

Indigenous Peoples and Multicultural Citizenship: Bridging Collective and Individual Rights*

Cindy L. Holder**
Jeff J. Corntassel***

I. INTRODUCTION

Many heralded 1998, which marked the fiftieth anniversary of the Universal Declaration of Human Rights, as a milestone for universal legal protection of individuals. For others, this anniversary was a time for critical reappraisal of existing human rights instruments and norms.¹ Two pressing issues for critics of existing human rights mechanisms are the lack of progress in promoting universal recognition of group rights and the continued exclusion of indigenous groups from political, economic, and social participation in many parts of the world. For many, the problem lies in the individualistic nature of existing human rights discourse. The concern is that existing

* An earlier version of this paper was presented at the 1997 Annual Meeting of the International Studies Association in Toronto, Canada. Special thanks to Laura Parisi, Michael James, Cary Nederman, and Timothy Luke for their comments on earlier drafts of this work.

** *Cindy Holder* is an Assistant Professor of Philosophy at the University of Victoria in British Columbia, Canada. Her main areas of research are social and political philosophy and the philosophy of law.

*** *Jeff J. Corntassel* (Cherokee Nation) is an Assistant Professor of Political Science at Virginia Polytechnic Institute and State University. His main research and teaching interests include global indigenous rights, ethnonationalism, and international law organizations. His forthcoming book entitled *Forced Federalism: Contemporary Challenges to American Indian Sovereignty* (Fall/2002, University of Oklahoma Press) examines indigenous political mobilization in the US and in global forums during the 1990's.

1. As one example of a critical approach to global human rights, see, HUMAN RIGHTS FIFTY YEARS ON: A RADICAL REAPPRAISAL (Tony Evans ed., 1998).

instruments emphasize individual needs and entitlements in a way that inadequately compares the collective nature of groups with non-Western world-views and priorities. In this regard the preference of many human rights documents for the language of “populations” and “persons who are members” over the language of “peoples” is one important example of an atomistic bias that does not adequately protect those for whom communal life is vital.²

Debate over the limits of existing rights discourse is often pursued within a framework of liberal-individualism versus corporatism.³ For example, Peter Jones distinguishes two different ways in which a group claim might be incorporated into human rights discourse: 1) as the claim of a collectivity that is ultimately reducible to individual members; or 2) as the claim of a corporate body the reduction of which to constituent members is not possible.⁴ Jones, among others, has argued that groups should not be recognized as subjects of human rights that can conflict with and potentially override the claims of individual members.⁵ For many proponents of

-
2. Some examples of human rights treaties stressing the individualistic nature of rights claimants include the International Covenant on Economic, Social, and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), and the Convention on the Elimination of All Forms of Discrimination Against Women (1979). For human rights documents using the language of “persons belonging to” and “populations” rather than “peoples” see Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, Article 1.1, G.A. Res. 47/135 (18 Dec. 1992); Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, U.N. Doc. A/CONF.157/24 (Part I) at 20, I.5 (14–25 June 1993); also I.18, I.19, I.33 of the Vienna Declaration; and the European Convention for the Protection of Human Rights and Fundamental Freedoms. A general overview of the international legal regime governing minority rights can be found in NATAN LERNER, *GROUP RIGHTS AND DISCRIMINATION IN INTERNATIONAL LAW* (1991).
 3. We have chosen to follow Peter Jones’ term “corporate” (see Peter Jones, *Human Rights, Group Rights and Peoples’ Rights*, 21 *HUM. RTS. Q.* 87–88 (1999)) rather than the more familiar term “communitarian” for two reasons. First, what distinguishes the advocates of group rights from liberal-individualist views is not that they like community but that they dislike reducing communities to individual members. It is thus misleading to describe the debate in terms of “communitarians” versus “liberal-individualists” as this suggests that the source of disagreement is the value to be accorded community when the disagreement is really over the nature of community and its role in individuals’ lives. Second, many communitarians have argued that rights discourse itself is antagonistic to maintaining a strong communal context, so that a discussion of whether group rights or individual rights should take precedence is beside the point. See MARY ANN GLENDON, *RIGHTS TALK* (1991); Michael Sandel, *The Procedural Republic and the Unencumbered Self*, 12 *POL. THEORY* 81–96 (1984). Nonetheless communitarian thinking has had a clear influence on the approaches to group rights which we describe as “corporatist.” See, e.g., Darlene Johnston, *Native Rights as Collective Rights*, 2 *CANADIAN J. L. & JURISPRUDENCE* 19–34 (1989); Frances Svensson, *Liberal Democracy and Group Rights: The Legacy of Individualism and its Impact on American Indian Tribes*, 27 *POL. STUD.* 421–39 (1979). So in what follows we cite the views of communitarian thinkers such as Charles Taylor and Alisdair MacIntyre in our explication of the corporatist position.
 4. Jones, *supra* note 3, at 90–91.
 5. *Id.* at 88, 92–93.

minority claims, however, protecting the ability of groups to determine for themselves the terms on which members interact with outsiders and with one another is an essential part of protecting their right to self-determination and so represents a goal toward which any fight for group recognition must aim.⁶ If reducing group claims to those of individuals is incompatible with treating group autonomy as in itself important then liberal-individualist accounts of human rights will be incompatible with not only corporatism but with the political demands of most of the groups actually claiming groups rights around the world.

Local and international rights claims of indigenous peoples often appear as test cases in theoretical discussions of this problem. Indigenous groups tend to practice a political and cultural philosophy in which the connections between individual and group identity are given as much weight as the boundaries. And so their practice seems to offer a good testing group for the theoretical works of both liberal-individualists and corporatists claiming to model their work after indigenous philosophies.

On close examination, however, the ways in which indigenous groups conceive of groups and their relation to respect for individual dignity are not only more complex than the liberal-individualist or corporatist approaches that they have been used to illustrate, but offer a more sophisticated understanding of the relationship between individuals and groups than either theoretical approach. Many indigenous groups⁷ emphasize the interdependence of individual and collective claims and gravitate toward solutions

6. See, e.g., Rosemarie Kuptana, *Speaking Notes for the North American Indigenous Nations UN Satellite Meeting* (1 Apr. 1993), cited in Wendy Moss, *Inuit Perspectives on Treaty Rights and Governance*, in *ABORIGINAL SELF-GOVERNMENT: LEGAL AND CONSTITUTIONAL ISSUES*, ROYAL COMMISSION ON ABORIGINAL PEOPLES (1995); Sami Council, *Cultural Policies for Development: An Indigenous Perspective*, available as Note by the Secretariat: Information received from indigenous organizations, U.N. Doc. E/CN.4/Sub.2/AC.4/1998/8; Human Rights Committee, *The Right to Self-Determination of Peoples*, art. 1, Gen. Comment 12, available at <[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CCPR+General+comment+12.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CCPR+General+comment+12.En?OpenDocument)> (visited 18 Nov. 2001).

7. Indigenous peoples are distinct from "minority groups" or other "national groups" due to their original occupation of traditional homelands, historical continuity, unique cultural practices, non-dominance, and group awareness. In defining indigenous, we refer to the commonly used "working definition" established by the UN Working Group on Indigenous Populations (UNWGIPI) in 1986:

Indigenous populations are composed of the existing descendants of the people who *originally* inhabited the present territory of a country (or countries), wholly or partially, at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them, *either by direct conquest, settlement, or other means*, reduced them to a non-dominant group *within their home region or territory*.

