

THE CONCEPT OF GROUP RIGHTS FROM UNIVERSALIST-PARTICULARIST PERSPECTIVE AND BEYOND

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Introduction

The issue of group rights is not a new one for political thought and political (international one included) practice. Both historically and theoretically the notion of rights of collectivities and groups of people (not of single individuals by themselves) exhibits a long tradition going back – according to some authors – to classical Rome. As Ramcharan (1993, p. 28) aptly puts it, "although national and international norms on human rights have emphasized protection of the individual, the notion of the rights of the collectivity, or of groups, or of peoples, is not a stranger to intellectual history of rights." Furthermore, according to the Stanford Encyclopedia of Philosophy "a group right is a right possessed by a group qua group rather than by its members severally" (Jones, 2016). The collective aspects of religious freedoms and their respective rights or the right of self-determination, ascribed to a group (a nation or a people), makes a telling exemplification of group rights with historically serious political and international implications.

Due to the developments of late 20th and early 21st century the issue of group rights has resurfaced in political-international discourses and practices and normative-theoretical debates. The resurgence of claims for self-determination, the assertion and advancement of collective and group rights claimed by various (and diversely defined) groups within and across borders, oftentimes engendering conflicts – all of these has irrefutably brought back the focus on the concept of group rights with ensuing theoretical tensions and vexing practical implications (including but not limited to claims for minority status and rights, participatory rights in multiethnic and multicultural communities, secessionist and irredentist claims, etc.).

Regardless of the adopted perspective – political-philosophical, political-practical or normative-legal – the concept of group rights is typically considered in relation to the concept of individual rights (Jones, 1999; Baker, 1994). However,

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the way this relation is theoretically defined and empirically attained varies widely depending on ideological and normative assumptions and specifics of the empirical context. While some authors argue that group rights by no means can be considered human rights, since the latter by their nature are individual rights, and accentuate the reality of conceptual differences between human rights and group rights, other authors think that human rights can take an individual, as well as a collective form, the latter being no less significant since human beings experience many important things collectively. The distinctions go further since the group rights, while conceptually differentiated from the individual human rights, are still not perceived as incompatible to the latter by some authors, while others conceive group rights as contradictory or even as potentially threatening individual rights (Jones, 1999).

It is against this general background that we address the concept of group rights, the major goal being to outline it within the more general political philosophy perspective on the issue of rights and to discuss it in terms of its logical consistency and practical implications. We are interested in the concept of group rights because of the normative, evaluative or descriptive role it plays both in theory and practice. And since different roles might require different interpretations of the concept (List and Valentini, 2016), it is precisely the debatable or even controversial nature of the "group rights" that we are interested in. Yet, instead of going into the typical communitarianism versus individualism (or the group vs. the individual) dimension (see Bakalova, 2003) we discuss the concept of group rights in the (liberal) universalist vs. particularist perspective. Our main argument is that the concept of group rights reveals several significant shortcomings for as much it is justified, at the same time it appears to be unsustainable (theoretically and empirically) for a number of reasons. We, however, also argue that the universalist perspective is by no means the only ground from which the justification of group rights can be critically reviewed.

In outlining the universalist-particularist dichotomy we apply a more general understanding of the two concepts. In this understanding universalist notions and hence behavior tend to be abstract, to imply equality (all persons/units falling under the same rules or in the same category should be treated the same) and to resist exceptions that might weaken the rule. In an opposite manner, particularist judgements and behavior focus on the exceptional nature and specifics of the circumstances in such a way that exceptions and particular circumstances infer and even justify repudiation of (unified and applicable-to-all) rules (see Trompenaars and Hampden-Turner, 1998, pp. 31-32)

In terms of methods, the study is firmly rooted in the political science methodology, which offers techniques for clarifying the theoretical meaning of concepts. More specifically the study uses methods of substantive conclusions and of normative and political analyses that are pertinent to both political theory (or normative political theory), which addresses conceptual, normative and evaluative questions concerning politics and society, on the one hand, and to political science,

which addresses empirical and positive questions concerning politics and society and seeks to describe and explain actual political phenomena, on the other. We apply a history-of-ideas approach to introduce the origin and evolution of the more general concept of "rights" as the natural setting within which the concept of "group rights" is tackled. We also use the method of analysis of political concepts building on the assumption that any concept has a "domain of application", i.e. the set of objects of which it is meaningful to ask whether they fall under the given concept or not; the defining conditions which determine, for any object in the concept's domain, whether that object falls under the concept; and a concept's extension is the subset of the domain consisting of precisely those objects that fall under the concept (see List and Valentini, 2016). Finally, we introduce the debates surrounding the "group rights" concept and critically discuss its inherent contentions and controversies.

The study is structured in three parts where the first one introduces the more general perspectives of political philosophy and political theory on the issue of "rights" and through historical review of its evolution reveals its different layers of understanding. In the second part the concept of group rights is outlined with a special focus on the ideas of Iris Marion Yong (1995) and Seyla Benhabib (1996) which represent the two polar justifications of group rights within the universalist-particularist dichotomy. The third part of the study covers various aspects of the group rights debates. More specifically we critically address the concept of group rights in relation to other concepts and covering several of group rights' normative and practical implications.

"Rights" in political theory and political philosophy

The issue of group or collective rights cannot be properly tackled without referring to the more general perspectives of political theory and political philosophy on the problem of rights.

In its conventional understanding the term "rights" bears connotations to: 1/ the totality of obligations and freedoms, socially established and upheld by the state, that regulate the relations within the society; 2/ the legally enshrined by the state opportunity people to act according their needs and desires; 3/ authorization based on the law; 4/ the law as a synonym of justice (See Bulgarian Dictionary of Interpretations, 1976, p. 711).

References in encyclopedic sources reveal greater details. Rights are defined as the set of rules governing the relationship between the people in society and emphasis is placed on the distinction between "natural law" (what recognizes the individual's initial rights, ensuing from the human quality) and "positive law" (the law, which is actually applied in a particular society) (see Dančov and Dančov, 1993, p. 1267).

Some qualifications notwithstanding, it can be argued that in political philosophy the term "rights" is used in the following contexts or frames of meaning:

1. To describe an institutional order guaranteeing legal protection of the interests; an order in which the individual interest is legally guaranteed and the resources and capabilities of individuals are placed within a legal frame;

2. To voice the fair demand that such an institutional order be implemented and enjoy legal and legitimate support;

3. To describe the axiological basis of above-mentioned requirement, related to the importance of equality, freedom, and justice as values basic for both liberalism and conservatism. (See Enciklopedia na politicheskata missal, 1997, p. 406)

Still in the same context, it is needed to also introduce the distinction among "legal right" (related to institutional order and legal guarantee of interests), "moral right" (related to the demand for justice and other axiological dimensions), and "human right" (related to all dimensions mentioned above).

Generally speaking (and with many qualifications too), the theoretical approaches to the definition and interpretation of rights boil down to the following two:

a/ Legalistic approach- rights are treated as legal relationships, including (1) privileges or freedoms (the person carrying out certain actions is not obliged to others); (2) claims-rights (the person has rights that are granted to him); (3) powers/competencies (the actions that one takes to change his legal relationship with others); (4) inviolability (the legally regulated state of affairs that a person is not subject to change through the exercise of authority over him by others) (Hohfeld, 1923).

b/ Political theory approach – rights are dealt with in the context of the rights-obligations relationship. The main lines of interpretation of this relationship are represented by (1) the correlation theory (or "benefit theory") – the ownership of a right is related to the duty of another; (2) "the theory of choice" – the possession of right by someone is linked to the obligation to that someone by another person and to the freedom to renounce a right and obligation; (3) "the theory of interest" – the possession of a certain right by an individual is related to his/her interest, which must be sufficiently significant to require others to support this interest. These theories refer to the form of interpretation of the rights.

