governments to redress it” (1995: 99). The implication of these arguments – which Kymlicka does not further develop – is that ethnic groups derived from immigration can only make legitimate claims to rights similar to national minorities when their migration was both involuntary, and the receiving country (or its historical predecessors) was responsible for their migration. An example for the Dutch case would be the ethnic group of Moluccans, who descend from native Indonesian soldiers in the Dutch colonial army, who were “repatriated” – still as army soldiers and therefore involuntarily – by the Dutch government after Indonesia became independent. France has a similar group of “Harki,” Algerian

Muslims who fought on the French side in the Algerian independence war. African Americans in the United States would also have a strong claim to the status of a national minority.

This does not mean that Kymlicka does not recognize any legitimate claims to cultural rights by immigrant ethnic groups. If their participation in the institutions of the majority culture is negatively affected by cultural barriers, these should where possible be removed. Examples he mentions include exemptions to Sunday closure laws for Jews and Muslims, and the Canadian exemption for male Sikhs from the obligation to wear a motor cycle helmet (1995: 96-97). The aim of such “poly-ethnic rights” is however not to protect the ethnic group’s culture, but to allow its equal participation in the institutions of the majority culture.

Second, Kymlicka distinguishes between two types of group rights: “external protection” and “internal restrictions”. External protection rights refer to the relationships among cultural groups and protect the minority culture against assimilation to, and discrimination by the majority culture. Examples are the right to education in minority languages, or exemptions from rules that are based on cultural traditions of the majority, such as Sunday closure. Internal restriction rights, by contrast, refer to rules regarding relationships within cultural groups, which limit the rights and personal development options of certain group members. The above-cited restrictions to the rights of women and of persons with a lower percentage of tribal blood among some Native American tribes are examples. From Kymlicka’s liberal perspective, this distinction is crucial:

“Indeed, what distinguishes a liberal theory of minority rights is precisely that it accepts some external protections for ethnic groups and national minorities, but is very skeptical of internal restrictions” (1995: 7).

Nonetheless, for Kymlicka the sovereignty rights that he grants to national minorities trump the argument against internal restrictions:

“In cases where the national minority is illiberal, this means that the majority will be unable to prevent the violation of individual rights within the minority community. Liberals in the majority group have to live with this, just as they must live with illiberal laws in other countries” (1995: 167).

However, no such toleration for illiberalism can be granted to ethnic groups derived from immigration:

“Cases involving newly arriving immigrant groups are very different. ... I don't think it is wrong for liberal states to insist that immigration entails accepting the legitimacy of state enforcement of liberal principles, so long as immigrants know this in advance, and nonetheless voluntarily choose to move” (1995: 170).

In practice, however, external protection and internal restrictions are often not easily separated. Allowing the wearing of the full face-covering burqa at work or at school can – as in most of the rulings of the Dutch Commission for Equal Treatment on the matter – be interpreted as an external protection, namely against religious discrimination. The burqa can however also – as in the original law proposal of the Dutch government discussed above or in the laws implemented in Belgium and France – be interpreted as an internal restriction. In this variant of Islamic orthodoxy, full covering is only required of women, and it is part and expression of a wider set of rules structuring gender relations, which requires strict segregation of men and women and excludes women from many functions that are reserved for men. In France, a similar line of argument was used by the government-appointed Commission Stasi in its advice on the ban on Islamic headscarves and other religious symbols in public schools. The Commission did not deny that some women wear the headscarf voluntarily, but emphasized that in many cases strong pressure and social control are exerted by families and by the wider Muslim community. In the hearings that the Commission undertook, several women testified about incidents in which women with a Muslim background who did not wear a headscarf had been insulted as whores by Muslim men, and in some cases had even been subjected to physical sexual harassment and rape (see *Le Monde* 2003). The Stasi Commission therefore interpreted the headscarf in the first place from the perspective of internal restrictions and expressed the hope that a ban in public schools would reduce the pressure on girls to wear a headscarf. In the eyes of the Commission, such protection against internal group pressures was especially important in the case of primary and secondary schools, because minors are concerned, who are in a dependent position vis-à-vis their families and communities and therefore not as capable of withstanding group pressures as adults. For this reason the French ban on the wearing of headscarves and other religious symbols does not apply to institutions of higher education.