Jeff Corntassel & Tomas Hopkins Primeau, *The Paradox of Indigenous Identity: A Levels of Analysis Approach to Indigenous Identity Construction*, 4 *GLOBAL GOVERNANCE* 139–56 (1998) (emphasis added); Jose R. Martinez Cobo, *Study of the Problem of Discrimination Against Indigenous Populations*, U.N. Doc. E/CN.4/Sub.2/L.566, ¶ 34 (1986).

such as dual-standing group rights (rights which are predicated of a group but can be claimed by particular members as well as collectivities). As we shall demonstrate below, indigenous peoples generally recognize that collective and individual rights are *mutually interactive* rather than in competition. Duties of citizenship are grounded in interactions at multiple levels (the host state, indigenous group, and individual members) as are the claims that individuals may make of their governing institutions and of one another.

This practically-grounded perspective on group rights is markedly different from views prevalent in the existing theoretical literature. And, we argue, it offers a more promising avenue for the development of theory in this area. Examining the practical content of indigenous rights claims which have been promoted in several international forums, including the United Nations Working Group on Indigenous Populations (UNWGIP) is thus useful for two reasons. First, it allows one to construct a foil of actual group practice against which the adequacy of extant discussions of group rights may be investigated. In addition, (and as we shall demonstrate in this research) paying closer attention to practice in this way—in this case, to the ways in which the world's indigenous peoples view basic questions of citizenship and group affiliation—opens up a promising alternative for future theoretical development.

In what follows we present group rights as portrayed in contemporary theoretical debates; compare this portrayal with some of the claims actually advanced by various indigenous groups throughout the world; and give reasons for preferring the practical to the theoretical treatments. Our findings suggest that liberal-individualist and corporatist accounts of group rights actually agree on the kind of importance that group interests have for persons and on what it is that groups who claim rights are concerned about in their political claims. For fundamentally the dominant theoretical approaches converge in their understanding of how, if irreducible group rights are to be acknowledged, their importance must be justified. Both liberal-individualists and corporatists locate the importance of group interests in the personal psychology of individual group members. As a result, they treat *group* interests (such as cultural integrity) as not only different in kind from individualized interests such as freedom of expression but as potentially in competition with them.

In contrast to this, the real-world demands of indigenous groups place a great deal of emphasis on concrete ways in which the preserving of communal life can be important to individuals' well-being, in addition to the various spiritual and symbolic resources which such life may provide. These practical aspects of communal life make individuals' group interests a lot like their individualized ones, and so suggest that such rights do not introduce new or distinctive theoretical questions. Instead, group rights are seen as raising familiar questions about how individuals' interests ought to

be balanced against one another when they are in competition; what counts as an adequate institutional structure for the instantiation of a right; and who ought to be recognized as an authoritative judge of whether a right has been respected.

For the purposes of this paper we take for granted that there are no conceptual barriers to the possibility of some kind of collective right-holder. There are undoubtedly many who would take issue with this assumption. However, since the possibility of collectivist claims is assumed by many of the approximately 3,000–4,000 indigenous groups within the world system, not accepting that collectivities are (at least in the abstract) potential right-holders is close to impossible without discarding most indigenous practice altogether. Further, the criticisms of those who deny that the term “right” can be applied to entitlements predicated on collectivities are largely tangential to the project of this paper. For rather than take a stand on questions of social ontology such as whether collectivities can be said to “exist” or “have interests” in the same way that individual persons do, the analysis of this paper departs from the modest assumption that among those things that exist and have rights-generating interests there may arise circumstances in which one or more of them have an interest that is irreducibly collective in form. When this happens, questions will arise about the conditions of tenure that should be applied to any rights to which the interest may give rise. May these rights be held corporately, for example? Or must they be reduced to individual holders? If it turns out that the rights may be held corporately, what ought to be their relationship to rights that are held individualistically? Must the corporate rights always give way to individualistic ones? Or may they sometimes take precedence? We take these to be the pressing questions in the area of group rights. And so we take the test of any group rights theory to be the degree to which its answers to these questions are satisfactory.⁸

II. THE LIMITS OF EXISTING THEORY

Most contemporary theoretical accounts of group rights fall into one of two categories: liberal-individualist and corporatist.⁹ Liberal-individualist

8. For general arguments defending the conceptual coherence of a collective rights, see Leslie Green, *Two Views of Collective Rights*, 4 *CANADIAN L. & JURISPRUDENCE* 315 (1991); Michael Hartney, *Some Confusions Concerning Collective Rights*, in *THE RIGHTS OF MINORITY CULTURES* 293 (Will Kymlicka ed., 1995).

9. This discussion does not necessarily apply to non-traditional approaches such as found in post-modern, post-structuralist, or feminist treatments of the subject. Rather, the susceptibility of non-traditional treatments to the criticisms outlined below depends on whether and to what extent such treatments share the problematic assumptions identified. For an interesting and thoughtful discussion of collective entitlements from a

approaches are distinguished by their focus on fundamental individual interests as the only acceptable grounds for according the status of a moral right to claims advanced by collectivities.¹⁰ In contrast, corporatist approaches focus on the community as a previously existing base from which individual action departs.¹¹ These two schools of thought represent extremes on a continuum, and the bulk of mainstream theoretical analysis falls somewhere in between the two. This framing feature makes the “pure” positions particularly useful as a focus of this paper. For as the approaches summarized below represent the outer boundaries of mainstream theoretical discourse regarding collective rights, it is safe to assume that features shared by the two extremes will also be exhibited by more moderate positions lying in between them. Identifying a problem that is common to the two framing approaches should thus allow us to illuminate a problem with mainstream theories in general (or at least, with theories which can be placed along the liberal-individualist/corporatist spectrum).

A. The Liberal-Individualist Approach

Those liberal-individualists who have accepted the need to incorporate group claims into their discussions of justice have done so largely in response to corporatist charges that the model of the person from which liberal-individualist theories depart is too disembodied and atomistic to capture the actual needs and interests of human beings in the world. This charge arises from liberal-individualists’ insistence that whatever importance collectivities have should be understood as essentially a derivative of the importance of individuals. Thus, if groups are to be recognized as sources of entitlement, liberal-individualists insist that this must (ultimately) be justified by appeal to some role that collectivities play in securing an *individual’s* fundamental interests. This means that if a group is accorded rights these must be contingent on some individual (or set thereof) holding of a (more basic) right to the collectivity’s continued existence.

The criticism which liberal-individualists commonly face is that their continued emphasis on individuals leads them to undervalue or ignore important and widely valued aspects of human experience. Consequently,

non-traditional perspective, see V. Spike Peterson, *The Politics of Identification in the Context of Globalization*, 19 *WOMEN’S STUD. INT’L FORUM* 5 (1996).

10. See WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* (1995); Allen Buchanan, *The Role of Collective Rights in the Theory of Indigenous Peoples’ Rights, in SECESSION: THE MORALITY OF POLITICAL DIVORCE FROM FORT SUMTER TO LITHUANIA AND QUEBEC*, ch. 2 (Allen Buchanan ed., 1991); JOSEPH RAZ, *THE MORALITY OF FREEDOM* (1986).