Of particular interest in the theory is the examination of rights at the level of their relationship with moral problems (the value-motivation of rights) and of relevance here is the point of view of political philosophy. It is precisely political philosophy that analyzes the specifics of the rights-values relationship because:

The subject-matter of political philosophy is the self-knowledge of society for itself through symbols; in other words, it is a kind of intellectual self-reflection of society. Each political philosophy deals with the normative and social conceptual content of social self-knowledge, analyzing the subjective-objective side of two dimensions of political reality – the regulatory and normative ideas of society and its institutions. If political philosophy is the symbolic world of society, the rights and values can be loaded with the signs of such symbolism;

The problems of political philosophy regarding rights are always related either to the establishment of natural foundations for them (the classic ideas of J. Locke

and T. Hobbes); or to the establishment of the deep moral values and principles underlying the rights (contemporary political philosophy);

Political philosophy interprets as fundamental human rights: the right to life (with different emphases); the right to freedom (either as freedom in a generalized sense, or as special freedoms – of thought, of religion, etc.); right to property; rights pertaining to the status of a person as a citizen (right to nationality, democratic rights); rights related to the rule of law and justice; social, economic and cultural rights that raise the issue of equity (education, employment, social security). The meaningful interpretation of these rights is axiological, both in the analysis of individual rights (which prevails in New Age's philosophy), as well as in the analysis of collective (group) rights that prevails in modern political philosophy (see Blagoeva, 1999, pp. 97-102).

Historical evolution of rights

The historical review of political philosophy reveals that interpretations of the concept of rights can be done from within the perspective of several problem- and content-specific areas.

In antiquity, human rights issues are "present" in the practice of ancient Greek democracy. In the classical period of Ancient Greece (Vth to the first half of the IVth century BC) the state-citizen relations are regulated based on the law and guaranteeing political and civil rights such as: the right to participate in the general assembly, the right to freedom of speech, the right to vote when discussing issues of importance to the polis, the right to own real estate. At the level of political philosophy, analyses of and about rights are based on the "natural rights" theory (moral standards are set in human nature and they determine which human behavior is "right"). The fullest interpretation of this problem is found in the Stoics philosophy – the universe is said to be governed by wise and supreme source and people as intelligent beings recognize and follow this wisdom in their behavior. Therefore, earthly laws must legitimize universal wisdom and this is every person's right.

Medieval European philosophy also searches for the foundations of human rights and obligations, but in a different context. The natural law derives from the Eternal Divine Law. The "political formula" is the moral and legal basis of power and it says: God rules the universe directly, and kings are his substitutes on earth. Power is legitimized by the divine right of kings to rule, while it is the duty of men to obey. According to T. Aquinas, all human laws and the behavior of every reasonable person must be in accordance with God's reason, and that is natural right on Earth.

The greatest development of the natural rights theory is in the philosophy of Modern Times (H. Grotius, T. Hobbes, J. Locke). All thinkers "accept" the existence of natural rights but interpret them differently from the viewpoint of the limits of state intervention (government) and strength of power. Thus, for instance, with J. Seldon and T. Hobbes, the protection of natural rights is compatible with the idea of absolute power. According to Locke, on the other hand, the Divine

Natural Law stipulates that "no one should endanger the life, health, freedom, and ownership of the other." Man is "granted" the natural rights of life, freedom, and property. The reason of establishing the political (state) power is to reliably protect these rights because they are inalienable (nobody and nothing possesses the moral authority to dispose of them against the will of the individual, of course, if one voluntarily does not "deny" them, reaching for the rights of others). The logical implications of Locke's theory are: (1) no one can be under the political power of another unless s/he has one's consent; (2) the protection of natural rights is the main task of the state; (3) natural rights set the boundaries of government interference in the individual's life (Blackwell Encyclopedia, 1997, p. 636).

The theory of natural rights is given a new impetus following the Great European revolutions of the nineteenth and twentieth centuries. Without leaving the basic idea of "classical natural-law theory", namely the inalienability of natural rights and the need for the binding force of law as part of the natural order, philosophers formulate various nuanced propositions, which specify and complement the theory of natural rights. During this period the term "human rights" appears and promptly becomes more frequently used than the term "natural rights". During this period, based on popular philosophical ideas, series of political and legal documents are accepted and receive wide international publicity, such as the US Declaration of Independence (1776), the US Constitution (1787, published 1789), the French Declaration of the Rights of Man and of the Citizen (1789), the United Nations Universal Declaration of Human Rights (1948).

Generations and systematization of rights

In the human rights discourse, wide popularity within political theory attains the evolutionary concept of rights expressed in the so-called "three generations of rights":

- Rights of first generation (until the end of the 18th century) encompass the civil and political rights proclaimed by the bourgeois revolutions. These rights guarantee the citizen's right to oppose the arbitrariness of power and put limits on power through electoral rights and the right to freedom of thought and speech.
- Rights of second generation (end of 19th and 20th centuries) cover economic, social and cultural rights. They are historically related to the development of science, technology and broad industrialization, which bring to the fore the topical human rights as the right to work, to social security, education, strikes. Their development is linked to the idea of the "social state" and its philosophical-economic justification by Keynes and his followers.
- Rights of third generation (the second half of the 20th and the beginning of the 21st century) are two groups. The first results from the development of technology and science and their harmful impact on the environment (right to access to information, right to healthy living and natural environment),

while the second set represents the collective (group) rights in opposition of the individual ones (the right to freedom of choice of individual peoples in self-determination, the right to linguistic and national identity, the right to cultural self-determination, the right to development of minorities).

The evolutionary development and systematization of human rights is the subject of in-depth research in modern literature (see, for ex. Ecshtein, 2004; Glukhareva, 2002). The rights are classified into certain groups according to defined criteria (see Table 1).

Thus, as has already been noted, the specificity of modern political philosophy on the subject of human rights is that it seeks the "moral values and principles" lying in the "basis of the idea of rights", i.e. it links rights with values (Blackwell Encyclopedia ... 1997, p. 408). In evidence of this statement, here we present two examples, related to the theories of utilitarianism and the political axiology of liberalism and conservatism.

First example: The basic idea of utilitarianism is that every action (decision, policy) is judged to be "right or wrong" depending on the feeling of happiness of those affected by it. For example, J. Bentham claims that the actions are right if they create happiness and are wrong if they do not lead to it. Happiness is a pleasure, and misfortune is pain. They are judged on certain scales (i.e. evaluation is related to values and is morally dependent). Hence, utilitarian philosophers conclude that people cannot have any rights of legal guarantees if the latter do not meet the utilitarian criteria and considerations, i.e. if they do not lead to happiness. In this case, human rights become a "hostage" to the feeling of happiness of others. This is also the reason to argue that utilitarianism cannot justify individual rights, but is only interested in the group rights.

Table 1. Classification of human rights

ACCORDING TO	
The time of their occurrence	□
The spheres of public relations	□
Their belonging to social norms-regulators	□
The political and legal status of the person	□
The degree of personalization of the subject	□
Their universality, enshrinement in constitutions and international norms	□
The possibility of a temporary limitation	□
The role of the state in securing the rights	□

Source: Adapted from Azarov (2003: 32-36)

Second example: There is a direct link between the political values of liberalism and conservatism (freedom, equality, justice) on the one hand, and human rights,

on the other. This link is enshrined in the UN Universal Declaration of Human Rights (UDHR) where rights are displayed as universal, but their interpretation is motivated by values and carries the historical, political, and cultural-cultural context (see Table 2).

