CHAPTER III: UNDERSTANDING MULTICULTURALISM: WHICH GROUPS QUALIFY?

1. INTRODUCTION

A deeply divisive issue in the debate about minority rights is which type of groups should be regarded as relevant in the discussion. As seen in Chapter I, none of the efforts at specifying the criteria for minority status have led to consensus. For this reason, sceptics fear that those rights become a sort of Pandora’s box for claims from all kinds of groups. To a significant extent, this scepticism is linked to the widespread idea that group rights are held by a collective subject that needs to be clearly identified. However, as shown in the previous chapters, this approach is unnecessary, not only because group rights can be conceptualised through other criteria, but also because the problem of defining “minority” is substantially linked to the central normative questions in the debate about minority rights. For the reasons explained, the discussion about the properties that make a particular group a rights-candidate mainly reveals the background disagreement about the kind of communities that deserve special protection and the reasons for this protection.

Accordingly, the idea that the disagreements surrounding the concept of minority are of a merely semantic nature is inaccurate. And the fear that group rights could become a “Pandora’s box” is not entirely justified either. Starting from the conception of group rights offered in the preceding chapter, the primary candidates for them should be those minorities whose claims go beyond the kind of individual human rights typically recognised in modern constitutions, and thus cannot be satisfied by such rights. In this chapter, I will argue that, on the basis of this approach, social groups will usually not qualify and that cultural minorities will have to be the main focus of attention.

2. SOCIAL MINORITIES

The expression “social minorities” generally refers to groups suffering from social disadvantages, mistreatment or discrimination mainly due to historically prejudices deeply rooted in the practices, beliefs and conventions of the mainstream society. Members of these minorities are, in some cases, easily identified by their externally visible characteristics such as gender, race or disability. In other instances, as with foreigners, members of particular religions or gays, those features are not immediately perceptible.

The notion of social minority is not necessarily related to the numerical factor. Although prejudices, negative stereotypes or hostility towards certain categories of

people often result from their numerical inferiority vis-à-vis the majority, this is not always the case, as is most obvious in the discrimination of women. While the gap between men and women in their status in society has been decreasing in all regions of the globe for some time now, gender equality remains elusive. The same holds true for other historically marginalised groups defined by characteristics such as race, class or sexual orientation. The list could be extended to include other social groups suffering significant inequalities as a result of a diminished status substantially linked to their identities. Partly because of this connection, traits such as race or sex become constitutive of the personality of members of those groups; that is, they come to represent central elements in their self-definition, generally informing their interests, dispositions and commitments. This is why it is widely accepted that to single out social groups by such characteristics as gender or ethnicity—instead of, for instance, size or eye colour—makes sense for purposes of inquiring about social justice.

For there are grounds to believe that, in spite of the formal recognition of values of freedom and non-discrimination by the constitutional orders of democratic states, the possession of those attributes significantly conditions people's freedom and well-being. Indeed, women, blacks and other social groups experience multiple forms of exclusion in various existential domains, in a pattern that reveals the existence of what Young, among others, describe as structural or systemic inequality. Structural inequalities involuntarily determine the status of people in society on the basis of their belonging to a group, constraining the options of some more than those of others who enjoy a position of privilege. To a great extent, this is due to the historical configuration of social institutions, practices and policies that reinforce one another, thus reproducing the relevance of an unfair delimitation between categories of people. Hence it is not merely that women, for instance, have been historically mistreated as a group; rather, the main problem is that the effects of historical discrimination persist in the present, still pervading institutions and practices, even if the procedures and norms that formally rule them no longer confer explicit relevance to ascriptive identities and statuses.

For instance, notwithstanding the assumption of difference-blindness embedded in the formal structure of anti-discrimination principles, cultural hegemony and social arrangements strongly influence who participates in the public space and in law-making processes. As Fiss notes, history counts mainly as a normative reason in theories of compensatory or corrective justice, whereas for the structuralist approach “history is solely factual.” That is, particular histories of discrimination are seen, not only as reasons for compensation and remedy, but mainly as providing the “causal dynamic that produced the social structure that needs to be remedied.”

Thus, a set of reproduced social dynamics leads to the perseverence of subordinating structures and disadvantaging outcomes for members of certain social groups, even in the absence of discriminatory motivations. Not only do most of them end up marginalised and deprived, but these patterns of discrimination seriously damage their self-esteem and the capacity for self-realisation. In part, this is so because, as Taylor writes, our identity is partly shaped by recognition of others; thus “a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back a confining or demeaning or contemptible picture of themselves.”

Following Young, we can distinguish different types of oppression that social minorities face through the analysis of five problems that systematically affect them:
exploitation, marginalisation, poverty, cultural imperialism and violence. In line with other feminist critics, she defends the relevance of using the term “oppression,” as it accounts more adequately for the structures that boost social tyranny of some groups over others. Such a connotation of the term “oppression” is important since it refers to the injustices and disadvantages that people suffer, not because of the explicit tyranny of the political power “but because of the everyday practices of a well-intentioned liberal society.” As outlined above, this is distinct from transitory, fortuitous disadvantages that may be the product of pure bad luck or simply attributable to individual poor choices. As Young indicates, structural inequality primarily involves “a set of reproduced social processes that reinforce one another to enable or constrain individual actions in many ways.” It thus generates constraints in the freedom and well-being of certain categories of people that occupy certain social positions. Indeed, the notion of social structure refers to a complex layering of elements (including legal institutions, occupational and property systems, the organisation of family and sexuality and the division of labour) in which individuals find themselves in a given position. This position, as Young argues, strongly influences their self-perceptions and the way they operate in the social world. This occurs, not because structures exist as fixed entities immune to the action of individual agents, but because these agents normally act from their relationally constituted positions according to rules and premises that are incorporated in pre-existing structures. In so acting, they recurrently reproduce social systems, including patterns of oppression and disadvantage.

Hence, group inequalities tend to be institutionally embedded, so that individuals acting within this framework reinforce and perpetuate existing patterns of disadvantage, often unintentionally. Moreover, members of marginalised or subordinated groups often play a central part in reproducing the patterns that contribute to their own systematic disadvantage. They normally do so by unreflectively internalising the negative connotations that incessantly degrade and stigmatise their identities, which is precisely what increases their vulnerability to oppression. This is surely one of the reasons why the strikingly high figures of gendered violence contrast sharply with a very low rate of reporting of the crimes. This pattern shows that preferences of victims of discrimination have often been ill-formed as a way of adaptation to unfair social circumstances, which tend to persist unless correctives are introduced.