11. See, e.g., Michael Sandel, *The Procedural Republic and the Unencumbered Self*, 12 *POLITICAL THEORY* 81 (1984); Johnston, *supra* note 3, at 19 (1989).

important components of individual well-being can be viewed to be at best under-protected and at worst actively undermined by liberal-individualist accounts of group entitlements. From a liberal-individualist perspective, this criticism can be understood as meaning one of two things: (a) that the model of the person from which they are working requires a more comprehensive *list* of interests than those generally used; or, (b) that liberal-individualism requires a more complex theory of the relationship *between* the elements already on a list deemed acceptable. Although only the latter understanding of the criticism actually implies that the liberal-individualist view of human motivation or rationality requires revision, liberal-individualist approaches have generally considered *both* avenues of criticism to be satisfactorily addressed by their attention to the role groups play in individuals' psychological and moral development. This has generally translated into treating the continued existence of one's community of origin as a special (read psychological) kind of "primary good," or in John Rawls' words, something that has been "publicly recognized as [among] citizens' needs and hence as advantageous for all."¹²

As a result, liberal-individualist approaches assume a picture of a group membership in which the interests of all members in a group's continuation are the same; and that having her membership in some core group protected exhausts the interest an individual has in communal participation. So members cannot have diverging or possibly conflicting interests in the nature and direction of a community, and do not have additional group interests in connection with their participation in other, equally important groups. Nor does the liberal-individualist conceptualization of membership allow for reciprocal interests between community and member; for the normative structure of the relationship between individual and community is unidirectional. Individuals may be acknowledged to have an interest in some group, but collectivities are not recognized as having legitimate interests in their members. This produces an asymmetry in the normative relations between individuals and their groups: individuals may be ascribed rights against groups of which they are a member, but they may not be ascribed correspondent obligations.

From a practical perspective each of these features are problematic. First, the unidirectional nature of group interests within the liberal-individualist account ignores the extent to which the language of collectivities can be a useful fiction for getting at interests which each fellow member has in the behavior and participation of other members. Second, the assumption that all members have the same interest in a group's continuance suppresses the

12. See, e.g., Johnston, *supra* note 3; Svensson, *supra* note 3; Owen Fiss, *Groups and the Equal Protection Clause*, PHIL. & PUB. AFFS. 5 (1976).

importance of mechanisms for negotiating conflicts of interest which arise from within the community. Third, the emphasis on the relationship between individual and community ignores the impact which a group's external context might have in shaping internal conflicts or decisions.

However, the liberal-individualist insistence on taking the individual as the reference point for justifying various collective entitlements is basically sound. For inasmuch as collective rights are *rights*, any approach which appeals to them must buy into the language of human dignity and to some form of *ethical* individualism; also it must buy into some form of the view that ethical values ultimately be grounded in the needs or interests of individual persons. Liberal-individualist approaches do capture something important about group rights: that, at least in their justification, such rights must be shown to serve individual persons.

B. The Corporatist Approach

Corporatist approaches characteristically depart from the premise that one cannot make sense of individual action outside of the collective context from which it emerges.¹³ For example, Charles Taylor argues that when people see their identity as defined by the nation or tradition to which they belong:

What they are saying by this is not just that they are strongly attached to this spiritual view or background; rather it is that this provides the frame within which they can determine where they stand on questions of what is good.¹⁴

As a result, an object or state of affairs can only really be positively perceived for a person if it connects somehow with his/her primary group membership(s). This means that an individual's decision-making process requires orientation "in a certain space of questions, through certain constitutive concerns."¹⁵ Individual action can only acquire significance—for both actors and observers—against some prior understanding of the social context in which individuals live and in response to which activity proceeds.

One way of thinking about this phenomenon is to describe collectivities as "ontologically prior"¹⁶ to individuals: to describe collectivities as necessarily

13. CHARLES TAYLOR, *SOURCES OF THE SELF* 27 (1989).

14. *Id.* at 50.

15. ALISDAIR MACINTYRE, *AFTER VIRTUE* (1981); MICHAEL WALZER, *SPHERES OF JUSTICE* (1983).

16. To describe collectivities as ontologically prior is to say that the existence of individual selves is preceded by the existence of collectivities. In other words, individual selves cannot exist unless there is a collectivity already in place. For a detailed discussion of this idea, see CHARLES TAYLOR, *Atomism*, in *PHILOSOPHY AND THE HUMAN SCIENCES: PHILOSOPHICAL*

predating individuals as both existents in the world and as units of social analysis. Only against the background of collectivities does it become possible to ascribe meaning or value to groups within the contemporary world system. Ascribing choices to individuals and describing their actions as structured and pursuing a purpose in the world thus requires a prior sense of who they are and what kind of world they take themselves to be operating within. Typically, this enabling function is conceived in terms of a cognitive schema from which decision-making departs and in terms of which an individual's action becomes rational or comprehensible. Thus collectivities are not just a secondary part of the world's socially constructed entities. They are rather a crucial part of what allows the notion of individuality and individual agents to make sense. So one ought to accord overriding importance to certain claims by collectivities because those claims are necessary to our capacity to attribute choices (and so responsibility) to a collectivity's members. It is because an individual's ability to act depends on the collective entity's (or entities') prior ability to act that a system of rights which fails to secure the rights of collectivities to act "as themselves" is argued to be incapable of attributing agency, and so praise and blame, to individual persons.¹⁷

Corporatists further argue that collectivities can only *realize* their rights of social action if the tenure of those rights is grounded in non-individualistic terms. This is so for four principle reasons. First, conceiving the bearer of collective rights in individualistic terms is argued to take the individual "as given" and so to ignore the importance of interests arising from interdependence and the embeddedness of an individual's capacity to act. Second, an individualistic focus is argued to frame one's dependence on a collectivity as a barrier to self-determined action, and so to permit or even encourage one to ignore obligations whose performance may be crucial to maintaining the communal environment from which one emerges. Third, when individualistic conceptions of collective rights treat individuals as having an objective set of interests independently of those of their community, such conceptions are argued to interfere (or to promote interference) with communal practices. This is deemed the case *even when no member of the community complains*, thus forcing communities to refer to something outside of (and perhaps alien to) their own self-understandings when formulating norms and modes of life. And finally, an individualistic explication of rights claims is argued to encourage competition between internal and external authoritative structures for jurisdiction such that

PAPERS VOL. II, ch. 7 (1985); and the concept of a person *in* HUMAN AGENCY AND LANGUAGE: PHILOSOPHICAL PAPERS VOL. I, ch. 4 (1985).

17. TAYLOR, *supra* note 16.

individuals may play collectivities against one another to the detriment of less powerful groups.

From a practical perspective, corporatist concerns about the impact an individual's exercise of rights can have on relationships between collectivities and on the capacity of a group to perform important functions for its members is a valuable insight. Corporatist analysis also insists on a mutuality of interest between individuals and the groups to which they belong and so permits recognition of the ways in which behavior by one member of a group can have negative effects for *other members* when it disrupts collective structures. Corporatist approaches seem to underrate the potential for harm arising from conflicts of interests within a group, however, especially conflicts of interest regarding the conditions on or social meaning of "counting" as a member. In addition, the emphasis on protecting groups against "inauthentic" pressures makes it difficult to address issues of accountability and dissent within a community.