Table 2. Fundamental values of Liberalism and Conservatism and their reflection in the UDHR

		Values	UDFR Principles
Of Liberalism	Equality	All men are equal because God and nature have created them equal, giving them reason. The existing differences are the result of social, human and hence transitional institutions.	Article 1. <i>All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.[1]</i>
	Fairness	An expression of the correspondence between natural rights and the socio-economic and political system.	Article 22. <i>Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.</i>
	Freedom	An opportunity for personal realization of everyone.	Article 23 <i>(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work...</i>
Of Conservatism	Freedom	The individual is free to do whatever s/he wishes, provided s/he does not interfere with others.	Article 3. <i>Everyone has the right to life, liberty and security of person.</i>
	Property	Ownership is a prerequisite for personal freedom and social stability.	Article 17. <i>(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.</i>
	Justice	Justice is all that exists.	Article 30. <i>Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.</i>
	Equality	People are not equal, they should not be equal, and we should not strive to make them equal; The differences in wealth and social inequality are natural, they are justified by the fundamental equality of political rights and economic freedom.	Article 1. <i>All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.</i>

Source: developed by the authors

It is from this general understanding of the concept of "rights", and its substance, historical evolution and value-based interpretation that we proceed further to present the concept of group rights, outlining its various aspects especially within the universalist-particularist dichotomy.

Universalist vs. particularist interpretations of group rights

Defining "group rights"

The *Stanford Encyclopedia of Philosophy* (Jones, 2016) identifies the group right as "a right possessed by a group *qua* group rather than by its members severally". In other words a group right is a collective right but not in the sense that is an aggregation of the individual rights of the persons of which the group is composed (see also Jovanovic, 2012). Typical examples of rights that are commonly asserted as group rights are the right of a nation or a people to self-determination (i.e. the right of a group to determine the character and destiny of its collective life), the group right to culture, language or religion [2]. These are examples of rights held by the relevant group *qua* group, and the duties generated by the right are duties owed to the group as a whole rather than to its members severally.

Two more important qualifications are needed. First, group rights are not identical with rights that people possess in virtue of being members of groups. While the former are held by the group *qua* group, the latter are held by individuals associated with some kind of group identities or group membership. Second, sometimes group rights are confused with what Will Kymlicka aptly refers to as "group-differentiated" rights, i.e. a form of positive discrimination where rights are given to a particular group only and not to the larger society within which the group exists. However, a group-differentiated right is a group right only if it is possessed by the group *qua* group; if it is asserted to and used by individuals who make up the group, then it is not a group right but a group-differentiated individual right (see Kymlicka, 1995, p. 45-49).

The above concise and clear-cut considerations notwithstanding, the concept of group rights is far from unequivocal and should be approached on different levels. Thus, for example, writing about human rights Taylor (1999, p. 126) distinguishes among norms of conduct, legal forms and their underlying justification, corresponding respectively to political, legal and moral-philosophical levels, which oftentimes seem to be tightly interrelated. Then for group rights too it is possible to distinguish among norms of conduct (political level), legal forms (the normative and legal plane) and their deeper (moral) justification (the philosophy undercurrent).

Anti-Universalist justification of group rights

Let us begin with the group rights concept as presented and justified by Iris Marion Young (1995). Building on the intrinsic linkage among rights, duties and obligations, Young approaches the concept of group rights through the issue of citizenship. In defending the notion of group rights, she argues against the principle of universal citizenship. The latter can be understood in three different ways and accordingly the realization of the principle covers three different levels: 1/ universality as extension to citizenship to everyone; 2/ universality defined as general approach in opposition to particularistic one (what citizens have in common as opposed to how they differ); 3/ universality in the sense of laws and rules that are blind to individual and group differences and that say the same for all and apply to all in the same way (Young, 1995, p. 175).

In Young's opinion the universality of citizenship in the first understanding contradicts the other two meanings of universality. She argues that the idea of citizenship as an expression of general will has tended to enforce homogeneity of citizens completely neglecting the differences among various social groups and ensuing groups' varied needs and positions. This leads to disadvantaged positions of some groups within the society because the impartial general perspective, presupposed by the ideal of universal citizenship, cannot exist in reality (Young, 1995, p. 182). Consequently "[I]n a society where some groups are privileged while others are oppressed, insisting that as citizens persons should leave behind their particular affiliations and experiences to adopt a general point of view serves only to reinforce that privilege; for the perspectives and interests of the privileged will tend to dominate this unified public, marginalizing or silencing those other groups" (Young, 1995, p. 183).

In other words, strict adherence to a principle of equal treatment (embedded in the idea of universal citizenship) tends to perpetuate oppression or disadvantage in cases where differences in capacities, culture values, and behavioral styles exist among groups and some of these groups are privileged. The point about equal treatment seems to be extremely important. Liberal political tradition has evolved around the understanding of the equal value and dignity of every human person, which respectively has been reflected in the principle of universal citizenship and ensuing universal individual rights. (This is, however, a two-way process and there has been a considerable impact also the other way round.) Initially as political ideology and practice persisted in defining some groups as unworthy of equal citizenship status because of supposedly natural differences from white male citizens; it was important for emancipatory movements to insist that all people are the same in respect of their moral worth and deserve equal citizenship. In this context, demands for equal rights that are blind to group differences were the only sensible way to combat exclusion and degradation. Today, however, the group rights proponents argue that despite the existing social

consensus that all persons are of equal moral worth and deserve equal citizenship, group inequalities nevertheless remain. And equality understood as universal citizenship only perpetuates further the existing in reality group inequalities. The only way these inequalities to be abandoned is through differentiated/special/'unequal' treatment. This means discarding universalism and opting for differentiated citizenship and group rights (see Young, 1995, p. 196).

Therefore, the inclusion and participation of everyone in public discussions and decision-making requires the articulation of special rights that attend to group differences in order to undermine oppression and disadvantage. It is the implementation of the concept of *differentiated citizenship* through which the inclusion and participation of everyone in full citizenship can be best realized (Young, 1995, p. 176). In Young's opinion differentiated citizenship and group rights in the form of explicit recognition and institutionalized representation of the disadvantaged ("oppressed" in her terminology) groups are the key for solving the "paradox of democracy" by which social power makes some citizens more equal than others, and equality of citizenship makes some people more powerful citizens (Young, 1995, p. 185). Writing about the "liberal dilemma" Vernon Van Dyke (1995, pp. 180-181) develops the same argument although with a different justification: traditional liberal-democratic thought has a problem dealing with collective entities since its main concerns and focus of attention is the individual; consequently, only the rights of the individuals are spelled out, neglecting collective entities and their rights.

The problem of disadvantages and oppression of some groups within a given society and hence the breached opportunities for these groups for participation and realization seem intrinsically interwoven with the existence of deep cultural and life-style differences: "Different social groups have different needs, cultures, histories, experiences, and perceptions of social relations which influence their interpretation of the meaning and consequences of policy proposals and influence the form of their political reasoning" (Young, p. 182). Consequently, the requirement for differentiated citizenship and group rights comes not only to answer the problem of disadvantage and oppression, but also to assert the positive value and pride in group specificity against ideals of assimilation. Will Kymlicka makes a similar point on the relevance and necessity of group rights focusing on the importance of culture for the individual. In his opinion culture is valuable (also from the standpoint of political liberalism) because it enables a meaningful range of choices in the conduct of people's lives and because it forms the horizon for the individual to develop a life-plan. Therefore, groups with different cultures who are not in majority/power position within the society should enjoy group rights in order to be able to preserve their different cultures (Kymlicka, 1995, pp. 233-257).

In relation to the above argument, though from a different perspective, comes the justification of group rights through the salience of human groups for the individuals. Widely shared among communitarians and group rights proponents, the point is explicated by Vernon Van Dyke: "in a state of nature individuals are joined in communities" which are not mere aggregations of individuals but collective entities, which "have moral rights that are distinct from the rights of individual members" (Van Dyke, 1995, pp. 199, 181).

