

# Participatory Parity vs. Segregated Citizenship

## Comparing the Theories of Will Kymlicka and Nancy Fraser on the Rights of Immigrants and National Minorities

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### Abstract

This article analyzes Will Kymlicka's theory of justifying special rights for members of national minorities in contrast to immigrants or refugees and compares Kymlicka's account with the principle of participatory parity, as it is established by Nancy Fraser. It is argued that, comparing to Kymlicka, Fraser provides a better starting point for ethical considerations of minority rights in general. Even though the principle of participatory parity lacks detailed instruction of its political implementation, it is primarily inclusive and does not deprive immigrants or refugees of basic rights.

**Keywords:** minority rights, human rights, immigration, refugees, citizenship, inclusion.

## Introduction

Ethical investigations of immigration occur within a wide scope of responsibilities.<sup>1</sup> The moral and legal dimensions of a right to migrate, the right to enter into another state, the legal and illegal dimension of immigration, the corresponding duties of hospitality and first-admission policies the host states may have to fulfil, and, of course, the almost unbearable living conditions many immigrants have to cope with during the process of migration are only some issues in current debates. All these moral and judicial aspects are further complicated by various causes, motives and aims that different categories of migrants have for leaving their home country, which also influence the moral justification of their right of residence.

There is, however, another point for discussion which does not touch the concrete process of migration, but does involve the legal coexistence of immigrants, refugees, regular citizens and other members of minority groups *after* immigration has taken place. In this context, the tension<sup>2</sup> between universal rights, which are conferred to every human being, and their contextual realization in individual nation states with their own particular ethno-political communities, cultures and citizenry, has led to the emergence of different legal categories concerning the membership in a political community. Various legal titles, for example full citizenship, the citizenship of the European Union, denizenship, permanent residence, special minority rights or the suspension of deportation for asylum seekers mark different categories of political membership, which deal with the tension between the universality of human rights claims and the particularity of citizenship and political interaction.

In my paper, I will concentrate on this tension by analyzing two different approaches to the legal status of national minorities, immigrants and refugees. On the one hand, I will discuss Will Kymlicka's theory of self-government rights for national minorities. For Kymlicka, the main challenge contemporary nation states are confronted with is their dealing with the rights of certain minority cultures, for example of refugees, immigrants and national minorities. In his view, a just treatment of these groups is best achieved by giving self-government-rights as a special case of citizenship rights to national minorities, whereas the interests of the other groups can be met by implementing so-called polyethnic rights. There are, however, some problems concerning his appreciation of cultural membership, which, I think, raise several questions and lead to an unjustified preference of national minorities in contrast to immigrants or refugees. I will therefore contrast Kymlicka's approach with some considerations of Seyla Benhabib and Nancy Fraser and I will refer to Fraser's so-called status model and the principle of "*participating as a peer in social life*"<sup>3</sup>. Their approach, I think, responds to some challenges of migration concerning the inclusion and exclusion of certain segments of the population. Migration flows lead to the re-composition of demographic groups, and this is why immigration ethics must provide possibilities of changing the *demos*, i.e. the group of those persons who gain political membership in a nation state. In this regard, Fraser's and Benhabib's account is, even if in a broad sense, better qualified than Kymlicka's approach. As the question of recognition is an important aspect of both positions, I will also make some short remarks concerning the different concepts of recognition which are implied in these theories.

My paper is divided into three parts. First, I will concentrate on Kymlicka's account (I); second, I will discuss Nancy Fraser's principle of participating as a peer, and I will support her theory by some aspects of Benhabib's debate about the rights of immigrants

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<sup>1</sup> See for an overview Veit Bader, "The Ethics of Immigration", in *Constellation* 12 (3/2005), p. 331 f.

<sup>2</sup> The tension between universal human rights and their particular embodiment in single nation states is clearly elaborated by Seyla Benhabib in *The Rights of others. Aliens, Residents and Citizens*, Cambridge 2004, p. 2, p. 44, p. 175.

<sup>3</sup> Nancy Fraser, "Recognition without ethics", in *Theory, Culture, Society* 18 /2001, p. 24.

and refugees (II). In the third (and very short) section, I will present my own considerations. There are several aspects I will not deal with, as the relation between individual rights and group rights or the liberal and communitarian impacts of Kymlicka's approach. All these are very important and comprehensive problems, which, however, cannot be discussed appropriately within the limited scope of this article.