C. The Problem

Although both liberal-individualist and corporatist approaches contain important insights about the interests and vulnerabilities involved in group rights claims, their ultimate usefulness for analyzing the actual demands of groups is limited. For both liberal-individualist and corporatist approaches describe the significance of group membership for individual well-being in primarily psychological terms—that is to say, in terms of the contribution membership makes to individuals' social well-being. Consequently the interests which individuals have in a community's continuance, and the conditions necessary to those interests being realized appear to be the same for all persons regardless of the group(s) to which they belong and the features of their membership therein. Moreover, the value of group interests is measured in terms of the internal, psychic impact of membership to the exclusion of the various external, tangible, and situational impacts which membership might have. These features limit the capacity of existing theories to account for the demands and priorities of indigenous groups in at least two ways.

First, by placing such heavy emphasis on the psychological importance of membership, existing theoretical accounts have made the plausibility of group rights claims stand or fall according to one's ability to demonstrate that members have an important psychological investment in the continuation of their collectivity, and regardless of the role which a strong or healthy group life might play in securing more tangible aspects of one's well-being such as the security of one's livelihood or one's ability to protect one's children from exposure to infectious disease. Thus, strong critics of group rights such as

Jeremy Waldron emphasize the capacity of individuals to function psychologically in the absence of a secure identification; liberal-individualist defenders of group rights such as Will Kymlicka focus on drawing distinctions between those interests which trump psychological investment in community and those which do not; and corporatist theorists such as David Miller attempt to establish the conceptual priority of identification.¹⁸

Under these circumstances, groups whose members are linked less by common culture than by a common history or common experiences of dominant structures can qualify for a group right only if group members' own act of identification is invested with enormous ethical significance. The experience of many indigenous peoples demonstrates, however, that it is often the insistence of oppressors in treating a collection of persons as a group that triggers the need for collective solutions and protective devices that can be wielded as a collectivity. In addition, emphasizing the individual members' identification opens the path for dominant or majoritarian groups to lodge claims for the retention of control over minority groups. Majoritarian groups can then block an oppressed minority's claim to rights by appealing to the importance of including such minority populations in the dominant group's (collective) goal of state-building or the development of national identity. This may in turn lead to a denial of minority rights under the auspices of respecting the group rights of the majority. In fact, the government of Bangladesh has pursued just such a strategy, insisting that the inclusion of groups such as the Jumma indigenous peoples living in the Chittagong Hill Tracts as Bengali citizens within the state of Bangladesh is essential to Bengali legitimacy.¹⁹ In fact, during the 1970s and 1980s, the newly-independent country of Bangladesh encouraged its non-indigenous

18. See Jeremy Waldron, *Minority Cultures and the Cosmopolitan Alternative*, 3 UNIV. MICH. J. L. REFORM 195 (1992); Kymlicka, *Multicultural Citizenship*, *supra* note 10; DAVID MILLER, *ON NATIONALITY* (1995).

19. The Chittagong Hill Tracts (CHT) are a confederacy of sixteen different indigenous nations collectively called Jumma, which include the Chakma, Marma, Tripura, Mro, and others. Over 500,000 predominantly Buddhist Jumma live in CHT homelands that are situated in the southeastern part of Bangladesh. Jumma indigenous peoples have a long history of self-rule despite colonization efforts by Bengalis and Great Britain. By 1947, the CHT was ceded by Britain to Muslim Pakistan. When Bangladesh seceded from Pakistan in 1971, the CHT region was also included in the newly-formed state. Since Bangladeshi statehood, the CHT region has been besieged by over 400,000 government-induced Bengali settlers who have sought to dislocate Jumma peoples from their homelands. A 1997 agreement between the government of Bangladesh and the Parbatya Chattagram Jan Samhati Samiti (PCJSS), the political party of the Jumma indigenous peoples, was negotiated to end the ongoing intrastate war. However, Jumma homeland autonomy has not yet been restored as over 3,055 Jumma refugee families have yet to have their original homelands restored to them. JAMES MINAHAN, *NATIONS WITHOUT STATES* (1996); *Intervention by Mangal Kumar Chakma*, UN Working Group on Indigenous Populations, 18th Sess., Geneva, Switz. (24–28 July 2000).

citizens to resettle the homelands of the Chittagong Hill Tracts in order to discourage collective claims of indigenous autonomy within the country. This strategy finds an opening because of the emphasis on the psychological impact of group identification in the justification of claims. For whereas more concrete consequences of group membership, such as access to cultural and political resources, homeland autonomy, and susceptibility to displacement will quite clearly distinguish between oppressors and oppressed, psychological consequences such as internal disorientation will not. Emphasizing the psychic impact as a source of justification thus erodes the intuitive moral difference between claims of the powerful and claims of the powerless. Intuitively, then, the psychological importance of collective rights claims cannot be the only, or even the primary, reason for recognizing collective rights in the world.

Second, this emphasis of psychological investment to the exclusion of more tangible material and structural considerations further sets up an implicit competition between (psychological) group interests on the one hand and (concrete or material) individual interests on the other. Resolving conflicts between group interests and individualistic ones thus appears to be a question of deciding the relative importance of symbolic and psychological ways of impacting an individual's well-being versus tangible and corporeal ways of impacting on an individual's life. In actuality, however, the irreducibly collective and the individualistic do not divide neatly along symbolic-psychological/tangible-corporeal line. Many group priorities, such as establishing legal recognition of aboriginal title or gaining control over the resources necessary to serve members' health needs, are very concrete. Moreover, the experience of many indigenous groups is that, far from representing a threat to individual members, the physical security of group life is a contributing factor to the security of members' persons.²⁰

But even if the psychological significance of group membership is the not the *primary* justification for group rights one might nonetheless deny that this is a problem. After all, one might argue, those who pursue group

20. See, e.g., INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, REPORT ON THE SITUATION OF HUMAN RIGHTS IN COLUMBIA, at ch. X (1999); INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, REPORT ON THE SITUATION OF HUMAN RIGHTS IN BRAZIL, ch. VI (1996); *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Uruguay*, Comm. on the Elimination of all Forms of Racial Discrimination (CERD), U.N. Doc. A/54/18, ¶¶ 425–35, at 425 (19 Aug. 1999) (Concluding Observations/Comments); *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Colombia*, CERD, U.N. Doc. A/54/18, ¶¶ 454–81 (20 Aug. 1999); *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Cambodia*, CERD, U.N. Doc. CERD/C/304/Add.54 (31 Mar. 1998); *Concluding Observations of the Human Rights Committee: Chile*, Hum. Rts. Comm., U.N. Doc. CCPR/C/79/Add.104 (30 Mar. 1999); *Concluding Observations of the Human Rights Committee: Ecuador*, CERD, U.N. Doc. CCPR/C/79/Add.92 (18 Aug. 1998).

rights in practice may be unaware of their true motivations or uninformed as to where their true interests lie so that their priorities are of limited value for the evaluation of theory. And even if this is not the case, it could be that the justification of rights in psychological terms is interesting in and of itself, so that it merits intellectual investigation regardless of its real-world importance. It might even be that psychological arguments have a rhetorical advantage over other arguments, and so it is worth pursuing them for their strategic value. Finally, mainstream theorists may simply point out that no theoretical account can be exhaustive, especially with regard to a topic as complex as the relationship between individual and collective interests. In that case our discussion thus far might be said to show only that the existing theoretical frameworks must be supplemented in some way if we are to fully understand the political importance of collective rights claims, but does not show that such frameworks must be fundamentally altered.

There are several reasons for thinking that the divergence of theoretical discussions and actual practice ought to be seen as more serious than mere incompleteness or limited application, however. First, a psychological focus tends to objectify and reify communal identities, treating them as monolithic and clearly delineated entities when in reality they are neither. To interpret collective membership and the role it plays in political life in this way introduces an element of naturalism to the discussion of group politics, with a corresponding limitation on the degree of moral and political responsibility which we expect people to take for the shape of the society they build.