The argument about the salience of the groups (with the ensuing implication for group rights) can be split into two sub-points. The bulk of energy and scientific passion goes for explaining the importance of the group for the group members' identities, perspectives and choices (Young, 1995; Kymlicka, 1995; Van Dyke, 1995; Tylor, 1999). Thus Young (1995, p. 186) views a social group not as an aggregate of persons according to some attribute, since the group is primarily defined not by a set of shared attributes, but by the sense of identity that people have. The other part of the argument is that the liberal tradition, focusing exclusively on the individual, shuns the intermediate level between the individual and state level, thus misrepresenting reality (this point is particularly eloquent in Van Dyke, 1995).

As a whole the arguments of group rights proponents appear to have two mutually related, however distinct aspects. On the one hand, group rights are invoked to compensate the disadvantages in groups' positions stemming from differences among various social groups in terms of culture, life-style and experiences and to answer the needs arisen from these differences. On the other hand, group rights are supposed to reflect and assert the group uniqueness understood as a cultural specificity, thus enhancing the "particular" at the expense of the "universal."

Presented in this way, arguments for group rights, in both aspects, seem to be sound and deserving the highest possible respect and observation. Group rights both as a remedy for current injustice through liquidating or diminishing the disadvantages of a given group within the society and as an enhancement and sustainment of variety and richness of different cultures represent serious reasons for accepting and even acclaiming the group rights concept. Without questioning the relevance and importance of the group rights concept as a whole, hereinafter we seek to reveal some of the weak points in group rights concept and to put forward some of the deficiencies it suffers from.

The Universalist retort about group rights

Similarly to Young's, Seyla Benhabib's argument lies predominantly on the third, moral-philosophical level of underlying justification. Her argument (Benhabib, 1996, pp. 55-58) is focused on the understanding of culture and the salience

of cultural diversity. In modernity cultures are no more compact and internally homogeneous set of values, models, life-styles and views. Rather cultures resemble, Benhabib says, images in a kaleidoscope, they are like retelling of narratives, constantly changing and reconfiguring. In short "[C]ultures and societies are polyvocal, multilayered, decentered, and fractured systems of action and signification" (Benhabib, 1996, p. 45).

Building on this understanding Benhabib makes several points about group rights as based on the preservation of cultural diversity. Since cultures are in constant re-configuration, citizen rights should not be constitutionally group-differentiated because there is no really existing cultural basis for this differentiation. However, Benhabib is not against special privileges and immunities for ethnic, cultural and linguistic groups. Only the justification she stands for is polar to that of Young: group-differentiated claims are defensible as long as they are aimed at the realization of universal citizenship for groups in question.

Thus granting Kurds, Gypsies or Aboriginal people in Americas with special group rights should be seen as fulfilling the promise of universal citizenship rather than creating enclaves of maintaining particularistic forms of identity (Benhabib, 1996, p. 57). In other words, Benhabib completely sides with the first part of the group rights argument as presented above and stands in opposition to its second part (that group rights are to promote and help sustaining the variety and richness of different cultures). Hence, politically the right to cultural self-expression needs to be grounded upon (rather than being considered as an alternative) to universally recognized citizenship rights. Thus Benhabib suggests that in considering the concept of group rights the "universal" and the "particular" could be seen as complementing each other rather than mutually excluding. The "universal," however, remains the underlying concept and group-differentiated rights and approaches are merely another way to achieve the universalist ideal.

Another important point in Benhabib's argument is related to the importance of culture regarding the conditions for choices it provides to the individual. For political liberalism the value of culture is in providing conditions for individual choice (a point made most eloquently by Will Kymlicka). If so, then objectively there is no basis for deciding among national cultures, the culture of religious groups, or of social movements and no differentiation can be allowed among the value or worth of those cultures except as expressed through the activities of individuals. Furthermore, the right to cultural membership entails the right of individual's choice whether to accept or not the various cultural settings stemming from one's upbringing, one's nation, one's religious or family community.

This assertion leads to two important implications. If group rights are invoked to sustain cultural diversity, i.e. to help the preservation and reproduction of non-dominant cultures, then a number of questions arise: Is the preservation of diversity justifiable for its own sake?; Can we value the mere cultural diversity

per se? If the utmost goal is the preservation of cultural life-forms then this might also lead to an artificial reproduction of the culture (preserving a "frozen beauty" in Benhabib's expression), and hindering the natural processes of cultural struggle, transformation, change and development.

The second implication reflects the question: Which is more valuable: the aesthetic value of the plurality of cultural life-forms or the freedom, justice, and dignity to be accorded to members of cultural life-forms? It might happen (and sometimes happens) that attempts to preserve cultural diversity and aesthetic pluralism are at the expense of the individual's moral autonomy and free will. Thus unless the norm of universal citizenship is strongly defended, the recognition of group rights would inevitably lead to the clash of 'internal freedoms' and 'external protections' (Benhabib, 1996, p. 57).

To extend further this line of argument, preservation of distinctive identity (based on a dissimilar culture) on individual level does not preclude integration within a larger and divergent community. If we accept as a basic stipulation that people have multiple identities, then it is quite probable to acknowledge that people are able to 'switch' from one identity to another. Besides, identities do not stay stable and unchanged across generations: what might be a common thing or a custom for one generation (and consequently special protection for this custom to be needed) might change for the next generation or over generations. Therefore, if it is natural for identities to change over time, why should one aim at any cost to preserve artificially unchanged the culture/s these identities are based upon?_

The group rights beyond the universalist-particularist perspective

The notion of group and "groupness"

The notion of the "group" is another issue out of which stem various problems for the concept of group rights. The so-called "salience of the group" is particularly indicative of the perplexities related to the group rights since it represents a significant point of friction among the various proponents of group rights. The contradictions run in several directions, namely what are the relevant types of groups, which should be considered in this group rights context and to which actually group rights should be granted.

Young suggests the category of "social group," which in her understanding involves first of all an affinity with other persons by which they identify with one another and by which other people identify them (Young, 1995, p. 186). Therefore, for Young a 'group' is primarily defined through the processes of external (and/or objective) and internal (and/or subjective) identification, while at the same time, however, a group's entitlement to group rights depends on whether the group is disadvantaged/oppressed. While pointing out that group

differentiation is an inevitable and desirable process in modern societies, Young states that "[O]ur political problem is that some of our groups are privileged and others are oppressed." And she provides a list of five conditions, which alone or in combination, if encountered by a 'large portions of members,' indicate that the group is oppressed: "1/ the benefits of their work or energy go to others without those others reciprocally benefiting them (exploitation); 2/ they are excluded from participation in major social activities, which in our society means primarily a workplace (marginalization); 3/ they live and work under the authority of others, and have little work autonomy and authority over others themselves (powerlessness); 4/ as a group they are stereotyped at the same time that their experience and situation is invisible in the society in general, and they have little opportunity and little audience for the expression of their experience and perspective on social events (cultural imperialism); 5/ group members suffer random violence and harassment motivated by group hatred or fear" (Young, 1995, p. 188).

Other authors, however, dwell more on what gives collectives a right-holding capacity and makes groups right-holders (see Jovanovic, 2012, pp. 66-109). Vernon Van Dyke suggests eight criteria of judgement to determine whether a group is entitled to status and rights, without, however, implying additional proliferation of the kinds of groups to be recognized. Thus, a group has a stronger claim for "groupness": 1/ the more it is a self-conscious entity with a desire to preserve itself; 2/ the more evident it is that it has a reasonable chance to preserve itself; 3/ the clearer are the criteria for membership; 4/ the more significant it is in the lives of its members and the more the members try to identify themselves by reference to their membership; 5/ the more important the rights it seeks or ought to have are to the interests of its members and the least costly or burdensome the grant of the rights is to the others; 6/ the more clearly and effectively it is organized to act and to assume responsibilities; 7/ the more firmly established is the tradition of treating it as a group; 8/ the more clearly the status and rights that it seeks can be granted compatibly with the equality principle (Van Dyke, 1995, pp. 191-193).