Some scholars refer to social minorities that are marginalised and suffer discrimination as minorities by force. At first glance, the term seems suitable, since it accounts for the fact that these groups are regularly categorised as “minorities” against the will of their members. However, the expression is unfortunate in so far as it might suggest that members of these groups are somehow forced to carry their—visible or invisible—traits, since they lack the option of transforming them. This might perhaps be generally true of traits such as race, gender or disability, or even, arguably, of religion or sexual orientation in some cases. Yet, the distinction is quite unsuitable to discuss issues of social equality, especially if we accept that the reasons against discrimination are not principally based on the fact that most people lack the option to change certain—inate or not—personal features and, hence, it would be unfair to penalise them for having them. Rather, the point is that there is nothing harmful or diminishing in those traits, and that, under conditions of social equality, they would indeed be seen as irrelevant. In this sense, groups like women or blacks are
social groups because they share a sense of identity which is not primarily based on skin colour or gender but rather on shared experiences of marginalisation, disadvantage and prejudice. Thus, as Iris Young and others have argued at length, being a member of a marginalised group usually yields a perception of institutions, practices and legal rules that is not promptly available to individuals that lack this experience. This enhances the mutual identification of people as members of the same differentiated group with similar interests, although it does not mean that they cannot transcend their own identities or reject this attributed identification.

An increasingly common way of responding to concerns arising from the phenomenon of structural inequality is to suggest that some form of differentiated citizenship should be recognised. The difference approach starts from a compelling critique of the traditional view of citizenship as entailing difference-blind institutions and homogeneity in the distribution of rights. The development of the modern states, it is argued, did not ignore identity trends. In spite of the proclaimed liberal aspirations to neutrality, impartiality and universalist inclusion, diversity was deliberately stifled by the dominant model of the “normal” citizen, which was typically based on the attributes of white, heterosexual, able-bodied and patriotic males. Hence, historically, citizenship has not been neutrally defined as a way of transcending all sorts of particularisms, as the liberal democratic rhetoric often contends. In depicting a model of citizenship shaped by primordial identities—sex, colour—which are very difficult or indeed impossible to appropriate by everyone, most democratic states generated systematic exclusions. Thus, women, black and gay identities were silenced, marginalised from the public sphere, even criminalised under the pretext of some natural constitutive inferiority that should be rectified or else repressed.

In short, the entrenchment of restrictive conceptions of citizenship played out as a powerful exclusionary device, institutionally privileging some groups over others. In part, what distinguishes the reform movement that is currently discussed under labels such as the “politics of difference” or “identity politics” is the concern with the capacity of liberal–democratic doctrines to respond to claims of accommodation made by various types of identity-groups. So far, this literature has helped to unwrap the principles, policies and dynamics that produced oppressive effects, leading to the formation of structural disadvantages for certain categories of persons. In some way or other, proponents of the difference-approach argue that equality requires something more than restating the commitment to difference-blindness. For aspects such as gender have already been taken into account, remaining deeply embedded in roles and positions that have been structured in biased ways. This produces profoundly unequal results for a number of groups, which cannot be reversed through mere anti-discrimination statutes that take for granted (a) that neutrality is the norm and (b) that every citizen is equally able to exercise her legal rights. Group-differentiated forms of citizenship are required, so the argument goes, in order to acknowledge the legitimacy of the struggle of minorities for equality.

To a great extent, the appeal of a group-conscious approach lies in that it provides a better understanding of the relationship between identity conflicts and structural inequalities. One of the key strengths of this model is that it emphasises a focus on
social processes and structures rather than on particular actions and norms, on history and tradition rather than on particular events, to comprehend the status and demands of minorities. And, indeed, one of the main explanations for the deprived state in which most marginalised groups find themselves can be found in the social processes and cultural practices that define their status and shape their choices. The difference approach focusses on providing a group-conscious framework to overcome the resulting discriminations, taking into account the relative position and social status of different identity-groups.

However, social minorities hardly ever pose their demands in terms of cultural (group) rights or appeal to “multiculturalism” to justify their claims, although some groups, like gays or the deaf, have increasingly shifted their own self-perceptions from mere statistical groups to communities or pseudo-cultural groups that provide an identity and shape the ways of life of their members. Whereas the need to create and maintain separate institutions is a central feature of the demands of cultural minorities, what this type of social disadvantaged identity-groups primarily ask for is the effective application of already existing constitutional rights—like equality of opportunity and non-discrimination on grounds such as race or sex. The main target here is the enduring social racism, sexism, homophobia or xenophobia, and the long-term purpose is that socio-political institutions remain really neutral towards this kind of diversity. Above all, then, social minorities seek to ensure that their interests and perspectives are taken into consideration within the main political institutions of the larger society. Women, blacks, gays and even members of uprooted cultural groups typically demand a higher level of intra-group equality; they usually want to participate and be recognised as full members of society, instead of being included just as second-class citizens. Accordingly, the special protections they seek are against the impact of long-standing social practices and prejudices that seriously disadvantage them.

The rhetoric of group rights does not, therefore, describe these claims accurately. Nevertheless, this does not mean that social minorities are satisfied with the formal recognition of basic individual rights in the constitution, since this might not lead to significant transformations in firmly rooted prejudices and social behaviours that provoke their vulnerability to discrimination. Real equality is not equivalent to formal identity of treatment, but may instead require the institutionalisation of differences. Social minorities, therefore, demand the adoption of special measures or policies to overcome persisting forms of de facto inequality. This may involve specific educational policies, public campaigns against discrimination and so forth. But it may also require the adoption of more drastic measures such as affirmative action or special political representation.

A closer examination of these and other means for overcoming structural inequalities exceeds the scope of this chapter. Nevertheless, these latter two measures deserve some comments as they could call into question the idea that I am trying to articulate—namely, that the language of group rights is unnecessary to account for the aspirations of social minorities.

Let us briefly consider the implications of affirmative action programmes that aim at increasing the presence of members of marginalised groups in the main social
and political institutions. Usually, these are programmes that either fix a given quota or provide members of these groups with some sort of preference (for instance, they establish that, wherever applicants are equally qualified to access certain jobs in sectors from which certain social groups have been traditionally excluded, members of these groups should be preferred). It would thus seem as if the structure of such measure largely corresponds to that of group rights, as rights ascribed to an individual by virtue of her group-belonging. Moreover, the full intelligibility of such a rule depends, to a great extent, on assuming that certain minorities face a situation of systemic vulnerability; otherwise, the decision to explicitly benefit members of particular groups in detriment of the wider majority would be hard to justify.\(^{23}\)

However, to characterise affirmative action as a group right would be inappropriate. On the one hand, although this measure requires a group approach to inequality, the kind of interests at issue are reducible to those that are already protected by individual rights. The aim is mainly to achieve real equality for all persons, and an equal enjoyment of basic civil and political rights, independently of group membership. Precisely for this reason, measures of affirmative action and other institutional solutions for overcoming structural inequalities are intended, on the other hand, as provisional remedies, for so long as the inequalities persists. In other words, they tend to be justified as transitory means to achieve justice. Here difference consciousness (colour, gender and so forth) plays out as a strategy intended not merely to compensate past wrongs or to institutionalise the moral significance of diversity, but, more crucially, to improve the position of a group as a whole. In the end, the goal is to render irrelevant these differences of status, which have been unfairly created on the basis of false beliefs. The ideal is a truly non-sexist, non-racist, non-homophobic society: a “community of equals,” borrowing Fiss’ expression.\(^{24}\) By saying that affirmative action makes “a small but determined contribution to eliminating the caste structure”\(^{25}\)—that is, at removing unfair differences that constitute the sources of vulnerability, and not merely at compensating for such a result—Fiss assumes that this is the crucial meaning of equality. Likewise, the UN Convention for the Elimination of All Forms of Racial Discrimination (1965) and that for the Elimination of All forms of Discrimination against Women (1979) allow for affirmative action measures established only as provisional. Thus, Article 4 of the latter convention establishes that

Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separated standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.\(^{26}\)

Admittedly, affirmative action tends to be controversial because some people think that equality is a matter of equality of treatment and, therefore, giving preference to women or racial minorities is as reprehensible as favouring white heterosexual men. This measure, therefore, would only institutionalise a new form of inequality. Others dispute the extent to which affirmative action programmes have indeed contributed to the eradication of social discrimination and structural inequalities.\(^{27}\)
Notwithstanding these important discrepancies, the point that matters for our present purposes is that both proponents and detractors of affirmative action tend to assume that equal citizenship and the anti-discrimination principle require, *prima facie*, a homogeneous distribution of rights.

As regards the idea of special political representation for under-represented groups, this measure is even more controversial, although, in my view, a similar reasoning applies. It is a widespread opinion that conceiving the parliament as a platform for the representation of different social groups would require the modification of some central elements involved in representative democracy. Some argue that greater political inclusion call for special measures to encourage or even grant the participation of under-represented, structurally disadvantaged social groups. Yet, as Anne Phillips contends, if legislative institutions were to become a microcosm where all social groups or communities needed to be proportionally represented, there would be no need for celebrating elections. Representatives could be elected within each group or even by a lottery system. Also, as she observes, taken to the extreme, this theory implies that only women can represent women, or only blacks can represent blacks and so forth, thus assuming some form of unified essentialist identities that can also generate exclusions.

Yet, leaving aside now the complexities that surround the debate about democracy and difference, it is important to realise that most models of group-specific representation are not usually proposed as a general theory of political representation. As with affirmative action, special political representation of social minorities can be seen as a measure that is temporarily necessary in order to overcome the deficits of current systems of representation in contexts of structural inequality which lead to the systematic under-representation of certain social groups. Structural inequalities are troublesome for democracy, it is argued, because, against a social background of group discrimination and historically subordinated statuses, the standard “aggregative” or “vote-centric” conception that draws upon ideas of formal equality of opportunity and aggregation of preferences cannot fulfil the underpinning normative commitments that confer legitimacy on public decisions. In many cases, moreover, the establishment of political institutions and decision-making processes that are blind to those social conditions is likely to reinforce existing patterns of domination. Even if overt discrimination in the form of a denial of political rights is proscribed, there are other equally compelling constraints to empowerment and autonomy that arise from the invidious hierarchy of status typically generated by structural inequality. These constraints make it very difficult for members of subordinated groups to exert influence in the public sphere and exercise their political agency. Consequently, both equality of opportunity and democracy become a chimera if the state does not attempt to breakdown—and not merely compensate for—those hierarchies.

In any event, those who subscribe to this view argue that we must come to understand that the basic normative values underpinning the idea of democracy demand certain forms of political affirmative action in order to level group inequalities, which substantially undermine representation and trust. Special representation is intended as a direct and effective measure to strengthen the real opportunities of
influence of marginalised social groups in the mainstream political process. The democratic character of societies shaped by structural inequalities, it is argued, very much depends upon what Phillips calls a “politics of presence.”

Certainly, it could be argued that the need to protect social minorities can be achieved through less controversial mechanisms. But, thus far, it is important to emphasise the central idea that special representation and similar mechanisms are eventually justified as temporary constraints on the general principle of rights-homogeneity in order to overcome structural injustices, rather than as a permanent feature of liberal democracies. So, rather than posing a challenge to the dominant view of equal citizenship, proponents of those measures normally regard them as necessary to attain this ideal.

3. CULTURAL MINORITIES

The expression “cultural minorities” usually refers to groups whose members see themselves as carriers of a cultural identity that is distinct from that of the majority in a given state; an identity that they value and hence wish to preserve. Accordingly, the classification of a collective as a cultural minority depends, on the one hand, on our understandings of “culture” and “cultural identity” and, on the other, on the self-perception and values of members of the group.

The notion of culture has attained ubiquity and it is certainly controversial. The problem is not merely one of lack of definition; rather, “culture” is a word the use—and abuse—of which in different contexts makes it multifaceted. Historians and sociologists often use the term to describe customs and ways of life or thinking of entire civilisations or of a particular epoch. They also refer to the prestige of certain cultures—Rome, Greece—whose achievements and progress in specific fields progressively spread around the world. But the term is also used colloquially nowadays as a synonym of mere tastes and lifestyles characteristic of particular regions or social groups. Thus, we speak of the “wine culture,” the “hippie culture” or the “yuppie culture.” Raymond Williams regards the concept of culture as very difficult to define due to its intricate historical evolution in different European languages and also because the term is used in many intellectual disciplines. Although I won’t try to rehearse this complex genealogy here, it is customary to refer to the contrast that emerged during the Romantic period between the German notion of Kultur, which Herder emphasised in the plural, with each form containing an irreducible uniqueness, with that of Civilisation, that embodied the French universal ideals or values that do not reflect individuality or authenticity. As Joppke and Lukes explain, for the Post-Kantian nineteenth-century German intellectuals, “the particularity of national Kultur was a weapon against the rootless cosmopolitanism of the French Enlightenment.”

For the purposes of the present analysis, the notion of culture will be explored in the context of its role in the political theory debates on multiculturalism and group rights. Culture emerges here as a notion that provokes ardent political and legal controversy but, as Seyla Benhabib writes, the term has become “a ubiquitous synonym for identity” that now grounds the demands for recognition and reallocation of public resources. The sharp contrast that is often drawn between culture and civilisation has, in some way, become obsolete, if only because the prevailing discourse is widely
shaped by the comprehensive notion of *cultures*, in the plural. This is typical of modern anthropology that attempts to depict “the particular life form of a collectivity against the life forms of other collectivities,”⁴⁴ thus democratising the concept and discarding *a priori* ideas of inferiority or superiority of particular forms of living as a critical reaction against West ethnocentric understandings of civilisation.⁴⁵

Indeed, the idea of culture that theorists of multiculturalism like Kymlicka, Margalit, Raz or Taylor have in mind, on the one hand, more restricted than the notion of “civilisation” (which could encompass different cultures without reflecting its individuality or particularities) and, on the other, wider than terms such as “fashion” or “lifestyle” (that corrupt the comprehensive meaning of “culture” through reducing it to superficial forms of collective experience that lack durability). In order to further specify this notion, Kymlicka stresses that his interest lies in what he calls “societal cultures.”⁴⁶ These are the cultures of territorially concentrated groups based on common languages and on certain social institutions, rather than on particular religious beliefs, customs or lifestyles. They are cultures, which provide its members “with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both the public and private spheres.”⁴⁷ Kymlicka insists in that by adopting the term “societal culture,” he wants to designate groups that include “not just shared memories or values, but also common institutions and practices.”⁴⁸ Likewise, Margalit and Raz refer as “encompassing cultures” to the cultures of groups that are defined on the basis of features similar to those highlighted by Kymlicka. Such groups, they say, have “a common character and a common culture that encompass many, varied and important aspects of life, a culture that defines or marks a variety of forms and styles of life, types of activity, occupations, pursuits and relationships.”⁴⁹ These are according to them, pervasive cultures that have a deep and far-reaching influence on people’s identities. Hence, membership in such groups has a “high social profile,” which means that it is one of the primary factors through which we identify others, and “one of the primary clues for people generally in interpreting the conduct of others.”⁵⁰ too.