Second, an emphasis on the psychological underpinnings of identity-based political action effectively downplays the actual content of identity claims. Instead, it focuses on the existence of such claims as evidence of a universal point regarding the limits imposed on political life by psychology. Demands which originate in communal identification assume importance not for the content or history of the claims themselves but for the phenomenon which such claims represent. As a result, concrete and specific political demands are transformed, and ultimately de-politicized, within contemporary theoretical discourse. Protest by indigenous groups becomes an allegory for needs felt by all human beings, and the validity of their claims are assessed on the basis of universal facts about the human psyche, rather than on the basis of specific historical or social wrongs which they have endured. Psychologization of collective interests thus does more than simply ignore the concrete political issues which motivate various indigenous groups—it declares such issues incidental. This occurs despite the appearance that collective rights claims are, *first and foremost* about the concrete implications of the manner in which one's communal membership links one to the social world outside one's group.

In fact, the phrase "in society" is key to identifying the weakness of psychological interpretations such as those found in mainstream theoretical

analyses. For in those analyses, collective memberships do not exert influence “in” society at all. Rather, communal relations and the identity they bestow are significant because of their influence within individual members’ heads. As mentioned above, the interpretation of one’s identity *by others* is based on political significance only insofar as one internalizes such interpretations, or has one’s *sense of self* otherwise undermined by them. In other words, projections of identity onto a member are politically salient because of the emotional and psychological implications, and not because of potential impact on physical or economic security. This treatment of collective membership as a primarily psychological issue stands at sharp odds with the goals of indigenous groups and the praxis of global indigenous rights. For such collective rights practitioners, collective rights claims are not just about protecting cultural attachment; they are also about political voice and gaining access to the processes which affect the physical and economic conditions under which one lives, and this includes having control over how *others* interpret and use one’s identifications.

Ultimately, then, existing theoretical frameworks are not merely “partial” in their representation; they are misleading. For in excluding aspects of group rights which are at the heart of the agendas actual groups pursue, existing theories have presented a distorted picture of what such groups in fact take their claims to be about. This in turn has led theorists to fundamentally misrepresent what is at issue in group claims; and so to misrepresent the nature of the claims themselves.

III. PRACTICE AS AN ALTERNATIVE

While theorists have written extensively about the concept of collective rights and applied these concepts to specific right-holders (namely indigenous groups), global intergovernmental organizations (IGOs), nongovernmental organizations (NGOs), and indigenous groups themselves have sought to define and protect a set of collective and individual entitlements for native communities residing within “host” states.²¹ The actions of most indigenous peoples in global forums is fairly recent as indigenous activism of the 1960s and 1970s had a diffusionary effect on the global indigenous rights movement by internationalizing the local struggles of indigenous groups and by establishing indigenous-based NGOs, such as the International

21. The term “host” state is the most grammatically precise and widely used phrase describing those countries containing indigenous peoples within their borders. However, this term should not be construed to imply a sense of undue state cordiality, especially given the severe treatment that several indigenous populations have received at the hands of their “host” states. See Cortassel & Primeau, *supra* note 7, at 139–40.

Indian Treaty Council in 1974 and the World Council of Indigenous Peoples in 1975.²² As a result, “practical” discussions of indigenous rights have advanced beyond the domestic setting of host states to the global agenda, as evidenced by the United Nations’ (UN) “International Decade of the World’s Indigenous Peoples” (1995–2004) and its devotion to indigenous “Partnership in Action.”²³

While one may run the risk of reifying indigenous world-views by basing perceptions of approximately 350 million native peoples on the rights claims espoused by politically active indigenous delegations within these global forums, we have found enough consistency and commonality across regional, state and universal IGOs/NGOs to assert that our findings are generally indicative of the global indigenous rights discourse at both the global and local levels. Additionally, it is conceded that global forums, such as the International Labor Organization and the Organization of American States, which have actively pursued indigenous rights in the past, may primarily reflect state interests rather than collective group claims.²⁴ However, the most prominent forum for expanding the global network of indigenous rights, the UN Working Group on Indigenous Populations (UNWGIIP), is comprised predominantly of indigenous delegations. It is within this forum, which was established in 1982, that the “Draft Universal Declaration on the Rights of Indigenous Peoples” (Draft Declaration) was authored by over 400 different indigenous delegations (without state interference) over a period of eight years.²⁵ As Cree scholar Sharon Venne points out, indigenous peoples’ participation over the past eight years was direct and substantial “in every step of the process, at times encouraging Working Group members to restructure their working methods to accommodate those of the Indigenous Peoples.”²⁶

22. FRANKE WILMER, *THE INDIGENOUS VOICE IN WORLD POLITICS* 18–19, 136–38 (1993).

23. An overarching goal of the “Partnership in Action” program to be undertaken during the Indigenous Decade (1995–2004) is to strengthen the global and local networks of intergovernmental cooperation while working toward solutions regarding indigenous struggles in areas such as human rights, the environment, development, education, and health. The UN posits that in order to be truly effective in promoting indigenous cultural, political, economic, and social freedoms, all levels of governance, including global and regional intergovernmental organizations, nongovernmental organizations, private enterprises, countries hosting indigenous peoples, and indigenous peoples themselves, must coordinate their efforts and continue to communicate their concerns in global forums, such as the UN Working Group on Indigenous Populations.

24. Corntassel & Primeau, *supra* note 7, at 139, 150–54.

25. Draft United Nations Declaration on the Rights of Indigenous Peoples, UN Working Group on Indigenous Populations, 12th Sess., U.N. Doc. E/CN.4/Sub.2/AC.4/1994/4/Add.1. [hereinafter Draft Declaration].

26. SHARON HELEN VENNE, *OUR ELDERS UNDERSTAND OUR RIGHTS: EVOLVING INTERNATIONAL LAW REGARDING INDIGENOUS RIGHTS* 151 (1998).

Atsenhainton, who is Kanien'kehaka (Mohawk) and has over ten years experience working in the UN system on indigenous issues, elaborates on commonalities among the world's indigenous peoples:

We never knew that indigenous people were so global, but we find that we have the same common problems and the same kind of world-view in most cases. That's why, in the drafting of the UN Draft Declaration on the Rights of Indigenous Peoples, it was easy for indigenous people to come to agreement on what our rights are. It's easy for us to agree. The hard part is to get governments to see the Declaration as necessary and not so threatening.²⁷

Despite its somewhat legalistic tone, which is necessary for a UN Standard Setting document, the Draft Declaration is deemed the closest contemporary approximation to a "universal" indigenous rights praxis as numerous indigenous representatives from every region of the world have drafted and reviewed the forty-five articles contained within.²⁸ By examining the underlying philosophy and rationales of the Draft Declaration and by complementing this understanding with additional claims made by particular indigenous groups, this paper seeks a broader understanding of collective and individual rights as viewed through a global indigenous lens of restorative justice.