The two understandings differ conspicuously at their very basic premises. In the former, group rights are related to the disadvantaged (oppressed) position of the group, while in the latter the claims for group rights are not dependent on a moral factor (whether the group is oppressed), but rather on whether it would be able to tackle the group rights given to it and what would be the impact of these rights on the members of the group and the costs for non-members.

Will Kymlicka puts forward another way to define what should be meant by a 'group' in the context of granting group rights. His point is that "[M]ost liberal democracies exhibit cultural pluralism, that is citizens of the same country belong to various cultural communities" (Kymlicka, 1995, p. 233). Since his main focus

is on what he calls "politicization of ethnicity" (meaning that in culturally plural societies conflicts concern the way ethnicity should be recognized by the state), one may safely conclude that for him the relevant groups which should be granted group rights are either component nations (in multinational states) or ethnic groups (in polyethnic states) (see also Anaya, 1997). Therefore, for Kymlicka the relevant criterion for groups to legitimately subscribe for group rights is the ethnic/national one. Thomas Pogge, on the other hand, makes just the opposite point, arguing that "in deciding what group rights we, as a society, may or should grant to various groups, we ought not to favor groups of one type, as such, over groups of another" (Pogge, 1997, p. 187). The gist of his argument is undeniably directed against singling out ethnic groups as the most salient recipients and bearers of group rights.

Though indicative and expressive, the considerable friction among the group rights proponents on what makes a group 'eligible' for group rights does not exhaust the problems related to the 'group' notion. Brubaker and Cooper (2000) quite rightly question the mere notion of 'groupness' of the groups in question. They argue that it is not enough to define the groups, which are to be granted group rights, according to a set of criteria for oppression, like Young does, because in this way it is still not clear what constitutes the "groupness" of these "groups". They go even further to suggest that "the language of bounded groupness is deployed not because it reflects social reality, but precisely because groupness is ambiguous and contested; there is a gap between normative arguments and activist idioms that take bounded groupness as axiomatic and historical and sociological analyses that emphasize contingency, fluidity and variability" [3].

Consequently, the question Brubaker and Cooper ask appears to be rather salient: What makes groups 'groups' rather than categories around which self- and other-identifications may (but certainly not necessarily or always) crystallize? Young does not address this question; neither is it in the focus of other group rights proponents. Rather they fall into their own trap by assigning to the groups the same homogeneity and external bounds which they strongly repudiate on the level of society as a whole. For them the 'principle of unity' which is not acceptable for society because it obscures or even hides the differences within the society, seems to be quite acceptable on group level, where, however, it does the same – hides differences within the group. This argumentation reveals one of the serious real-life dilemmas, posed by the group rights concept: if the cultural distinctiveness is to be preserved, the borders of the groups (or the "bounded groupness" in Brubaker and Cooper's terminology) should be maintained. The implication is that the 'group' is interested in preventing its members from crossing the group's borders, which actually leads to the submission of the individual will to that of the 'group' for the sake of group preservation [4] and oppressiveness of the groups towards individuals, similar to that of state towards groups.

We conclude this part of the argument by suggesting that what is important in the context of group rights considerations (especially in practical terms) is not actually the type of a given group but rather the role it plays in the lives of those identified or affiliated with it and the 'weight' of this group within the society.

Group membership

Another implication of the ambiguity of the 'group' notion is related to the relevant criteria of group membership. Various authors suggest a number of purportedly relevant criteria, which can be roughly described along the 'subjective-objective' and 'external-internal' distinctions. Markedly, these two lines, though coinciding in some cases, are not one and the same. Iris Young, for example, views the criteria as entirely "externally dependent": "[M]any group definitions [and group membership accordingly] come from the outside, from other groups that label and stereotype certain people" (Young, 1995, p. 186). If the (negative) attitude of the 'outsiders' is what defines a group and thus indirectly contributes to claims for group rights, then this very same outsiders' (negative) attitude might make use of the more 'material' criteria (along which group rights are normatively assigned) as a basis for the outsiders to exclude (or to perpetuate the exclusion of) members of the group in question from the mainstream society. It can be also a 'psychological' exclusion, which might come as a response to (satisfied) claims for group differentiated rights. This is one of the cases in which the discrepancy between legal dimensions of group rights concept and their implication on social realities and inter-group distances is of too significant consequences to dismiss easily the problems related to the group rights concept.

Another real-life issue of group membership can also be addressed here, namely the problem of mixed families. How are the persons from such families (both children and parents) assigned membership? How is their 'group' defined? According to the mother (as in the Jewish tradition) or according to the father (as in some societies with predominant traditional culture)? Or the individual has the right to decide for him/herself? If the 1990s Bosnian case is taken as an example, then one of the possible conclusions would be that in normal every-day situations on the grass-root level the concrete group (or groups) to which one is a member is not by definition of particular importance. In a mixed, multicultural society, with no group rights to serve as barriers and to sharpen the borders [5] between different communities, individuals do not seem to care much for the exact group/s they belong to. However, in extreme situations with mounting violence this nonchalance disappears – families split and individuals from mixed marriages are forced by the circumstances to make a choice, or even worse – the group/community chooses for them [6].

The mixed families exemplify mostly the problems related to membership in ethnic/religious/linguistic group. Indeed, some authors question the assertion that ethnic groups are more salient for the individuals and hence bear greater claim for group rights than other types of groups (see Pogge's points above). Nevertheless, group membership criteria like ethnicity, language/mother tongue, and religion should be perceived as more salient for the mere fact that these are not characteristics that one can choose or change by will (with some qualifications for religion). Moreover, under particular circumstances ethnicity as a criterion for group membership does override other criteria: ethnicity is particularly salient in extreme and conflict situations [7].

Generally said, however, any individual is a member simultaneously in many overlapping and crisscrossing groups. If the rights/privileges are focused on one of these groups, this would lead to reinforcing the 'groupness' of that particular 'group' and consequently to fostering this particular identity within the group members.

The group and the individual's identity

Another 'slippery' point with the justification of the group rights concept is the role of the group/s for individual's identity/ies. Proponents of the group rights usually put forward the argument that groups should be preserved and supported (incl. through group rights) because of their salience – or even their centrality – for individual's identity. It seems to be a gross generalization to say that community is important for the individuals and for their identities. For some it might be, for some it might not be so; and even if it is important, this importance is not constant over time. It is quite probable to state, however, that community membership is important in extreme situations when the individual feels threatened and unsecured and needs the comfort and support of the group. Also it is in inter-group conflict situation, when individual's identity is more rigidly tightened to the group.

Young states that "[A] person's particular sense of history, understanding of social relations and personal possibilities, her or his mode of reasoning, values, and expressive styles [actually the person's very being] are constituted at least partly by her or his group identity" (Young, 1995, p. 186). Starting from this more or less moderate understanding of the relation between one's group and one's personal identity, Young goes further to argue that "a person's identity is defined in relation to how others identify him or her [sic!], and others do so in terms of groups [sic!] which always already have specific attributes, stereotypes, and norms associated with them, in reference to which a person's identity will be formed" (Young, 1995, p. 187).

This seems to be already a rather extreme understanding of identity. First of all, it is completely 'external' in terms of the identity's source (it provokes an image of an individual, who perceives him/herself as nothing else but a mirror, reflecting the reflections of the 'others,' the 'outsiders'). Second, even if we accept the 'mirror' person, it still does not explain why the 'others' would always identify one in terms of groups (It does not change much of the meaning that 'groups' is in plural here). A person might be seen by the 'others' (or more correctly 'by some of the others') as something more or even as something different from the group/s s/he belongs to.