As can be seen, these definitions of the term “culture” focus mainly on the sort of public goods that shape primary individual identifications and patterns of behaviour. I shall come back to the merits of such an approach in subsequent chapters. The point for now is that these definitions aim at identifying the relevant traits of the kind of groups that raise demands of rights on cultural grounds. Thus, the elements of territorial concentration, common language or institutionalisation included in Kymlicka’s notion of societal culture play a role as prerequisites for the generation of cultural goods that are particularly valuable. Both concepts are “thin,” so to say, in that they primarily convey institutional and linguistic elements, rather than shared beliefs and values. This helps avoid essentialism, since it allows to account for the unavoidably pluralistic and constantly evolving character of the type of dynamic cultures that usually flourish in democratic settings. As follows from Margalit and Raz’s observations above, what ultimately matters is people’s self-perception and identification as members of a cultural group, which they help build and transform collectively. Such membership provides them with meaningful ways for interpreting and acting in the social world.⁵¹
Now, understood in this way, the notion of cultural minority allows for the inclusion of a large number of groups, eventually subsuming notions such as “nation,” “national minority” or “people.” Further delimitation of the characteristics and contours of a culture is difficult because, in a sense, all cultures are constructed through change. Yet we do not need to claim or show that a culture is defined by an existing essence immune to transformation in order to assert its reality and, especially, the reality of cultural identities and identity-groups, which is central to the on-going political struggles for recognition and redistribution in diverse democracies. Admittedly, in these societies, courts, the media and policy-makers assume, more often than not, some sort of holistic view of cultures that risks reifying them as established structures with coherent fixed meanings. In general, the desire for coherence and continuity in the collective—both external and internal—narratives of particular cultures often gestures towards what Benhabib calls a “reductionist sociology of culture,” which is based on flawed epistemological premises that risk “overemphasising their boundedness and distinctness,” their purity rather than hybridity, melange or mestizaje.

But, of course, anti-essentialism and deconstructivism can lead us to the other extreme; that is, to deny the existence of all social phenomenology, thereby contradicting our common practices and ways of depicting and understanding the world. For this reason, I agree with the perspective that Tariq Modood adopts when he writes:

In individuating cultures and peoples, our most basic and helpful guide is not the idea of an essence, but the possibility of making historical connections, of being able to see change and resemblance. If we trace a historical connection between the language of Shakespeare, Charles Dickens, and Winston Churchill, we call that language by a single name. We say that it is the same language, though we may be aware of the differences between the three languages and of how the changes are due to various influences.”

By conceiving group diversity in relational rather than in substantial or primordial terms (based on common essences or historical character) we can in fact retain descriptions of differentiation without reifying identities. I think Modood is right in pointing out that identities (based on culture, gender, race and so forth) are not mere fictions that we should be ready to discard altogether. People identify themselves as members of identity-groups with specific features and those categories are thus useful to analyse the dynamics of subordination as well as the reasons for the emergence of particular social conflicts and demands. Sometimes, as in the case of indigenous peoples, the identities asserted are no more than a product of a long tradition of resistance to cultural imperialism and, also, of a shared experience of colonialism that led groups with diverse traditions and languages to vindicate group rights. The charge of essentialism against some modes of describing identity-groups is generally not meant to deny the meaning of these struggles for recognition, or the relevance of cultural narratives in explaining human action. Rather, it is mainly intended to avoid accounts that misrepresent, oversimplifying, those descriptions and these narratives. Especially when we take the closer look of the insider, as when we zoom in on a photograph, we get an increasingly blurred and contested picture that should not be obliterated. But, again, the fact that group-identities are not perfectly defined, and
have been created and recreated through multiple influences in permanent evolution does not mean that identity in general or identity claims are unimportant concepts. As Waldron says:

[When a person talks of his identity as a Maori, or a Sunni Muslim, or a Jew, or a Scot, he is relating himself not just to a set of dances, costumes, recipes or incantations, but to a distinct set of practices in which his people (. . .) have historically addressed and settled upon solutions to the serious problems of human life in society.]  

In any event, it is worth noting that the reductionist account has been rendered implausible and therefore rejected by most contemporary theorists of multiculturalism and minority rights. In general, recent literature focusses less on conceptualising cultural identity in the abstract and more on distinguishing between different types of groups, classifying their demands and examining the normative questions involved. That is, it focusses on exploring why cultural identity matters, if it matters at all, whatever the origin of the subjective self-identification may be. It is therefore assumed that to explore the impact of cultural identities on the lives of human beings makes sense for the purposes of inquiring about justice and rights in multicultural societies. The main interest thus lies in analysing the role that the concept of cultural identity plays in this context.

In short, the concept of cultural identity is taken as a key concept to examine contemporary struggles for recognition and the claims of rights by minorities. Of course, the fight against the structural inequalities that affect social minorities is central, too. Nevertheless, the claims posed by cultural minorities seem to clash more deeply with some liberal principles. For one thing, as indicated before, these groups are not simply fighting for effective regulations against discrimination that can allow them to fully enjoy their citizenship. They feel entitled to explicit forms of recognition, a plus that is often linked to some form of differentiated citizenship that may entail the recognition of group rights. While this is obvious in the case of national minorities and indigenous peoples, it is also progressively true of immigrant communities. Indeed, in general, all these groups aspire not merely to neutralise their diversity, nor to achieve equal treatment regardless of their difference with the majority, but to maintain and develop what they regard as a distinctive cultural identity, often through separate institutions or jurisdictions. Hence the use of the expression “minorities by will,” which aims at reflecting this trait. Although the degree of willingness varies (and so does the substance of the particular claims), the language of group rights acquires its full meaning in this context. For cultural minorities do not seek the recognition of a special temporary status, but of a permanent one based upon the assignment of specific rights to their members precisely by virtue of this membership. The recognition of group rights thus leads to an asymmetrical distribution of rights, which is precisely what poses difficulties for liberal theories.