Since advancing their claims to global forums, indigenous peoples have long realized that the core of their ongoing struggle for greater self-management and autonomy lies within the host state(s)' policies of resource allocation *vis-à-vis* its citizenry and how to reconcile "competing" indigenous claims with states for territory, resources, and cultural diversity. Reconciling the competing claims of states and indigenous groups appears to be an intractable problem as evidenced by the approximately thirty-five ongoing intrastate conflicts pitting indigenous peoples against their host states in areas such as Bangladesh (Jumma), Burma (Shan, Karen, Kaya), Burundi (Hutu, Tutsi), and Mexico (Mayans, Zapotecs).²⁹ However, we can begin to address this issue by assessing indigenous people's demands in global forums as practical and philosophical guidelines. As with the states

27. TAIJIAKE ALFRED, PEACE, POWER, RIGHTEOUSNESS: AN INDIGENOUS MANIFESTO 110–11 (1999).

28. Julian Burger, *Indigenous Peoples and the United Nations*, in *THE HUMAN RIGHTS OF INDIGENOUS PEOPLES* 3–16 (Cynthia Price Cohen ed., 1998).

29. Russel Barsh has documented the objections of states to the Draft Declaration at the 1995 Commission on Human Rights Working Group meeting. Countries such as France, Japan and the United States opposed any references to the collective dimension of indigenous rights. For these and other countries, human rights are essentially to remain "individual" in character. Although some human rights are ordinarily exercised "in community with other members of the group," the group should not be able to prevent their exercise by individuals. Russel Barsh, *Indigenous Peoples and the UN Commission on Human Rights: A Case of the Immovable Object and the Irresistible Force*, 18 *HUM. RTS. Q.* 782, 794 (1996).

that “host” them, indigenous groups also allocate resources (material and non-material) to members of their group. Understanding how indigenous groups allocate goods to individual members (and vice versa) lends further insight into the diversity of native world-views while expanding one’s understanding of the existing rights discourse beyond identity claims within host states.

Before proceeding, one must acknowledge the multiple regional and state contexts that indigenous peoples experience. For example, native peoples within Canada, the United States, and New Zealand believe they have additional collective entitlements as “prior sovereigns” based on previous treaties signed with the host state.³⁰ While many of these treaties were effectively abrogated and many of these peoples were removed from their original homelands, treaties do provide a basis for group recognition and autonomy within the host state. Yet several colonial powers did not engage in the treaty-making process and hence, the majority of the world’s indigenous peoples were not extended the same types of rights.³¹ The groups who have not been extended these same treaty-based rights constitute the vast majority of the world’s indigenous populations (90 percent or 270 million by some estimates)³² and live in developing countries. Despite the differential treatment accorded the world’s indigenous peoples, there is a remarkable degree of overlap between indigenous

30. From more on this, see *Study on Treaties, Agreements, and Other Constructive Arrangements between States and Indigenous Populations: Final Report by Miguel Alfonso Martínez*, Special Rapporteur, UN Comm’n on Hum. Rts., U.N. Doc. E/CN.4/Sub.2/1999/20 (22 June 1999). For example, in New Zealand, the Treaty of Waitangi was signed in 1840 between the British Crown and the Maori chiefs and subtribes of New Zealand. Originally regarded as a document of land cession, it also agreed to “protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures.” IAN BROWNLIE, *TREATIES AND INDIGENOUS PEOPLES* 7 (1992). This treaty has been updated by the New Zealand government by the Acts of 1975 and 1985 to allow for Maori claimants to present their grievances to a Tribunal.

In Canada, all 11 treaties were signed between 1871 and 1921, effectively dispossessing them from their traditional homelands. However, these treaties also establish these governments as “status” tribes with official recognition by the Canadian government. JULIAN BURGER, *REPORT FROM THE FRONTIER: THE STATE OF THE WORLD’S INDIGENOUS PEOPLES* 204–05 (1987).

In the United States, over 371 treaties and executive agreements have been negotiated between Indian governments and the US government. Of those treaties, 76 called for removal and 230 dealt with land cessions. Jeff Corntassel & Tomas Hopkins Primeau, *Indigenous “Sovereignty” and International Law*, 17 *HUM. RTS. Q.* 343, 355–56 (1995).

31. Corntassel & Primeau, *supra* note 30, at 343, 359; see also *Study on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Populations*, *supra* note 30.

32. Barsh, *supra* note 29, at 784; see also BURGER, *supra* note 30, at 177–78.

belief systems in developed and developing countries, as evidenced by universal provisions in the Draft Declaration and other global indigenous documents.³³ Overall, the Draft Declaration generally reflects a common indigenous experience with colonialism and unified agendas to maintain spiritual and political autonomy in the face of host state encroachments. Therefore, the contemporary struggle of indigenous peoples for greater autonomy and collective rights as outlined in the Draft Declaration is deemed a key component of the global indigenous rights praxis today.

IV. THE CONTRIBUTION OF INDIGENOUS WORLD-VIEWS

In order to develop a more comprehensive rights discourse between the practical and theoretical, it is important to outline three prevalent and overarching indigenous perspectives on community citizenship that could better inform the individualist/collectivist theoretical debate. However, one must first understand that indigenous world-views are not fixed or static but rather flexible and adaptable to changing circumstances. Indigenous perspectives represent an effective critique of liberal-individualist and corporatist theorists but no indigenous world-views are “preordained.”³⁴

The first aspect of an indigenous rights praxis is the interdependence between collective and individual rights. For example, the Inuit Tapirisat of Canada express their strategy for survival at both the collective and individual levels:

The impacts of racism and colonialism on aboriginal peoples cannot be adequately addressed by individual rights alone. . . . The protection of collective rights can provide freedom at the individual and the collective level to choose assimilation, or not. . . . Inuit believe in individual and collective rights as complementary aspects of an holistic human rights regime.³⁵

The above quote emphasizes a central theme of this paper, which is a general recognition of collective and individual rights as being mutually interactive rather than mutually exclusive. In other words, existing human rights treaties and host state policies toward minority groups within their

33. See, e.g., World Council of Indigenous Peoples, *Declaration of Principles of Indigenous Rights*, reprinted in U.N. Doc. E/CN.4/1985/22, Annex II (1984); *Proposed American Declaration on the Rights of Indigenous Peoples*, Inter-Am. Comm’n. on Hum. Rts., approved by the IACHR 26 Feb. 1997, at its 133rd session, 95th regular session, OEA/Ser/L/V/II.95 Doc. 6 (1997) [hereinafter *Proposed Inter-American Declaration*].

34. ALFRED, *supra* note 27, at 20–21.

35. Standard-Setting Activities: Evolution of Standards Concerning the Rights of Indigenous Populations, UN Working Group on Indigenous Populations, 12th Sess., U.N. Doc E/CN.4/Sub.2/AC.4/1994/4/Add.1 (31 May 1994).

borders are individualistic in nature and do not adequately protect cultural groups such as the Inuit. On the other hand, intra-group divisions make some individual recourse necessary from the authority structure within the collectivity. To offer effective protection from hostile host state intervention, many indigenous groups have developed a strategy whereby individuals can advance claims either on their own behalf or on behalf of any other member or members of the group. The collectivity or indigenous group may then also exercise specific rights. This strategy is most closely approximated in Allen Buchanan's "dual-standing" collective rights.³⁶ However, there are some important differences between Buchanan's conceptualization of dual-standing collective rights and indigenous praxis.