## Political Self-government and Societal Cultures. A Short Outline of Kymlicka's Approach

### *Three Forms of Group-specific Rights*

Will Kymlicka's philosophical interests focus on questions concerning multiculturalism, historical formation of multicultural states, their political problems and claims for recognition that certain minority groups raise against the state they live in. His aim is to establish terminological concepts which could meet the requirements of contemporary politics of multiculturalism and the corresponding legal discourse.<sup>4</sup> For Kymlicka cultural diversity, which causes the challenges of multiculturalism that modern societies are confronted with, has been incurred within a long period of formation. In particular, Kymlicka discusses two ways of emergence of cultural diversity in modern societies. On the one hand, cultural diversity "arises from the incorporation of (...) previously self-governing, territorially concentrated cultures into a larger state"<sup>5</sup>. Kymlicka refers to these cultures as 'national minorities.' A national minority wishes to sustain itself as a kind of distinct society besides the majority culture and therefore demands certain forms of self-government. On the other hand, cultural diversity "arises from individual and familial immigration"<sup>6</sup>. In contrast to national minorities, immigrants wish to be integrated into the larger society and to be recognized in their ethnic identity. These so called 'ethnic groups' of immigrants tend to modify the institutions of the larger society, which should not only represent the values and opinions of the majority, but also those of the members of ethnic groups.<sup>7</sup>

Contemporary democratic states have developed several instruments to integrate national minorities and ethnic groups. One of these instruments is expressed by the civil and political rights of individuals (for example freedom of association, of religion, of speech and mobility a.s.o.).<sup>8</sup> These rights enable the maintenance of "the various groups and associations which constitute civil society"<sup>9</sup> and which guarantee the sustainment of different organizations that individuals belong to. However, according to Kymlicka, there are some challenges of cultural difference that can only be accommodated by establishing certain group-specific rights which

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<sup>4</sup> A very clear introduction into Kymlicka's philosophy is given by Susanne Schmetkamp in *Respekt und Anerkennung*, Paderborn 2012, p. 197-216.

<sup>5</sup> Will Kymlicka, *Multicultural citizenship. A liberal Theory of Minority Rights*, Oxford 1995, p. 10.

<sup>6</sup> *Ibidem*.

<sup>7</sup> There are, of course, many other categories of group-membership, for example the group of disabled persons or of homosexuals, but Kymlicka does not discuss them in particular. As I will point out further, Kymlicka adheres the adjudication of minority rights to the formation of a societal culture a minority has to build up if it wants to be in a position to get special rights. This concept of a societal culture is indeed very ambitious: for Kymlicka, the term "a culture" [is] synonymus with 'a nation' or 'a people' – that is, an intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history." W. Kymlicka, *Multicultural Citizenship*, p. 18. Therefore, certain minority groups and minority cultures are excluded from further investigations: they do not meet the criteria mentioned above, and should be understood as "new social movements", *ibidem*, p. 19, but not as minority cultures.

<sup>8</sup> W. Kymlicka, *Multicultural Citizenship*, p. 26. Conspicuously, and this will be pointed out further, there are no rights of political participation within this list.

<sup>9</sup> *Ibidem*.

exist beyond the regular scope of citizenship-rights. In particular, Kymlicka distinguishes between three forms of group specific rights: self-government rights<sup>10</sup>, polyethnic rights<sup>11</sup> and special representation rights<sup>12</sup>.

Self-government rights justify their bearers' claims for political autonomy and territorial jurisdiction of national minorities. They are to achieve political self-determination for the members of national minorities living in a specific area on the territory of a nation state. Polyethnic rights ensure the expression of difference from the mainstream society. They enable members of ethnic groups to practice their cultural and religious customs, and, in some cases, they also permit the deviation from special legal rules, for example rules concerning dress-codes in public institutions. Special representation rights respond to the concern that the general political institutions may fail to represent the diversity of the population. As some sections of the population may be underrepresented, they sustain special rights which guarantee their attendance in political processes and acclamations. As he often regards special representation rights as a corollary of self-government rights, Kymlicka does not discuss them in detail. These rights can overlap in the sense that a special group claims for more than only polyethnic rights or self-government rights.

### *Societal Cultures*

The distinction between national minorities and ethnic groups has several consequences for the justification of group-specific rights. According to Kymlicka, the justification of group-specific minority rights is especially justified if they are applied to a so-called societal culture. A societal culture is perceived of as a

“culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language.”<sup>13</sup>

A societal culture provides its members with personal identity and self-determination, it enables them to achieve their aims in life. It is essential that the traditions and values of a societal culture are also represented in practices and institutions covering the whole field of human activities: a societal culture therefore incorporates the public and private life of individuals. This comprehensive notion of societal cultures also explains why Kymlicka regards his theory of minority rights as based on fundamental liberal principles.