The specific content of the claims advanced under the term “group rights” varies enormously, depending on the type of group, the particular history of relations with the state and the mainstream society, on its present circumstances and future prospects. The normative assessment of particular demands should take into account these factors or else the analysis will lack rigour, as when we speak of the justification of a politics of “multiculturalism” as if all groups were similar, posed the same
demands or faced the same difficulties. Yet, taking into account this reservation, Jacob Levy offers a useful taxonomy of the main demands that are currently discussed under the label of group rights\(^63\) that might be useful to briefly reproduce as a guide to the following discussion:

First, exemptions from norms prohibiting or restricting certain actions that form part of the cultural practices of minority groups. These demands aim at allowing practices that may contrast with those of the majority or even infringe upon legal rules. Think, for instance, of the demands of some orthodox Jews or Muslim women that want to dress their traditional attires while working in public institutions, infringing the dress codes that are often required in order to work, say, in the police or the military.\(^64\) Other examples of exemption claims, not necessarily religiously based, are the demands of an indigenous people for the right to fishing in areas where this activity has been banned, or to smoke forbidden substances while conducting their traditional ceremonies.

Levy mentions “assistance” as a second category of claims of cultural rights. Contrarily to the purpose of exemption rights (“which seek to allow minorities to engage in practices different from those of the majority culture”\(^65\)), assistance rights seek “help in overcoming the obstacles to engage in common practices.”\(^66\) Language rights, for instance, can fit in this category when they suppose a cost to the members of the dominant group. Also, public funding or subsidies for ethnic festivals and artistic development and even preferential policies for members of cultural minorities to be employed in public institutions.

Within the category of “self-government,” Levy includes the demands of federation, autonomy or separation raised by national minorities and indigenous peoples as the most visible types of demands of group rights.\(^67\) Note that this category covers a wide range of claims, from partial autonomy to decide on cultural affairs, which may include the control of public education, of the historical patrimony and so forth, to full secession and the creation of a new state. To a great extent, the distinctiveness of these claims lies in that they raise particularly complex issues of borders and territory.\(^68\)

The label “external rules” refers to the claims of rights that are intended to restrict the freedom of non-members and are seen as necessary for the sake of cultural preservation. Levy is thinking here of restrictions on immigration, or on the freedom of non-members to educate their children in a given language or to acquire property.\(^69\)

The fifth category—“recognition/enforcement”\(^70\)—refers to claims of cultural communities that seek the recognition of their traditional legal codes as valid law, even if they conflict with state law. An example could be the recognition of the peculiarities of the family law that forms part of the traditions of a cultural minority as binding or optional for the members of this group. For instance, legal standing might be accorded to a particular ceremony as a valid method of performing a marriage or to other customary rules of a cultural minority. As Levy indicates, most objections to this type of claims are based on the idea that the existence of various legal codes applicable to different groups of people within the same state constitutes the very essence of discrimination.\(^71\) Arguments in defence of these demands usually invoke, also, rights to self-government, but they can also appear merely as demands
for recognition of certain traditions or values against those that configure the mainstream society. Think, for example, of immigrant groups that request the revision of primary education programmes so as to incorporate their historical and cultural specificities. This type of demands is discussed in the United States, Australia or Canada as “multiculturalism policies.”

Levy also refers to the “internal rules” of cultural groups as a distinct category; these rules are not necessarily elevated to the category of “law” but refer mainly to “expectations about how a member should behave” (for example, in their family life, ways of dressing, etc.) if she wants to avoid a sanction. Different problems emerge from these internal rules. In particular, Levy discusses whether it is legitimate for a group to impose such restrictions on its members even if we think that a liberal state cannot legitimately oblige to comply with these rules.

In the category of “representation,” Levy includes the demands for a special and permanent presence of cultural minorities in central institutional bodies, with a view to guaranteeing that their interests are taken into account in decision-making processes. For example, three out of the nine members of the Canadian Supreme Court are reserved to francophone judges from Quebec. Likewise, the Maoris enjoy some special representation in New Zealand’s parliament.

Lastly, “symbolic demands” are often relevant in debates over group rights. This category comprises all remaining claims or disputes over the need of reforming symbols that only reflect the history and institutions of the cultural majority (flags, holidays, national anthems and so forth). Although symbolic demands might only indirectly impinge on power asymmetries and the ability of everyone to participate and develop their own culture, members of minority groups often attach to them an important value.

Obviously, each one of these categories involves a particular set of normative issues that are important to identify in analysing particular cases. Yet the purpose of the following chapters is to articulate the philosophical grounds for an account of group rights that could be the basis to examine the morality of the demands and practices described. As will become apparent, the discussion essentially revolves around the implications of these demands for the ideals of freedom, equality and state neutrality; here, some widespread assumptions about the general scope of citizenship rights tend to preclude a justification of special legal regimes as a way of recognising group rights to cultural minorities. The categories and examples suggested so far are mainly intended to illustrate the main demands that are discussed within this debate, since the focus of the subsequent chapters is on assessing the legitimacy of the assumptions that most cultural minorities share in common when formulating their demands for group rights. Only by starting from this abstract level will we be able to realise the general challenge posed by such demands and bring to light the principles that should guide the assessment of each particular claim.

4. AGAINST GROUP RIGHTS? SOME PROVISIONAL CONCLUSIONS

Thus far, I have focussed mainly on the inadequacy of the dominant approach to the problem of minority rights, and on the need for a theoretical framework based on different presuppositions in both conceptual and substantive terms. It has been asserted...
that this change in perspective constitutes an essential preliminary step towards a better understanding of what recognising these rights would imply. If it has been regarded as appropriate to examine the prevailing approach—instead of ruling it out _ab initio_—this is because this approach is largely responsible for the popularity of the thesis that group rights and liberalism are incompatible. Proving the lack of weight of the premises of this thesis is therefore crucial for overcoming a central obstacle to the justification of those rights. Let me recapitulate the main stages of the argument elaborated so far:

Both supporters and opponents of minority rights usually assume, often implicitly, that the best way of guaranteeing a special protection for these groups is through a different category of rights. This idea results from the common perception that the kind of moral and political interests that underlie the demands at stake cannot—or should not, according some versions—be subsumed under the familiar catalogues of individual rights constitutionally recognised in most Western democracies. However, this approach generally rests upon two problematic assumptions. The first concerns the idea that existing disagreement on the notion of “minority” presents a significant obstacle to the justification of group rights. From this standpoint, resolving the semantic issue is seen as crucial to adequately account for the normative issues involved in the debate. Moreover, as we saw, this approach also employs a reasoning analogous to that usually guiding the justification of individual rights. This explains why the absence of a widely accepted definition of “minority” is regarded as a major obstacle to justifying group rights and it is usually perceived as an impediment for the progress of the entire debate.