Examples such as the burqa and the headscarf raise the question whether cultural practices that generally do *not* extend the range of choice options and the opportunities for personal development of (in this case female) individuals should be accommodated in liberal states. After all, if we follow Kymlicka's line

of argument, the reason to grant poly-ethnic and other minority rights is that enabling access to the group culture contributes positively to the freedom of choice of individuals. If the group culture implies limitations to the freedom of certain subgroups within them, there does not seem to be any good reason why liberal states should accommodate them. Whether such limitations of freedom are self-chosen does not make a principal difference because if this were decisive liberal states should also accommodate clitoridectomy and widow burning, because women (or their mothers) often follow these practices “voluntarily” and women themselves exert much of the social control that sustains them.⁸

A less extreme case in point from the Netherlands is the one of the Reformed State Party (SGP), a small fundamentalist Protestant political party, which gathers about two percent of the national vote. The party’s program aims to establish a theocratic form of government based on a strict interpretation of the Bible. One of the principles of the party is that women are not meant by God to be politically active. Therefore, the party favors limiting voting rights to males (or formally, in order not to get into trouble with the law; “breadwinners”) and does not allow women to take up any offices or elected positions within the party. In 2005, a feminist organization went to court and demanded that the government cancel the subsidies it gives to the SGP in the context of a general rule that provides state funding for political parties’ scientific foundations. The case went through the Dutch courts and ended in the final instance with a defeat for the SGP, which thereupon went to the European Court of Human Rights (ECtHR), but lost again. The Court explicitly rejected the party’s argument that SGP women agree to the rule that excludes them from office, because they share the party’s ideology: “No woman has expressed the wish to stand for election as a candidate for the applicant party. However, the Court does not consider that decisive.”⁹

Following this line of reasoning, the statement of burqa or headscarf wearers that they wear these garments voluntarily cannot in itself be a decisive argument, either. The consideration to be made is rather a case-by-case one to determine what should weigh more heavily: the external restrictions that would follow from non-accommodation of the practice, or the internal restrictions (“voluntary” or not) that would go with accommodation. This consideration will

⁸ Steven Lukes’ classical treatment of the different faces of power remains the crucial reference here; see Lukes 1974.

⁹ EHRM decision application 58369/10; see [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112340#{"itemid":"001-112340"}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112340#{).

for instance be different for the burqa than for the headscarf, because the former involves much greater restrictions to individual expression and unequivocally expresses an orthodox religious belief system that propagates the fundamental inequality of men and women. There does not seem to be any compelling reason why a liberal state should accommodate such a symbol of gender inequality in public institutions or even why the state should protect it against discrimination by individual citizens who for instance do not want to employ or teach burqa wearers. Whether there is sufficient ground for a general ban on burqas in the public sphere is yet another question.

6. Discussion and conclusion: The majority, too, has cultural rights

From the above considerations we can derive four good reasons why a normative and legal recognition of the rights of cultural majorities is necessary. The *first* reason is normative and logical consistency. If we accept that “persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture” (UN Minority Rights Treaty) and that “persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture” (European Convention on Human Rights), then argumentative consistency and equal justice require that majorities enjoy such rights, too – and that they enjoy them not just because of their power of numbers but as a fundamental right. If Quebecois, Pueblo Indians and Frisians can claim cultural rights, then so can the Danes and the Dutch.