Brubaker and Cooper suggest a more reliable understanding of the notion of external and self-identification. For them the key type of external identification is "the formalized, codified, objectified systems of categorization developed by powerful, authoritative institutions, the modern state being one of the most important agents of identification and categorization" (Brubaker and Cooper, 2000: 56). This is how groups can be fixed from above (or even created) – because in the general case it is the state which has the power to name, to identify, to categorize, to state what is what and who is who. And as far as the state grants legal group rights, it is expected to do exactly this type of delineation of groups (rights should be given to 'somebody' and it should be clear who is this 'somebody'). It can be expected this type of formalized 'group-ization' should inevitably influence the way a person perceives and identifies his/herself and the way the other perceive and identify him/her. This is one of the surest ways to foster a particular group-related identity. But this type of argumentation has actually nothing to do with Young's argument that group rights should be granted to a given group because of its salience for its members' identification.

As pointed above, in real life people belong simultaneously to various groups. Therefore, they can and usually identify with more than one social group. And it is up to the individual to decide which one of the groups he belongs to is salient to him/her at a particular moment (see Hidasi, 2016; Saldukaitytė, 2017). The latter means also that different groups' salience fluctuates over time for every individual. Therefore, it would also be problematic to treat groups as fixed and unitary in their interests because of these types of fluid identifications and individual-group relations (identities cannot be 'frozen' into a unity). This last point calls for rethinking of the meaning and function of group political representation regarding its relation to identity. (Brubaker and Cooper suggest that talking about belonging to different groups simultaneously and not about identities might help escaping the 'identity definition gap'). This is yet another point at which Young's argument for group political representation on the basis of group identities becomes unsustainable.

Group rights: moral and/or legal

Another important point pertinent to the notion of group rights is the relationship between moral and legal rights. The distinction is suggested by Van Dyke who considers communities as collective entities, which "have moral rights that are distinct from the rights of individual members" (Van Dyke, 1995, p. 181). Elsewhere it is argued that philosophy dealing with the humans in society should be the basis of legal norms (Taylor, 1999, p. 127), or, in other words, legal rights should be backed by moral ones. Regarding group rights this brings up several questions: How flexible is the link between moral and legal rights when talking about collective (group) rights? What is the way to satisfy a moral 'group' claim? Is it only through providing a legal 'match' for it?

Except for those with legal inclinations, most of the group rights defenders seem not to make difference between 'group rights', 'special measures', 'special treatment' or 'preferential treatment' of groups [8]. These are not one and the same though in some cases they are being confused or used interchangeably. One way to distinguish them is to posit "rights" as a legal category, which corresponds to a matter of principle (in other words legal rights follow moral rights), while special or preferential treatment/measures of a group (though it can reflect moral principles too) is usually a matter of contingent circumstances. Both answer moral rights. The difference is that group rights tend to foster group borders and have a persistent effect in time on the group 'boundness,' while special measures (which are not necessarily legally codified as "rights") have a less strong impact on the inter-groups borders, while at the same time can successfully answer the same moral rights (stemming from disadvantages or oppression) [9].

Furthermore, moral rights (including those justifying group rights) are said to be general and universal (Van Dyke, 1995, p. 194). But if the answer to the question 'Are there universal human rights?' is 'No!' (as particularists defending group rights would answer), then, however, according to the same logic and by analogue, the concept of group rights cannot be universally justified too. Consequently, one cannot talk generally about group rights as an alternative and opposition to universal rights, with the implicit suggestion of the same level of generality and universalism. And this exactly what Iris Young does, opposing differentiated citizenship to the universal one. Her proposition, however, is no less universal, for as she states, in every society there are oppressed groups (at least there are women in every society and Young defines them as one of the groups that should be given special rights). Despite the fact that she agrees that there cannot be a common set of group rights or a single way to tackle the problem, she still insists that group rights and differentiated citizenship are universally relevant and should be applied (in one or another form) everywhere. But then if the concepts of universal citizenship and universal human rights are unsustainable,

why should the concept of group rights be accepted as universally sustainable? Consequently, group rights are not only strongly contextualized and situationally dependent, but the concept itself cannot be said to be universally applicable. This line of argument renders the whole universalist-particularist debate irrelevant for the group rights discourse.

Group rights vs. individual rights

Another significant problem posed by the group rights concept is the tension between individual and group rights (see for instance Jovanovic, 2012; Eichler, 2015; Jones, 1999). Though the issue was addressed at several points so far in the text, it deserves special attention. The legacy of individualism in Western liberal thought puts the individual in the center of all considerations about rights [10]. Built on the belief of the equal value and importance of all human beings, the clear-cut distinction between public and private sphere has generally left the differences among the individuals unaddressed. Proceeding from this main assertion particularist, communitarianists and group rights defenders develop two major lines of arguments in defense of the notion of group rights. The first one builds on the understanding that individuals form groups that are not merely of great importance for the individuals, but are 'living organisms' of their own (not mere aggregates of individuals). Hence, groups possess their own moral rights independent of those of the individuals and should be granted group rights separately from the rights individual get. Since this point has been already discussed above, the focus here is on the second argument, according to which some of the rights individuals have are relevant and can be adequately exercised only in community with other individuals and therefore they should be anchored in the community (group) itself, not in the individual (see Bakalova, 2003).

In the liberal tradition rights are taken as a reflection of human needs and interest. However, as Van Dyke argues, "assuming that the object is to satisfy the interests and needs of individuals, it does not necessarily follow that the associated rights should go to individuals. Where the right should be located is a matter of practicality, and in some instances it is best, if not essential, to locate it in a collective unit" (Van Dyke, 1995, p. 183). The point is eloquently exemplified by the right of individual to language (in its various dimensions: to communicate in it, to receive education in it, etc.) as well as the right of individual to culture (to live and develop in one's own cultural environment). In both cases it is said that an individual cannot enjoy these rights on one's own, but only in community, with the group. Therefore, these rights (and such rights) should be granted to communities/groups, not to individuals.

Furthermore, as Jovanovic claims, "[E]ven authors who explicitly endorse the conflicting stance of value individualism have gradually come to acknowledge

that collective rights principally may – and in practice often do – prevail over individual members' rights". A collective right, it is claimed, can override an individual right provided that "the collective right in question protects some sufficiently strong interest of a right-holding entity as to outweigh the conflicting interest of an individual member of the group" which "implies resorting to some instruments of interpretative techniques that are widely used in conflicts between two individual rights or between an individual right and a right of a wider society..." (Jovanovic, 2012, p. 10).

Though clear at first sight, this argumentation has invoked considerable debates and counter-arguments. First of all, on the plane of abstract theoretical considerations even the proponents of collective rights agree that "collective rights can, under no circumstances, override some of the most fundamental human rights" (Ibidem.). Moreover, empirically, it is indicative that (except for the short-lasting and unsuccessful post-WWI Versailles minority protection system) the idea of minority rights [11] has always been approached reluctantly on international political and legal level. During the Cold War period this tendency was especially conspicuous in the efforts of the international organizations, and particularly UN, to tackle (or in many instance to avoid) the issue of minority rights. In the UN Commission on Human Rights a compromise formula was devised, according to which rights related to culture, religion or language were given to "persons belonging to ethnic, religious or linguistic minorities," not to minorities themselves (see Bakalova, 2012). The notion of groupness was introduced with the expression "in community with the other members of their group" [12].