But, for the reasons laid out above, this conclusion is incorrect: basically, because it starts from an argumentative strategy which, as I have tried to show, insists in the separate examination of two issues—semantic and normative—that, in this context, are inevitably connected. It is wrong to attribute the indeterminacy of the concept of minority to mere terminological disagreements. Rather, the discrepancies over the meaning of this notion are symptomatic of profound disagreements about the kind of groups that should be the focus of the normative debate on collective rights. I have thus argued that the difficulties regarding the definition of “minority” are better understood if we conceive this concept as “contested” or “interpretative,” so as to stress the evaluative dimension of the semantic problem that we face. In particular, by proposing a certain legal conception of minority we inevitably endorse a position on central issues in the normative debate. In other words, the different meanings of the word “minority” reflect different theories on the kind of groups that deserve the special protection granted by rights. It is therefore pointless to separate the issue of defining “minority” from the problem of justifying the rights of minorities. In this sense, the existence of semantic disagreements is an invalid reason for rejecting the idea of group rights.

The second problematic assumption concerns the commonly endorsed notion of group rights. As indicated above, both proponents and critics often define them as rights belonging to a collective entity, and this interpretation has been greatly influential in the literature. The extent of this influence is reflected in the common view that the ideal framework for approaching the problem of group rights is the debate between liberals and communitarians. As a result of this connection, the discussion
leads to a controversy between individualists and collectivists concerning the nature of moral agency, the relative priority of the community or the individual, and the possibility of reducing group interests to individual ones. However, one of the main arguments defended so far is that, rather than presenting a suitable framework for assessing the idea of group rights, the liberal versus communitarian debate is a source of confusion. The focus on it has contributed to a simplistic interpretation of the challenge that the claims of cultural minorities represent for liberalism. To begin with, it is doubtful whether the philosophical debate between liberals and communitarians indeed warrants the conclusions that are often drawn from it with respect to the legitimacy of group rights. Moreover, this approach is misleading, to the extent that prevents us from developing a structured normative account that would identify the substantive reasons that underlie the claims involved and analyse their legitimacy according to certain parameters of justice.

This critique of the prevailing approach is reinforced by several other reasons that are worth outlining at this point:

First, in the way it is usually conceived, the category of group rights turns out to be a mixed bag that includes any group claim aimed at preserving some kind of collective interest. As a result, the theoretical analysis tends to focus either on complex philosophical issues about the nature of individuals and groups or on a set of formal issues with the purpose of testing the suitability of different criteria for categorising rights. Yet, contrary to what this approach might suggest, the opposition to group rights arises, as we have seen, mainly because of moral or political considerations, rather than metaphysical or formal ones. Some think that the interests at stake are morally irrelevant and thus regard it as a mistake to discuss them in terms of rights. Others, however, while accepting the relevance of those interests, oppose group rights either because they are concerned with their potential illegitimate use—as an instrument for a group to reduce or even suppress the individual liberties of its members with impunity—or because they fear that their recognition may open the gates to a proliferation of demands by all sorts of groups.

Despite the fact that this common position against group rights is based on a number of different arguments, this variety is hardly appreciable in the debate. Moreover, the relation between group rights and individual rights is repeatedly pictured as a zero-sum game: the more the former are recognised, the more the latter are weakened. But these assumptions conceal the fact that liberal opposition to group rights can be reconceived as based on a number of substantially different reasons. While it is commonly assumed that a favourable stance towards these rights implies a departure from the individualist and universal structure of the rights discourse in the liberal tradition, I will argue in the following chapters that it is essential to fully appreciate the different lines of reasoning behind the opposition to group rights, since their implications for this debate might be entirely divergent.

Secondly, under the dominant approach, the demands of illiberal minorities tend to be conceived as paradigmatic of claims for group rights. Thus, it is common to cite the demands of particular religious or ethnic groups which aim at acquiring a level of autonomy on the edges of the state, so that their ways of life remain unaltered, immune to the effects of modernity, so to speak. An even more recurrent theme is the invocation, as typical for group rights’ claims, of what Levy calls “exemptions,”

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mostly in order to legitimise actions of non-compliance with civil or criminal legislation regarded as incompatible with the cultural identity of a group. Think, for instance, of polygamy or female genital mutilation that some minorities desire to practice while living in Western liberal societies. But this is a biased selection. Of course, taking as a model the stereotype of a traditional illiberal community fits better with the communitarian ideals that, for the reasons set out above, are often employed to justify group rights. In addition, such examples surely allow to emphasise (and caution) that group rights can serve as a cover for a number of dubious practices only because they are part of what some groups regard as their essential traditions. In other words, the goal of protecting cultural diversity can lead, in practice, to tacitly give some groups carte blanche to mistreat certain categories of members. This illustrates the potential risks of adopting a model of multicultural citizenship that recognises group rights to minorities. It is what Ayelet Shachar calls the “paradox of multicultural vulnerability.”

But the former is not yet a conclusive argument to reject the legitimacy of group rights altogether. As seen, the debate covers a wider range of demands raised by groups that are often not illiberal in nature. Moreover, pointing to the claims of illiberal minorities would clearly be insufficient to account for the challenge that multiculturalism represents in most democratic states. This point is worth emphasising. Majorities and minorities clash over issues of territorial and political borders, over the traits of political systems of representation and linguistic regimes, over education curricula and public subsidies for cultural activities and religious schools, the choice of state symbols and holidays, etc. The dominant approach fails to account for, and offer a coherent reply to, these questions that are also raised in terms of group rights.

In sum, the debate is trapped between two antagonistic angles whose explanatory force is limited. By ignoring the origin and the nature of many of the actual disagreements, this approach can offer no more than a slanted vision of the complexity of the dilemmas that must be faced. In particular, the usual line of conceptualisation and justification of group rights does not provide any guideline for establishing distinctions between legitimate and illegitimate demands according to some parameter of justice. This leads to a distortion of the debate, which often focusses on secondary problems, rather than offering answers to the truly relevant ones. This outcome, in itself, provides enough reasons to start from a new, more satisfactory, starting point, capable of avoiding the objections mentioned. The first proposal along this line has been to explore an alternative conception of group rights. The notion suggested represents an attempt to coherently articulate the structural and substantive elements that are common to the heterogeneous claims of cultural minorities without renouncing the individualist and universal traits central to contemporary human rights discourse. It therefore helps to avoid the main liberal objections against group rights, especially the violation of the humanistic principle. In this sense, it would be premature to affirm that the tendency to entrench minority group rights in international law and some recent constitutions is symptomatic of a crisis of human rights as the common legal heritage of all democratic states.

Once these central conceptual problems have been clarified, the following chapters assume that it makes sense to think about the morality of group rights within the liberal tradition—in other words, without succumbing to the most extreme version of
communitarianism or adopting a critical stance towards the value-individualism that characterises liberal theories of rights. However, by choosing this approach over the conventional one, I am not trying to prejudge the possible answers to the question of whether group rights are legitimate and, if yes, whether they are compatible with individual rights. Indeed, there may be nothing morally valuable in the interest that most persons show in the preservation of the cultures to which they belong. Yet this conclusion must be reached through theoretical assessment. So far, the main idea I have sought to advance is that the discussion about group rights needs to review the dominant approach. Hence, the main question—the justification of group rights—remains open, but we need to face it through a different lens.