The *second* reason is that as a result of the proliferation of international human rights and minority treaties and the codification of universal equality and anti-discrimination norms in national legislation we are no longer in a situation as before the Second World War, when national independence and the attendant unlimited national sovereignty rights sufficed to guarantee the cultural rights of national majorities within “their” nation-state. While for minority groups it has remained – or has since the Second World War become – legitimate to manifest their identities and mobilize on behalf of their interests in ethnic terms, it has increasingly come to be regarded as normatively illegitimate to define “Dutch” or “Danish” as ethnic categories. These national labels are nowadays only regarded as normatively legitimate if they formalistically refer to “everyone who lives in the Netherlands” or “everyone who has the Danish nationality,” but

the Dutch or the Dane as a member of an ethnic group with its own cultural traditions has disappeared as a normatively legitimate category. Since the Second World War nation-states are expected to follow universalistic norms and not to make distinctions on the basis of individuals' cultural background, except where the recognition and protection of cultural minorities are concerned. What used to be a normative advantage for cultural majorities – that they had their “own” sovereign nation-states – has turned into a normative burden – namely that these nation-states are now expected to implement universalistic norms and no longer to reflect a particular culture. As a result, the cultural right to self-determination of national majorities now faces strong constraints. This is good and necessary in as far as it protects minorities against oppression by the majority, but it has had the unanticipated and undesirable effect that the cultural majority within nation-states no longer has a normatively legitimate opportunity to express its cultural identity and to defend its cultural interests.

This brings me to the *third* reason why the current situation is problematic, namely that the lack of a legitimate normative basis for cultural claims of majorities polarizes and poisons the public debate. Partly because international treaties often lack strong enforcement mechanisms, the majority can sometimes prevail in parliamentary decisions and popular referenda because of its numeric power, but such decisions are then widely depicted by opponents as normatively suspect and “populist” – think for instance of the Swiss ban on minarets or the Dutch Law on Integration Abroad, which requires prospective marriage migrants to learn basic Dutch prior to immigration. Whereas the cultural demands of minorities are seen as legitimate expressions of the desire to maintain their own culture and to pass it on to the next generation, similar desires coming from the cultural majority are often derogated by political and intellectual elites with qualifications such as “nostalgia”, “narrow-minded,” “dangerous,” “expressions of fear” or even with the Nazi-term “*Blut und Boden*” (see, e.g., Duyvendak et al. 2008).

In addition, precisely because there is no accepted normative basis for cultural majority claims – which would also entail boundaries beyond which the legitimacy of such claims ends – there is a great risk of radicalization of majority rights claims. If any attempt to defend Dutch traditions or any claim that certain minority cultural practices are incompatible with Dutch cultural traditions results in normative excommunication and accusations of discrimination or racism, we have no way of distinguishing claims that might be acceptable under a normative regime that grants legitimacy to cultural majority

claims, and claims that would also under such a regime be seen as incompatible with liberal democracy. Currently, we are lacking such a normative consideration of what are legitimate and what are illegitimate majority claims within a liberal-democratic context. In the absence of this, the public debate on cultural issues has increasingly taken the form of a polarization between “right” and “might”: cultural minorities supported by cosmopolitan elites whose claim-making is based on normative legal principles (“right”) stand against cultural majorities who do not find legitimate recognition for their cultural claims and identities and who therefore seek recourse to the populist power of numbers (“might”).

The *fourth* and last reason for a reconsideration of cultural majority rights is that the idea that majority cultures are not in need any special protection is, even disregarding the constraints arising from international norms and obligations, less and less tenable in the age of globalization. For instance, the position of small languages such as Dutch or Danish is under pressure in many contexts, for instance in academic publishing, as a language of instruction in higher education or as the language of popular music and cinematography. Globalization moreover often means Americanization, also where the framing of discussions on human and minority rights is concerned. For example, the discourse and sensibilities of American race relations have diffused across the Atlantic, and are often applied in ways that show little sensitivity to the different historical and cultural contexts and the different systems of meanings and connotations of concepts that they encounter in Europe. The Dutch discussion on Zwarte Piet is a case in point. When looked at through the US-American cultural lens, Zwarte Piet is an appalling example of a “blackface,” a white person who has painted his face black in order to mock or belittle blacks, which used to be a popular style figure in US vaudeville, and is therefore nowadays rightly shunned in the US American context. But does that mean that painting one’s face black becomes an intolerable form of racism everywhere, irrespective of local traditions and meanings? Until the recent Zwarte Piet discussion erupted in the Netherlands, nobody in the Netherlands had any idea of a “blackface,” because, unlike the USA, this particular form of mockery of blacks had never been a part of Dutch popular culture. Tellingly, in the entire Zwarte Piet debate the concept of “blackface” is used in the English language, because there is no Dutch word for it.¹⁰ How important the international stage is