There are two major reasons for the concept of minority rights not to be accepted at international legal level in most of the post-Cold War period. First, minority rights were seen by many states as granting judicial personality to minority groups as such and this could present a challenge to state sovereignty. Having in mind the way the inter-war minority rights system was abused and the role some minorities (mostly German) played for the beginning of the WWII and in the course of the war, states were oversensitive on the issue of minority rights. The end of the Cold War has made the issue of minority rights quite 'fashionable.' At the same time, with the turbulent disintegration of Yugoslavia and especially after the NATO military involvement in Kosovo crisis, state sovereignty has obviously ceased to be the 'sacred cow' of the international law. Minority issues have been put forward more and more eagerly as a problem to be tackled at the international level. This has led to several attempts at normative codification of a set of minority rights [13]. Thus, though not stripped off of validity, the first reason for not accepting minority/group rights seems to be currently in a process of deep reconsideration and transformations (Bakalova, 2012).

The second set of apprehensions, however, is still entirely pertinent. It is based on the arguments, that if a group is granted minority/group rights "the freedoms of individuals within a minority group to choose voluntary assimilation rather than preservation of their particular minority attributes could be jeopardized, given that the primary interest of the group would be to preserve its unity and strength, rather than to respect the individual's choice involved a weakening of the group" (Musgrave, 1997, p. 136). In short rights of the group may jeopardize the individual rights, so that protecting the group rights would mean violation of the rights of the individual [14]. In situations where group rights are recently introduced or planned to be introduced, it should also be taken into account how many of the group members prefer integration but are downplayed by the group political leaders and ethnic entrepreneurs.

Going to the opposite extreme of the argument, one may as well hold that there are cases when mechanisms are needed to curb the power of the group to suppress individual. Just like there are cases and situations when the introduction of group rights is justifiable, there are also cases and situations where individuals should be protected from the group. Not only in extreme situations, but also in everyday-life situations, the moral right of community can lead to infringement of the rights of individuals. In these cases, it is not the legal group rights that matter, but rather the moral rights or moral authority of the group [15]. The deeper are the cleavages among groups, the stronger and more powerful is the group's moral authority (even without the existence of legal group rights) over the group's members.

Additional implications of group rights

The implication of group rights on social cleavages should not be underestimated. Pogge, for instance, argues that given the fact that "[G]roup members differ in the degree to which their identification with the group are inherited rather than chosen" any special accommodation and group specific rights for groups with an inherited cultural identity would be "socially divisive and impractical" (Pogge, 1997, p. 211). Though Pogge's point seems to be too extreme, it is still true that group rights can have as a 'side effect' the deepening of the social cleavages. In some cases, in the attempt to remedy the disadvantaged situation of a given group, group rights can lead to further 'locking' of the group and to the increase of the social distance between the members of the group and the others/majority.

Thus through deepening the social cleavages and widening social distances (if this is the case) the introduction of group rights might involuntarily advance problems of keeping society together and social cohesion. The reason is that group rights tend to enforce group allegiance and as Taylor succinctly puts it "[T]he danger [for the common allegiance and commitment which is crucial for the

freewheeling rights enforcement] is in any form of either individualism or group identity that undercuts or undermines the trust that we share a common allegiance as citizens of this polity" (Taylor, 1999, p. 131).

On the other hand, introducing group rights on political and legal level might result in the perpetuation of the situation of the disadvantaged group on social and psychological level. It can be said that this is one of the arguments liberal tradition uses to define special measures as transitional or 'situational': if the situation changes they should be changed or even canceled too. Otherwise it appears to be a vicious circle when, on the one hand, some special measures/rights are assigned to compensate certain disadvantaged, and on the other, the mere measures/rights contribute to the perpetuating of the situation.

Conclusion

The conducted analysis leads to the conclusion that the issue of group rights is complex and multifaceted. Hence, straightforward and clear-cut "black-and-white" claims are hard to sustain when it comes to the justification, necessity, implications or functional usefulness related to the concept of group rights. The analysis allows for the following conclusions and general points to be made (some degree of provisionality notwithstanding):

First. The substantive study of the problem of group (collective) rights requires that they be considered in the broad context of the problems of rights in political philosophy. The approach of political philosophy is related to the following three highlights: describing an institutional order that guarantees the legal protection of interests and rights; requiring that such institutional arrangements be implemented within the framework of legal and legitimate public support; disclosure of the moral and value basis of that requirement.

Second. The problem of rights – collective and individual – is present in the overall historical development of political philosophy, but with different accents and with varying intensity. If in antiquity, rights are "present" in the theoretical understanding of the practice of ancient Greek democracy, in the Middle Ages, the foundations of human rights and obligations are sought in the Eternal Divine Law. Modern times directs their thinking in justifying the importance of the natural rights and obligations of the state. It was only after the Great European revolutions that the term "human rights" was introduced in theory. The semantic meaningful interpretation of these rights is axiologically oriented, but in modern times the analysis of individual rights prevails; and in contemporary political philosophy the focus is on collective (group) rights.

Third. The analysis of collective rights is also linked to the evolutionary treatment of rights through the so-called 'three generations of rights': first (until the end of the eighteenth century), second (end of the nineteenth and twentieth

centuries) and third (the second half of the twentieth and early twentieth centuries). It is the latter that raises the problem of collective (group) rights as opposing the individual.

Fourth. The notion of group rights with its ensuing theoretical, legal and practical implications could not be meaningfully addressed outside the more general and – from certain perspectives – more fundamental concept of individual rights. However, it is the ambiguity of the way group rights relate to individual rights that generates some of uncertainties and contradictions pertinent to group rights.

Fifth. The universalist-particularist dichotomy offers a starting ground for addressing group rights. Within this dichotomy the tensions between human rights, which are individual and universal by their very nature and group rights, which by their nature are case-specific and hence particularistic, can be partly explained.

Sixth. A deeper understanding of the nature of group rights requires transcending the universalist-particularist divide in order to cover some inherent problematic facets of group rights – such as the notion of the group and ensuing issues of agency behind group rights, the fallacy of "groupness", contingency of group membership or empirically problematic implications of group rights.

Seventh. The group rights should not be taken out of the overall context of the respective political culture. That means that group rights concept cannot be salient and successfully implemented if toleration is missing as a part of the political culture and group rights themselves are not able to cure or change the intolerance towards differences (on the contrary – they might be able even to exacerbate it). In that respect, Iris Young might be right in claiming that "[T]hough in many respects the law is now blind to group differences, the society is not, and some groups continue to be marked as deviant and as the other. In everyday interactions, images and decision-making, assumptions continue to be made about [different] marked groups, which continue to justify exclusions, avoidances, paternalism and authoritarian treatment. Continued racist, sexist, homophobic, ageist, and albeit behaviors and institutions create particular circumstances for these groups, usually disadvantaging them in their opportunity to develop their capacities and giving them particular experience and knowledge" (Young, 1995, p. 196).

Finally, the analysis also reveals that introducing group rights on the normative/legal plane cannot by itself change negative attitudes, exclusionism, etc. towards members of the disadvantaged groups. Social intolerance and prejudices cannot be remedied by a law. What a law can do is not to worsen the situation by legal discrimination or by allowing respective discriminatory policies. But there is no law that can make people more tolerant and positive-minded towards differences. Therefore, what is finally of importance is the increasing of tolerance and acceptance towards differences within society. For it is only in the wider context

of a policy directed towards increasing tolerance and acceptance of the ‘otherness’ where group rights can actually be working and beneficial – for the respective group and for the society as whole. This cannot be done by legal remedies alone (including assignment of group rights) and generally is a slow process, but not unachievable.

Notes

[1] Henceforth the quotations from the UDHR are made after the text of the Declaration from the official UN site available at <http://www.un.org/en/universal-declaration-human-rights/> (last visited September, 2017).

[2] These are the right of a cultural group (the group’s culture should be respected and even publicly supported), the right of a linguistic group (its language should be usable and respected in public); and the right of a religious group (freedom to engage in collective expressions of its faith).