First, dual-standing rights are depicted mainly in the sphere of self-government and formal allocations of land rights within the community. However, there are usually many layers of informal collectivities within indigenous societies, such as kinship networks and clan affiliations. Therefore, the community's authority rests not on formal leadership but on the consensus decision making of the members. As Taiaiake Alfred, a Kahnawake (Mohawk) scholar, points out indigenous peoples view collective power as being derived from six basic principles: the active participation of individuals; balancing many layers of equal power; dispersion of power; situational dynamics of power; non-coercive nature of power; and power that respects diversity.³⁷ These principles highlight a decentralized power base within indigenous communities that operates within several kinship and clan affiliations inside the community as well as citizenship within the larger community. In contrast to this, Buchanan's conception emphasizes formal obligations divided between identifiable spheres of authority.

Second, practical world-views advanced by native peoples are also instructive in their emphasis on the interdependence between individuals *within* the group. Evidence from oral traditions and historical documentation provides insight into a distinct native kinship network system. The oral traditions of many indigenous groups emphasize that the public or tribal position of the Indian is entirely dependent upon her private virtue, and, thus, one is never permitted to forget that she does not live to herself alone.³⁸

36. Buchanan, *supra* note 10, at 94–95. While Buchanan advances the notion of dual-standing rights as a strategy to best protect indigenous communities, he focuses heavily on indigenous land entitlements and never fully develops other informally allocated rights within indigenous groups, such as participation in ceremonies and right of exit from the group.

37. ALFRED, *supra* note 27, at 26–27.

38. See Russel Barsh, *The Nature and Spirit of North American Political Systems*, 10 AM. INDIAN Q. 181 (1986); see also Menno Boldt & J. Anthony Long, *Tribal Traditions and European-Western Political Ideologies: The Dilemma of Canada's Native Indians*, 17 CANADIAN J. POLITICAL SCIENCE 537 (1984).

These traditions illustrate the conceptual interrelatedness of individuals within native groups' belief systems. In other words, one's relations with others are primarily defined by social or kinship networks. As a corollary to this, members are not forced to comply, but rather a consensus is sought.³⁹ In the absence of hierarchical relationships, an indigenous world view leads to a strong emphasis on discursive democratic values:

The primacy of individual conscience dictates a very pure form of democracy characterized by its lack of central authority and in which any collected action requires the consent of everyone affected—or at least the consensus of all their families.⁴⁰

Buchanan's dual-standing rights do not adequately account for the implications of this interdependence.

However, the Draft Declaration uses a conceptualization very similar to Buchanan's dual-standing rights regarding the importance placed on individual autonomy relative to citizenship claims:

Indigenous peoples have the collective right to determine their own citizenship in accordance with their customs and traditions. Indigenous citizenship does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.⁴¹

Here one sees that the right of citizenship takes place on multiple levels: at the state, group, and individual. Choosing *not* to exercise full political participation, either at the state or group level, is also an option. Such a philosophy illustrates the importance of individual choice in the practice of most indigenous groups, and a belief that such choice is an essential grounding of strong community. Representation is simultaneously individualistic and group-based in this conception: it is a privilege and a duty that members share through their own kinship networks and traditional structures of representation. Rights of exit from an indigenous group follows from the emphasis placed on the autonomy of the individual; but the effects of this exit on others must also be taken into account. These rights—so often treated “a-contextually” by liberal-individualists and corporatists alike—

39. AKWESASNE NOTES, ED., *A BASIC CALL TO CONSCIOUSNESS* 11 (1986). Mayan beliefs in consensus-building are also well-documented as evidenced by the practice of a group “cargo system.” According to the cargo system, a leader is selected by an institution called *Lah-Ti*, meaning to compare discourses and come to a common consensus during a public assembly of men and women. See Victor Montejo, *Tying up the Bundle and the Katuns of Dishonor: Maya Worldview and Politics*, 17 *AM. INDIAN CULTURE & RESEARCH J.* 103 (1993); see also Boldt & Long, *supra* note 38, at 543–45.

40. Barsh, *supra* note 38, at 185.

41. Draft Declaration, *supra* note 25, art. 32.

emerge from indigenous praxis as essentially bound up with the actual history and circumstances in which individual members share.

For this reason, among others, the Draft Declaration promotes indigenous rights at *both* the collective and individual levels while leaving open the specifics of how such rights should be instantiated in particular indigenous communities. The larger ideal by which these rights are to be reconciled and translated into real-world policy is given in Article 8:

Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.⁴²

Here, personal and collective self-determination are presented as different aspects of the same phenomenon: the right to be oneself and to have a say in the manner of one's development—as an individual and as a collectivity. And so the Draft Declaration document, initially developed in close consultation with indigenous participants, stresses the interdependence of individual and collective rights to physical security (Article 6), and to “not to be subjected to ethnocide and cultural genocide” (Article 7).⁴³

So while theoretical approaches have taken the central issue of collective rights claims to be the best way to mediate a recurring tension between individual and group,⁴⁴ the practical discourses of indigenous groups have emphasized the interrelatedness of collective and individual rights claims, and the multiplicity of obligations and claims arising from their “dual citizenship” within host states. As a result, theoretical treatments have focused on developing an account of rights based on exclusivity of spheres and conceptual or institutional precedence.⁴⁵ This stands in direct contrast to the emphasis of practitioners on fair terms of negotiation and of the need to achieve balance among interests *within particular contexts*. For example the Declaration of San Jose,⁴⁶ the Declaration of the Principles of Indigenous Rights,⁴⁷ the Draft of the Inter-American Declaration on the Rights of Indigenous Peoples,⁴⁸ and the Convention (No. 169) Concerning

42. *Id.* at art. 8.

43. *Id.* at arts. 6–7.

44. See KYMLICKA, *supra* note 10, at ch. 3; Chandran Kukathas, *Are There any Cultural Rights?*, in *THE RIGHTS OF MINORITY CULTURES*, *supra* note 8, at 105–39.

45. See Sandel, *supra* note 11, at 81; Svensson, *supra* note 3, at 421–39; Robert Clinton, *The Rights of Indigenous Peoples as Collective Group Rights*, 32 *ARIZONA L. REV.* 739 (1990).

46. See UNESCO, *Meeting of Experts on Ethno-Development and Ethnocide in Latin America*, 11 Dec. 1981, UNESCO Doc. FS 82/WF.32, esp. art 5.

47. See World Council of Indigenous Peoples, *Declaration of Principles of Indigenous Rights*, Sept. 1984, reprinted in U.N. Doc. E/CN.4/1985/22, Annex 2, esp. Principle 7.

48. *Proposed Inter-American Declaration*, *supra* note 33, esp. art. II, § 3.

Indigenous and Tribal Peoples in Independent Countries⁴⁹ are all international documents which name both collective and individual rights as essential components of ensuring cultural survival.

A second major component of indigenous rights praxis relates to kinship orientations that may extend beyond group members to other species and objects.⁵⁰ Often referred to as universal kinship, such a belief highlights the ties indigenous peoples have to physical objects such as land. In Buchanan's discussion of dual-standing rights, land rights are viewed predominantly as regulatory and commodified and not viewed from an indigenous praxis perspective of land as a link to one's ancestors and part of a larger spiritual compact of stewardship. For many indigenous peoples land is regarded as sacred: to be revered and served rather than owned.⁵¹ As the Vice-President of the World Council of Indigenous Peoples stated:

Next to shooting Indigenous Peoples, the surest way to kill us is to separate us from our part of the Earth. Once separated, we will either perish in body or our minds and spirits will be altered so that we end up mimicking foreign ways.⁵²

Such universal kinship philosophies are pervasive in many native societies. This practical approach essentially weaves together the interests of group members as persons with their interests together with their interests as members of a variety of collectivities, including the collectivity made up of members of the species and of the people who are joint trustees of particular pieces of land. In effect, many indigenous peoples define themselves "communally in terms of a spiritual compact rather than a social contract."⁵³

Article 25 of the Draft Declaration reaffirms the universal kinship principle and its extension well beyond any exclusive psychological conceptions of the rewards of group membership:

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise

49. See International Labour Organization Convention (No. 169), *Concerning Indigenous and Tribal Peoples in Independent Countries*, esp. art. 13 (27 June 1989).