¹⁰ That the origins of Zwarte Piet have little to do with “blackfacing” is also shown by the fact that in the Dutch Caribbean and the former Dutch colony of Surinam people also paint their faces black when they dress up as Zwarte Piet, even if

for anti-Zwarte Piet activists is shown by the fact that their most important organizations, “Kick Out Zwarte Piet” and “Majority Perspective,” have English names, and that many of the placards that activists display at demonstrations are in the English language.

The argument that Zwarte Piet is a form of “blackfacing” and therefore racist, had enormous normative power, backed as it was by the strong moral condemnation by a UN Committee and by various newspaper reports and a TV documentary that showed how shocked people in other countries, particularly in the United States and the United Kingdom, were when they were confronted – obviously completely oblivious of the history and context – with images of Zwarte Piet. Looking at this Dutch tradition through an Anglo-American lens, Professor Shepherd, the head of the UN Committee, did not need a thorough investigation to reach the verdict that Zwarte Piet is a racist symbol of slavery. And moreover, she added, in a perfect example of cultural imperialism: why do you Dutch need two Santa Clauses, anyway? Kymlicka’s argument that “to understand the meaning of a social practice requires understanding of this ‘shared vocabulary’ – that is, understanding the language and history which constitute that vocabulary” (1995: 83) is obviously not always applied where majority cultures are concerned.

Surely, there is no reason for excessive concern about the effects of globalization and Americanization. Dutch, Danish, and other national cultures will not disappear anytime soon, but still it is not true that they do not face any threats and challenges, either. International minority rights norms and Canadian multiculturalism grant Quebec the legitimate right to protect its language and culture by way of internal language rules and language requirements for immigration. But many other national languages and cultures objectively have a weaker position than the French language does in Quebec. Even if we look at Quebec separately from the rest of the francophone world, it is with its 8.1 million inhabitants larger than Denmark, Norway or Finland and about the same size as Austria or Switzerland. In an ever more globalized world in which Anglo-Saxon culture has become the norm, the distinction between “dominant” and “minority cultures” can no longer be applied only to relations between cultural groups within nation-states but needs to be also viewed in the light of the increasingly unequal cultural power of smaller and larger nation-states.

they already have brown skins themselves. And in that same context, dark-skinned people who dress up as Sinterklaas may paint their faces white.

If majority groups are granted cultural rights within a liberal-democratic framework, it is crucial that membership of such groups cannot be based on descent or race. The UN interpretation of the rights of indigenous peoples states that “this reserves for these communities the sovereign right and power to decide who belongs to them, without external interference,” and Kymlicka’s conclusion is that liberals have to accept that indigenous peoples may base membership on, and differentiate rights according on the basis of degree of genetic kinship. A truly liberal conception of cultural group rights can however not tolerate membership definitions that are based on innate characteristics that cannot be affected by individual’s choices and efforts. Cultural groups have the right to require a certain degree of cultural assimilation and identification with the group culture as a precondition for membership, but they cannot make it a mere question of descent – at least not if we want to stay within a liberal normative framework. Thus for example, everyone who identifies with, and has a certain degree of knowledge of Dutch history, traditions, language, and culture, qualifies as a member of the Dutch cultural community. This can and should emphatically also include shared responsibility for the negative aspects of such cultures and histories, such as colonialism and slavery.