With this last point, I seek to emphasise again that the debate about group rights is not a pseudo-debate, namely, a debate the relevance of which disappears once the disagreements concerning the use of the relevant terms has been clarified. Contrary to what some conceptual discussions might initially suggest, the disagreements are substantive in nature. As will become apparent throughout the following chapters, it is not possible to explore the legitimacy of the demands of cultural minorities without revisiting the traditional interpretation of some of the main pillars of liberal democracies. The recent evolution of the academic debate provides the best evidence for this. Thus, a new current of thought—especially in political theory, but also in philosophy and legal studies—is emerging, dedicated to discussing issues such as the status of ethnocultural groups, the legitimacy of nationalism, and, generally speaking, the moral relevance of cultural belonging. The recent works of scholars such as David Miller, Will Kymlicka, Joseph Raz, Charles Taylor, Yael Tamir, James Tully or Michael Walzer among others, typically criticise liberalism because of the scarce attention paid to these issues. The repercussion of this wave of thinking is important. While it struggles to offer some plausible tools for dealing with many of the claims by cultural minorities within the classical human rights scheme, it vindicates the liberal imprint of group rights by striving for a deeper level of pluralism and equality in multicultural states.

Obviously, the fact that this trend seems to be on the rise does not mean that the legitimacy of group rights is unproblematic. Traditional human rights doctrines lack specific arguments to justify these rights, as mentioned at the beginning of this book. This gap is not fortuitous: liberalism has been the main driving force of human rights, and liberal theorists tend to think that individual membership in particular identity-groups is irrelevant. Hence, the recognition of group rights poses genuine dilemmas that go far beyond the mere resistance to a particular terminology. According to a widespread view, any measure aimed at preserving particular identities or cultural goods, even if grounded in individual interests, would involve renouncing some of the values that are at the core of the liberal tradition, such as equality and state neutrality. For others, even if people’s interests in cultural goods and cultural belonging might be perfectly legitimate, these are secondary interests, the satisfaction of which lacks the priority or relevance that is commonly associated with the notion of human rights.

These considerations raise additional questions. In particular, is there any reason why cultural goods, or the development of one’s cultural identity, are so important as to justify the recognition of collective human rights? In other words, taking up Raz’s
idea of rights, why should belonging to a cultural group be regarded as a fundamental interest for people’s well-being? Likewise, in the event that group rights of cultural minorities were recognised, how can we prevent that they are used by these groups to treat some of their members unfairly? In the end, every culture contains its own internal dissidence. Finally, should we really assume, as we have done so far, that the interests at stake are not already protected through the familiar constitutional catalogues of civil and political rights?

These are some of the crucial questions that a theory of group rights must address. Their articulation in the following chapters will allow identifying the main strategies and arguments behind the opposition to group rights. I will draw upon this basis in order to elucidate possible answers to the main problems identified so far. In my opinion, the objections outlined above do not involve insurmountable obstacles. I think that group rights are justified on the basis of the very principles that underpin liberal philosophy, even though defending this thesis certainly requires questioning certain interpretations of these principles. Ultimately, the analysis seeks to demonstrate that certain conceptions of liberalism situate cultural minorities in an unfair position and that group rights can help to solve this injustice. As I will also try to show, a theory that integrates both individual and group rights can eventually provide a better account for many of the policies and institutions that, as a matter of fact, already exist in many multinational and multiethnic states. At the same time, it allows to accommodate within the framework of human rights the growing tendency to protect cultural minorities in the international legal order.

NOTES

1 Today, women represent 60 per cent of the world’s 550 million working poor—persons unable to raise themselves and their families above USD 1 per day. Source: International Labour Organisation (ILO)—Press release Women’s Day March 2004.

2 For a recent account that relates judgements of inequality with social groups, Young (2001, pp. 1–18).


4 Fiss (1997, p. 38).

5 Fiss (1997, p. 38).

6 Taylor (1992, p. 25). I spell out this idea in detail in Chapter V.

7 Young (1990, pp. 48–63).

8 Young (1990, p. 41).

9 Young (2001, p. 2).

10 Young (2001, p. 15).

11 Young (2001, pp. 12–15). I have analysed this view and, in particular, the problems that structural inequality poses for democracy in Torbisco Casals (2005).

12 Or, as John H. Ely (1980, pp. 164–165) argues, the lack of interest in public life that women and other disadvantaged groups show is often due to deeply rooted prejudices and social forms of discrimination that the victims have internalised and hence accepted as justified.

13 On the notion of “adaptive preferences” as an unconscious process of adjustments of wants to possibilities in order to avoid the frustration in having aspirations that cannot be satisfied, see Elster (1983, p. 25, pp. 109–140). Contemporary psychology confirms this observation. Referring to what she calls “moral harassment,” Marie-France Hirigoyen argues that the situation of subordination plunges victims of discrimination or violence into a confusion that leads to chronic anxiety and depression. Such mental conditions result not so much from the aggression as such, but mainly from the fact that the person feels responsible for the prejudice and even guilty of provoking the aggression, which explains, in part, the lack of reaction and attitudes of submission. See Hirigoyen (1998).
Thus, Comanducci (1994, pp. 41–43) distinguishes between “minorities by force” and “minorities by will.” Similarly, Pizzorusso (1993, pp. 52–55) refers to minoranze discriminate and minoranze volontarie.

Young (1990, p. 46). Young mentions as an example Jews that are seen as such and discriminated against on these grounds, even if they have been completely assimilated.


As Habermas (1996, pp. 494–496) maintains, the status of citizen involves, on the one hand, a legal position defined in terms of civil rights, and, on the other, it amounts to the recognition of a previous, pre-political membership in a cultural group, or nation.

For discussion, see Kymlicka (1998b, pp. 91–102).

This is clearly reflected in the debate about gay marriage. For instance, the law passed by the Spanish Parliament in 2005 (Ley 13/2005 de 1 de julio) that reforms the Civil Code to extend the right to marry to gay couples is seen as a victory by the main gay and lesbian associations, especially because the conservative party in the opposition pressed to formalise these unions under another name, so they could enjoy the same benefits that the law attributes to married couples but through a separate institution.

On the distinction between formal and substantive equality, see Calsamiglia (1989).

It is important to clarify that hierarchies of status are not reducible to economic disparities, wherein social positions are rooted in the economic structure of society, creating class-related collectives defined by a distinctive relation to the means of production or to the market. See Fraser (2000, pp. 107–120). Instead, as Nancy Fraser argues, status hierarchies are based in social patterns of representation, interpretation and communication that generate cultural domination, non-recognition and disrespect. Certainly, some groups are affected by both economic and status vulnerability—indigenous peoples, for example—but this is not always the case. As Kymlicka (2002, pp. 332–334) points out, gays in Western societies have similar per capita levels of income as heterosexuals, but suffer from demeaning forms of homophobia which often leads them to live a double life. On this last point, see Kenji Yoshino (2002, p. 772, 812). Similarly, most women are constrained by gendered expectations and disrespect for their priorities and traditional roles, even if they enjoy similar levels of wealth and education as men. In any event, the point here is that these patterns express an imbalance of status that cannot be surmounted only by means of economic restructuring.