50. VINE DELORIA, JR., *GOD IS RED: A NATIVE VIEW OF RELIGION* (1994).

51. See S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 104–07 (1996) (for more on the international debate over native land philosophies).

52. BURGER, *supra* note 30, at 14.

53. Boldt & Long, *supra* note 38, at 541. Gerald Alfred and Franke Wilmer also point out that "[a]ccording to the views of indigenous cultures . . . there is no distinction between the human and natural worlds. Hence, 'natural resources' or the 'natural world' are experienced subjectively as well as objectively." See *Indigenous Peoples, States, and Conflict*, in *WARS IN THE MIDST OF PEACE* 29 (David Carment & Patrick James eds., 1997).

occupied or used, and to uphold their responsibilities to future generations in this regard.⁵⁴

The Draft Inter-American Declaration on the Rights of Indigenous Peoples also highlights the relationship between land and spirituality for native peoples in Article X, number 3:

In collaboration with the indigenous peoples concerned, the states shall adopt effective measures to ensure that their sacred sites, including burial sites, are preserved, respected and protected. When sacred graves and relics have been appropriated by state institutions, they shall be returned.⁵⁵

This brings out a final component of the indigenous rights praxis: going beyond the psychological aspects of group membership to note the importance of communities in structuring concrete aspects of a person's life. For indigenous peoples, there is a link between the material and non-material benefits of healthy communal life that belies the unidimensional understanding of collective rights usually found in theory. For example Article 13, Part 1 of the ILO Convention (No. 169) stresses the interrelatedness of protecting both indigenous practices and land ties:

In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.⁵⁶

Consequently, theoretical perspectives which tend to prioritize or assign values to *either* material or non-material benefits of collective rights as if the two were separate considerations simply fail to capture the true nature of the interests at stake. For example, liberal-individualists tend to contrast the instrumental or utilitarian nature of most other interests in contrast to one's interest of being a member of a group. Similarly, corporatists emphasize the almost primordial nature of one's interest in group membership to the exclusion of tangible motivations. For many indigenous peoples, however, the line between these two types of interests is often blurred. For example, access to a tangible resource such as land can coincide with intangible benefits, such as group ceremonial practices or spiritual training. This is further illustrated by Article 13 of the Draft Declaration:

54. See Draft Declaration, *supra* note 25, at art. 25.

55. See *Proposed Inter-American Declaration*, *supra* note 33, at art. X, no. 3.

56. See ILO Convention, *supra* note 49, at art. 13.

Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of ceremonial objects; and the right to repatriation of human remains.⁵⁷

In sum, the praxis of many indigenous rights claimants diverge from the theoretical rights discourse in three important ways. First, many indigenous peoples view collective and individual rights as interdependent and grounded in dual-standing collective rights. Second, for those groups in which it exists, universal kinship extends to all individual members, species, and homeland claims. Within such a philosophy, the group's survival is predicated on both individual and collective access to such resources. Finally, material and non-material benefits accorded group members are not mutually-exclusive entities. Intangible benefits members receive as part of the larger collectivity extend far beyond psychological gratification to issues of social development and education. In sum, holistic indigenous world-views go well beyond liberal-individualist and corporatist explanations, which tend to frame the collective/individual rights debate in terms the individual's "psychic health" as being contingent on group affiliation.

V. CONCLUSIONS

The main objective of this paper has been to point out the significant theoretical gap which separates philosophical treatments of collective rights, and the actual agenda of groups demanding political and legal entitlements. In the case of global indigenous rights, we have given several reasons to think that practical approaches ought to guide philosophical ones in this area of inquiry. In the closing paragraphs we offer several recommendations for developing a theory more closely aligned to actual practice.

First, a complete theory of collective rights must account for demands which serve material and economic interests such as land claims and territorial integrity. Within contemporary philosophical theories, these demands are interpreted as having primarily symbolic importance. However, closer examination of the political context in which most indigenous groups operate shows demands for insulation from the state and a land base of one's own to be important pragmatic conditions for community survival. An adequate philosophical account of collective rights must recognize

57. See Draft Declaration, *supra* note 25, at art. 13.

these direct, material interests as well as the indirect symbolic import of collective claims.

Second, the material and pragmatic interests served by collective claims must be integrated with symbolic and psychological interests in a way that preserves the symbiotic nature of their relationship. The above discussion has shown both liberal-individualist and corporatist approaches to assume a kind of hierarchy of need, in which identity interests occupy a place which is either higher or lower than other interests. Such a framework is too inflexible to properly capture the reality of collective claims, however. A complete theory must thus find a way in which to permit the relative importance of psychological and material interests to vary across cases without becoming *post hoc*.

Similarly, an adequate philosophical treatment of collective rights must avoid dichotomizing individualistic and collective interests. Both corporatist and liberal-individualist approaches assume that in the final analysis, one type of interest—either the individual or the collective—must be given priority, and when push comes to shove, one will be the final winner. The experience of indigenous peoples' movements, however, shows the world of collective claims to be more complicated than this. Indeed, the practical context of most indigenous groups—historically oppressed and marginalized, internally divided, and perceived as a threat by state actors—suggests that one must be able to recognize particular cases in which collective interests must give way to individual claims without thereby conceding a general priority to individual interests if indigenous governing units are to exist as autonomous entities within their host state. In fact, the experience of indigenous groups suggests that it may be a mistake to regard such conflicts in terms of “collectivities” versus “individuals.” Instead, one ought to recognize that all parties to the conflict are individuals, and it is the type of interest which each individual negotiates that may be characterized in collectivist or individualist terms.

While this list of conditions is very demanding, we believe that a theory which meets these demands is possible and that the building blocks for it can be found among existing treatments of collective rights. For example, Allen Buchanan's conception of dual-standing collective rights holds great potential for reconciling individual and collective interests, as does Leslie Green's attempt to generate irreducibly collective entitlements from individualistic moral foundations. In both cases, however, the view would have to be modified slightly to recognize the extent to which even irreducibly collective claims can represent fundamental—and so potentially trumping—interests of individuals. Similarly, Will Kymlicka's “context of choice” approach seems to be a promising avenue of development. His interpretation of the context which a community provides as essentially cognitive must be modified to recognize communities' economic and material

contributions as well. The key to capitalizing upon each of these theorists' work is thus recognizing the full range of relationships existing between individuals and the communities of which they are a part. The experience and demands of groups such as indigenous peoples' movements shows such relationships to be embedded in not only psychological but also economic and physical concerns which inevitably shape the nature of the interests at stake. An adequate philosophical account of collective rights claims will thus incorporate corporatist insights regarding the erosion of collective life which certain individual interests can produce, while nonetheless recognizing the ethical priority of individual persons and rejecting essentializing or reifying interpretations of communal identity. Ultimately the global indigenous rights discourse provides an alternative view of multicultural citizenship that is not centered on the individual but interacts at multiple levels.