To find an answer to the question of the legitimate scope of cultural majority rights it is instructive to refer back to the definitions of cultural minorities and of indigenous peoples, as well as to Kymlicka’s normative distinctions between the rights of different types of minorities. It is no less true for cultural majorities than for minorities that their members “possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language” (United Nations 2010: 2) or that “they are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system” ¹¹. Also, Kymlicka’s argument that “people should be able to live and work in their own culture” (1995: 96), because only this allows meaningful individual choice and personal development, cannot be reserved for minorities only.

It follows that the same cultural rights that are granted to national minorities and indigenous peoples should also apply to cultural majorities. When the two conflict, the national majority’s normative claim is not more, but also not less

¹¹ UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1-4.

valid than that of a national minority. The solution may then either be a system of mono-cultural dominance in the areas where each group is in the majority (as in Belgian Flanders and Wallonia), or a system of mutual minority rights (as in Canada where English speakers have minority rights in Quebec and French speakers have minority rights in the rest of Canada).

Following Kymlicka, things are different when the claims of a majority culture conflict with those of an ethnic group derived from recent immigration. In this case the majority culture's claim should weigh more heavily because it has no other place on earth where it can live within its own societal culture, whereas the minority group in question has through emigration voluntarily waived the right to live within its own societal culture within the country of origin. This does not mean that the majority must always prevail in such cases. Obviously considerations of proportionality continue to play a role, for instance if meeting the claim of the majority would entail a unilateral violation of the individual human rights of members of the minority group or if the damage to the minority culture of a decision to its disadvantage would be disproportionately large compared to the damage the majority culture would suffer from the alternative decision. The implication of this reasoning seems to be for instance that minority groups derived from recent migration cannot claim public funding or other facilities for education in their own language, but the state can neither prohibit the minority in question to organize such language teaching outside of school and at its own cost. Where claims of non-autochthonous religions are concerned, the freedom of exercise of all religions must obviously be guaranteed for all denominations, including the right to build houses of worship. But at the same time, it is not necessarily illegitimate if the majority restricts certain public displays – particularly within common public institutions such as schools, courts of law, and public administration – of religiousness that it considers to be repulsive or in conflict with its basic norms and values.

A counterargument against this line of reasoning could be that group rights are already problematic enough within a liberal framework and that this would only get worse if we also recognize the cultural rights of majorities. This is certainly an important consideration. Would it not be better to do away with all group rights, including such interpretations of individual human rights that tie them to the well-being of groups? This would, however, lead to a threefold problem. Firstly, we would then have to take away the rights of national minorities and indigenous peoples because in a fully culturally neutral, universalistic state, they enjoy the same individual rights as anyone else. Secondly, this would rob

nation-states of the possibility to protect their cultures or those of their minorities against external cultural threats, which in an ever more globalizing world would put smaller cultures and nation-states at a disadvantage. Thirdly and most importantly, the normative-legal fiction that rights are independent of time and place would not do away with the psychological and sociological reality that most people feel and cherish a strong connection to the history, traditions, and territory of a particular ethnic group (Smith 1986). This reality seems to be a human constant (Freeman 1999), which will also in a legal system that is exclusively based on universal human rights lead to cultural tensions and conflicts, for which then however no legal and normative framework would be available as a referee. By contrast, a normative framework that recognizes the rights of cultural majorities as well as minorities does justice to sociological reality and to the intuitive sense of justice of most people, which tells them that the world is not a universalistic flat pancake in which history, tradition, and connections to a particular territory are normatively irrelevant.

Practically, the outcomes of conflict resolution based on such a normative-legal regime need not be radically different from the empirical outcomes that we now see, for instance where issues such as the burqa or headscarves in schools are concerned. The important difference is, however, that even if the outcome would be the same, the process leading up to it would have recognized the legitimacy of cultural claims by the majority group, and normative and legal considerations would have given them serious weight. Even if the outcome is the same, it makes a big difference for social acceptance and cohesion whether such an outcome is the result of a victory or a defeat of the numeric “might” of the majority against the normative “right” of the minority, or whether it is the outcome of a process in which legitimacy and normative consideration is given to the cultural claims of both sides.