On the links between structural inequalities and group representation, see Melissa Williams (1998).
in terms of real power and influence in society. The alienation from the political process stems from the fact that members of these groups do not actively participate (and are often invisible) in processes of political decision making and in the formation of public opinion and thus lack the opportunity to shape the outcome of those processes. As Phillips (1995), Young (2000, pp. 139–141) and others argue, there are significant differences of experience attached to being member of an identity-group (being male or female, for instance) and there is a relationship between people’s experiences in their ordinary lives and their judgements, commitments and understandings of political issues. If this is so, it becomes implausible to claim that all groups are equally represented, especially when bodies of representation are largely composed by members of the group that rank high in the social hierarchy. Moreover, when effective representation fails, the chances of members of marginalised groups of contributing to shape the society in which they live significantly diminish. This, in itself, amounts to an unfair restriction to a central dimension of individual autonomy, which ultimately weakens the democratic legitimacy of the outcomes of political processes.

Although a detailed exploration of this topic is beyond our present interests, supporters of special representation—or descriptive representation, in Jane Mansbridge’s terms (2000, p. 99)—argue that this is a good strategy to target structural inequalities for various reasons such as (a) in settings of historically subordinated statuses and infra-representation of certain identity-groups, it serves as a mechanism to promote effective representation through removing the obstacles to adequate communication between representatives and constituents; (b) special representation is also seen as a form of equalising certain outcomes (political representation, in this case), a goal which is justified when the presumption is that the opportunities are not equal for members of all groups. This is a way of acknowledging that disparities arising from overt forms of legal discrimination are not significantly different from disparities that emerge out of structural constraints, as Phillips (2004, p. 7) emphasises; (b), introducing descriptive representation can help to restore the sort of trust between groups that makes it possible to speak of a unified constituency reflecting a common political culture (see Rosenkrantz, 2005). Finally, descriptive representation offers the affected groups the opportunity of transforming the negative representations linked to their identities, since access to power provides the means of struggling against the false beliefs that are on the basis of degrading stereotypes that subordinate certain groups. Certainly, the mere presence in democratic institutions may do nothing to shape the outcomes of decision-making processes. If decision making is majoritarian, there is nothing that prevents more numerous participants from ignoring the voices of the minority. For this reason, the effectiveness of group-representation mechanisms depends importantly upon promoting the deliberative character of democracy (see Gargarella, 1998, pp. 269–274). Theorists of deliberative democracy have discussed extensively the pre-conditions that need to be satisfied for this model to deliver its promising benefits. See Elster (1998) and Dryzek (2000). For a critical analysis of the relation between group representation and deliberative democracy, see Williams (2000).

For example, some constitutional law scholars suggest that the control of the constitutionality of the legislation by constitutional or supreme courts should have a higher degree of scrutiny in contexts of social inequality, especially if the law singles out criteria of distinction that happen to coincide with the traits of some vulnerable minority or will make a significant impact on this group. Ferreres (1997, pp. 250–254) even argues that, in such cases, the burden of proof should be imposed on those who defend the constitutionality of the law.

Williams (1976, p. 76). According to Williams (1976, pp. 77–79), “culture” as an independent noun, and abstract process or its result only gained importance at the end of the nineteenth century, mainly to represent the European art and literature that were regarded as the highest expression of human development. In this sense, it has been suggested that the relevance of the concept of “culture” emerged as the product of European colonialism, coupled with the predominance of bourgeois masculine values progressively embedded in industrialised societies.
50. See also Geertz (1973, p. 5), who refers to the webs of significance that human beings themselves help to create as “culture” and not merely to mere patterns of behavioral events.

51. For a defense of this interpretation see, too, Tamir (1993, p. 8).

52. As with social minorities suffering from structural inequalities, the claims of cultural minorities involve both redistribution and recognition. In this vein, Bhikhu Parekh (2004, pp. 199–213) argues that recognition and redistribution, as described by Fraser (see supra note 35), are complementary discourses in the pursuit for equality. Parekh convincingly argues that economic improvement is often dependent on self-respect and collective pride.

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57. See, in a similar sense, Young (2000, p. 89).

58. Benhabib (2002, p. 7) herself shares this view. Thus, the anti-essentialist approach she defends as part of her “sociological constructivism” is compatible with conceiving differences as fictions. Her reaction is mostly directed towards what she calls “strong or mosaic multiculturalism,” as the view that “human groups and cultures are clearly delineated and identifiable entities that coexist, while maintaining firm boundaries.” Benhabib (2002, p. 8). Although this is a common picture of multiculturalism in the political praxis, I think it is not easy to find proponents of this theory in the literature (see below note 60).


60. See supra note 14. Comanducci (1994, p. 42) describes cultural minorities as “minorities by will” because they wish to distinguish themselves from the majority, and their claims are not limited to the mere protection against discrimination, but they reject the homogenisation or assimilation into the cultural model of the majority.

61. Levy (1997, pp. 22–66; or see 2000, pp. 125–175). Levy’s method of categorisation is not based on the type of group but on different kinds of demands (that sometimes are raised by different types of groups). Kymlicka, instead, classifies the demands according to the type of group, but this leads him to distinguish unnecessarily between similar claims. See Kymlicka (1995a, pp. 37–38).

62. Initially, this type of demands might not seem to raise significant problems, since the exemptions could be granted as part of the protection of freedom of religion. Yet this argument is contested as the recent controversy over the foulard in France and other European countries show. This debate will be taken up in Chapter VI. Also, the Supreme Court of the United States decided that Jews do not have the right to have the weekly holiday on Saturdays on the grounds that other citizens’ preferences deserve the same respect, even if they are not founded on religious reasons. And yet, this same court had granted the Amish certain exemptions from the compulsory education of their children, which shows the complexity of finding a way to deal with this issue in a consistent manner. For discussion of these and other examples, see Levy (1997, pp. 25–29).

63. Levy (1997, p. 33). And, of course, this category raises the fears about the potential incompatibility of group rights with individual human rights.

64. See Kymlicka (1998b, pp. 15–17).
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74 Levy (1997, p. 43).
76 This is indeed a central theme in Okin’s critique of multiculturalism in Okin (1999, pp. 9–24).
77 Shachar (1999, p. 87).
78 As mentioned in the introduction, it is not uncommon to interpret this recent trend as reflecting a change of paradigm in the philosophical justification of human rights, which challenges their universal validity.
79 Indeed, it is an essential part of the notion of human rights that these rights are called upon to protect basic needs or goods. Hence, the imposition of duties on others derived from these rights is only justified with the aim of guaranteeing our most urgent interests. See supra note 53 of the Introduction.