[3] It should be pointed out that – in line with these considerations – Young herself also acknowledges that being a product of social relations groups are fluid; they come into being and may fade away (Young, 1995, p. 187).

[4] See also above for Benhabib’s point on ‘internal freedoms’ and ‘external protections.’ However, Brubaker and Cooper do not challenge the particularistic claims as such, but seem to be more concerned about how best to conceptualize them.

[5] We would not want to imply here that group rights are the only factor that can set the groups apart. As we try to show further there might be a long-existing group separation (even an institutionalized one, or one that is promoted and supported politically) and/or there might be long, traditionally established negative attitudes between the groups (like for example the attitudes towards Gypsies or Jews in many societies), which is the strongest possible inter-group barrier. In such situations group rights, even if absolutely justified in the concrete circumstances (diminishing disadvantages of a group), would ultimately merely reinforce the already sharp borders between the groups. Attitudes cannot be changed by legal means.

[6] During the war in Bosnia and Herzegovina there were many cases of ethnic purification in towns or areas when ethnically mixed families had either to split or to leave. They were not allowed to stay, especially if it was the wife, who belonged to the majority in the area (for a detailed account see Conrad, 2014). This can serve also as an example of how much the ‘groupness’ is situationally dependent.

[7] In *Ethnic Groups in Conflict* (1985) Donald Horowitz writes that ethnic identities are especially subjected to elite manipulation and ethnic groups are especially prone to violence. Similar points are put forward by Russel Hardin (1995, p. 7) who argues that some parameters of group identification – like

ethnicity, language/mother tongue, and religion – are perceived as more salient in cases of conflicts for they can serve as a basis for mobilization.

[8] This distinction is made in the international legally and politically binding documents on human rights, minority rights, etc. Though both ‘group rights’ and ‘special treatment’ can fall under the broader umbrella of ‘positive/affirmative action’ (also ‘positive discrimination’), usually it is the latter which is mostly associated with it.

[9] Let us exemplify this point with the following example. Under the Bulgarian Constitution, there are no legally defined minorities in Bulgaria and accordingly there are no group rights granted to Roma, Bulgarian Turks, Jews, and the other ethnic and religious communities. However, as an attempt to address the calamitous situation of the considerable part of the Roma population, in the beginning of the new millennium the Bulgarian government launched a multidimensional program for the Roma, aimed at helping them integrating better into the mainstream society and trying to provide them with equal opportunities for full participation in society’s life (see Romite, 2008, pp. 60-67). The special measures provided within that frame are not legally encoded – Bulgarian Roma are not given special group rights for being Roma. Nevertheless, the moral claim arisen from their particular situation has been answered (or at least attempted to). It is doubtful whether granting Roma with group rights would do a better job in that situation. Moreover, granting Roma group rights would have simply deepened the division between Roma and the rest of population (not only the Bulgarian majority, but also the Bulgarian Turks, etc.), thus perpetuating (for bad) the considerable social distance between Roma and the others, exteriorized through the negative attitudes the rest of the population in Bulgaria harbors regarding the Roma.

[10] Some of the group rights proponents, like Kymlicka, Pogge, Van Dyke, assert that the concept of group rights is not incompatible with Liberal values. However not all of the suggested justifications of the compliance between liberalism and individualism are salient. For instance, Pogge argues that legal group-specific rights can be justified on individual ground with an account of the free associative choices of individuals (Pogge, 1997, p. 198). This is, however, too extreme a suggestion, since not all groups allow membership to depend on "free associative choices").

[11] Many authors use ‘minority’ and ‘group’ interchangeably when discussing the notion of "rights". ‘Minority’ defies (even more than ‘group’ does) attempts at definition. At international legal level ‘minority’ is the preferred term and usually it refers to ethnic, religious and/or linguistic groups with (and sometimes without) a special legal status (see Bakalova, 1999). In scientific literature, however, many authors prefer ‘group’ because of the pejorative connotations the term ‘minority’ is considered to have. As a whole ‘group’ may be considered as a more general

(sociologically) term than 'minority.' Therefore 'minority rights' issue can be seen as a sub-issue of 'group rights'.

[12] Article 27 of the International Covenant on Civil and Political Rights (1976) is one of the few international legal texts where the term 'minority' is used and the problem of group/minority rights is (made a reluctant attempt to be) tackled. It reads: 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.'

[13] Mention deserve the two of the most significant ones: Prioritizing the issue of minority rights after 1989, the Council of Europe has devised two minority rights conventions: the European Charter for Regional or Minority Languages (opened for signature on 5 November 1992) and the Framework Convention for the Protection of National Minorities (opened for signature on 1 February 1995).

[14] The case 'Lovelace vs. Canada' represents an eloquent example of the tensions between group and individual rights. Sandra Lovelace was born and registered as a 'Malisset Indian' but after marrying a non-Indian, she lost her rights in accordance with the Indian Act. The Indian Act integrated some legal enactments from already 1896 provided that an Indian woman, who marries a non-Indian man, would lose her status as an Indian. The same is not valid however for the Indian men marrying non-Indian wives. The reason is that in the farming societies of the 19th century, reserve lands were more threatened by non-Indian men than by non-Indian women. The case thus demonstrates how for the sake of preserving the rights of the group, the rights and freedoms of the individual could be infringed. After the case was brought before The Human Rights Committee, it was stated that "there is an apparent conflict between the [Canadian] legislation, which seems to protect the rights of the minority as a whole, and its application to a single member of that minority" (see "Communication N 24/1977, Sandra Lovelace v. Canada" in Phillips and Rosas, 1995, p. 238-247).

[15] The situation with the inter-group marriages aptly illustrates the point. Up until 1970s-1980s Bulgarian marriages across groups were almost unthinkable (especially in backward rural regions) and there were several 'Romeo and Juliet' stories, the Montagues and Capulets being the Bulgarian and Turkish communities. As far as our knowledge goes, the same can be said to apply also in Macedonia (especially in mixed Albanian-Macedonian non-urban areas), as well as in Kosovo before the exacerbation of the conflict there.

[16] Let us consider again the example of the Roma in Bulgaria. It is true that as a whole many Roma are in a disadvantageous position along a number of social and economic criteria. The transition hardships Bulgaria has been going through further exacerbate the situation. But if the Roma would be given group rights merely on the basis of them being Roma (i.e. group rights aimed at remedying

those socio-economic disadvantages), then this would have discriminated the non-Roma who suffer the same difficulties throughout transition and post-2008 crisis. This could lead to increasing antipathy and negative attitudes towards Roma as a whole.

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THE CONCEPT OF GROUP RIGHTS FROM UNIVERSALIST-PARTICULARIST PERSPECTIVE AND BEYOND

Abstract

The issue of group rights is not a new one for political thought and practice. In late 20th-early 21st century it has resurfaced in political-international discourses and practices and normative-theoretical debates. The concept of group rights is of interest because of the normative, evaluative, and descriptive role it plays both in theory and practice and it is its debatable nature that we are interested in. Our main argument is that the concept of group rights reveals significant shortcomings for as much it is justified, at the same time it appears to be unsustainable (theoretically and empirically) for a number of reasons. We begin with a discussion of the concept of group rights in the universalist-vs.-particularist perspective and go beyond it to introduce the "group rights" debates and critically discuss its inherent controversies. We use a history-of-ideas approach to introduce the origin and evolution of the more general concept of "rights" as the natural setting within which the concept of "group rights" is tackled. Then we apply methods of substantive conclusions and of normative and political analyses of concepts that are pertinent to both normative political theory and to political science. The study reveals that straightforward and clear-cut "black-and-white" claims are hard to sustain when it comes to the justification, necessity, implications or functional usefulness related to the concept of group rights.

Key words: Human rights, Group/Collective rights, Universalist and particularist perspectives, individual and the group

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