7. References

- Banting, Keith and Will Kymlicka. 2013. Is There Really a Retreat From Multiculturalism Policies? New Evidence from the Multiculturalism Policy Index. *Comparative European Politics* 11: 577-598.
- Barry, Brian. 2002. *Culture & Equality: An Egalitarian Critique of Multiculturalism*. Cambridge, MA: Harvard University Press.
- Carpenter, Kristen A. 2012. Individual Religious Freedoms in American Tribal Constitutional Law. In: Kristen A. Carpenter, Matthew L.M. Fletcher en Angela R. Riley. *The Indian Civil Rights Act at Forty*, pp. 159-210. Los Angeles: UCLA American Indian Studies Center Publications.
- Duyvendak, Jan Willem, Ewald Engelen en Ido de Haan. 2008. *Het bange Nederland. Pleidooi voor een open samenleving*. Amsterdam: Bert Bakker.
- Freeman, Michael. 1999. The Right to National Self-Determination: Ethnical Problems and Practical Solutions. In: Desmond M. Clarke en Charles Jones, red. *The Rights of Nations. Nations and Nationalism in a Changing World*, pp. 45-64. New York: St. Martin's Press.
- Groenendijk, Kees. 2012. Kroniek inburgering 2010-2011: van integratiebeleid naar immigratiebeleid. *Asiel- en Migratierecht* 1: 36-48.
- Joppke, Christian. 2001. The Legal-Domestic Sources of Immigrant Rights: the United States, Germany, and the European Union. *Comparative Political Studies* 34: 339-366.
- Joppke, Christian. 2004. The Retreat of Multiculturalism in the Liberal State: Theory and Policy. *British Journal of Sociology* 55: 237-257.
- Joppke, Christian. 2005. Exclusion in the Liberal State. The Case of Immigration and Citizenship Policy. *European Journal of Social Theory* 8: 43-61.
- Koopmans, Ruud. 2008. Nederland is nog volop multicultureel. *NRC Handelsblad* 19-11-2008. <http://vorige.nrc.nl/article2066117.ece>.
- Koopmans, Ruud, Ines Michalowski en Stine Waibel. 2012. Citizenship Rights for Immigrants: National Political Processes and Cross-National Convergence in Western Europe, 1980-2008. *American Journal of Sociology* 117: 1202-1245.
- Kymlicka, Will. 1995. *Multicultural Citizenship. A Liberal Theory of Minority Rights*. Oxford: Clarendon Press.
- Kymlicka, Will. 1999. Minority Nationalism within Liberal Democracies. In: Desmond M. Clarke en Charles Jones, red. *The Rights of Nations. Nations and Nationalism in a Changing World*. New York: St. Martin's Press.

Le Monde. 2003. Document. Le rapport de la commission Stasi sur la laïcité. 12-12-2003. http://medias.lemonde.fr/medias/pdf_obj/rapport_stasi_111203.pdf.

Lukes, Steven. 1974. *Power: A Radical View*. London: MacMillan.

Michalowski, Ines. 2011. Required to assimilate? The content of citizenship tests in five countries. *Citizenship Studies* 15: 749-768.

Orgad, Liav. 2016. *The Cultural Defense of Nations: A Liberal Theory of Majority Rights*. Oxford: Oxford University Press.

Smith, Anthony. 1986. *The Ethnic Origins of Nations*. Oxford: Blackwell.

Soysal, Yasemin Nuhoglu. 2000. Citizenship and Identity: Living in Diasporas in Post-War Europe? *Ethnic and Racial Studies* 23: 1-15.

United Nations. 2010. *Minority Rights: International Standards and Guidance for Implementation*. New York en Genève: Office of the High Commissioner for Human Rights.

Vertovec, Steven en Susanne Wessendorf. 2010. *The Multiculturalism Backlash. European Discourses, Policies and Practices*. Oxon: Routledge.

Young, Iris Marion. 1990. *Justice and the Politics of Difference*. Princeton, NJ: Princeton University Press.