According to Kymlicka, the

“freedom which liberals demand for individuals is (...) the freedom to move around within one's societal culture, to distance oneself from particular cultural roles, to choose which features of the culture are most worth developing, and which are without value.”<sup>14</sup>

A societal culture therefore provides conditions for the liberal value of freedom and for exercising one's own freedom. This is why the liberalization of a nation and a strong sense of cultural identity are no contradictory aspects.<sup>15</sup> It is important to see that in Kymlicka's account it is not the ethnic groups, but only the national minorities that are able to form a societal culture.<sup>16</sup> As Kymlicka points out, societal cultures are always associated with national

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<sup>10</sup> *Ibidem*, p. 27.

<sup>11</sup> *Ibidem*, p. 30.

<sup>12</sup> *Ibidem*, p. 31.

<sup>13</sup> *Ibidem*, p. 76.

<sup>14</sup> *Ibidem*, p. 90 f.

<sup>15</sup> Kymlicka's examination of liberal theories of minority rights in contrast to communitarian approaches is indeed very detailed, but I cannot discuss it more thoroughly due to the limited scope of the text at hand.

<sup>16</sup> *Ibidem*, p. 94.

groups or national minorities: national minorities are situated in local territories, they maintain their own language, customs and practices and provide their members with a sense of identity and cultural self, which should be protected. Ethnic groups, in contrast, do not build a community that is as deeply bound to cultural customs, tradition and identities: their aim is to get integrated into and to enrich the society and not only to be different from the majority.

For Kymlicka, the best way to protect societal cultures is to implement self-government rights as a special case of citizenship-rights for national minorities,<sup>17</sup> which guarantee full political self-determination within a nation state. This protection of societal cultures has to be seen as a sign of recognition and respect a nation state expresses towards the societal culture of a national minority.<sup>18</sup> As societal cultures contain the basic source of identity, self-respect and social embodiment of their members, they have to be appreciated by the institutional order of a state and its population. Instead of responding to “national differences with benign neglect,”<sup>19</sup> a state pays tribute to those populations which have been discriminated against within the process of nation-building.

However, self-government rights as one (and maybe the strongest) example for group-specific rights are only justified for national minorities. Immigrants, who form ethnic groups, possess some attributes of societal cultures (for example their own language), but lack others (for example their own territory). As they aim at being integrated into the larger society and are yet interested in keeping central traditions and customs of their cultures, ethnic groups should be protected by polyethnic rights, but not by self-government rights. Polyethnic rights enable immigrants to perform their traditions and, at the same time, oblige the majority to bring about a reasonable integration of immigrants.

### *Societal Cultures and Exclusion: The Case of Immigrants and Refugees*

This distinction between national minorities and immigrants and between self-government rights and polyethnic rights poses several questions. In this regard, much could be said about the legitimacy of group rights in general or within Kymlicka’s discussion about liberal and communitarian concepts of group rights, but my intention is to focus here on another point. Kymlicka’s explanation of national minorities and self-government rights is elaborated and clearly illustrated by many examples of indigenous peoples in North and South America and of different ways local politics deal with their needs. Nevertheless, while marking central differences between minority groups, Kymlicka to some extent fails to consider essential claims, needs and conditions of other minorities, for example those of immigrants and refugees. According to Kymlicka, in many cases, immigrants are not able to perform societal cultures: “I believe that national minorities have societal cultures, and immigrant groups do not.”<sup>20</sup> As immigrant groups are too mixed and as they aim to be integrated into the major society or to engage in the political and economic institutions of the nation state they immigrated in, they do not have the ability to exercise self-government rights. In contrast to national minorities, immigrants decided to uproot themselves, they “voluntarily relinquish some of the rights that go along with their original national membership.”<sup>21</sup> Indeed, for Kymlicka, “immigration is one way of waiving one’s right”<sup>22</sup>. At a first glance, it seems as if this does not really matter at all, because immigrants are still bearers of polyethnic rights. But at a second glance it is obvious that in Kymlicka’s account immigrants are disadvantaged if compared to national minorities. As liberal states have to protect people’s cultural membership and societal culture, immigration

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<sup>17</sup> *Ibidem*, p. 101.

<sup>18</sup> *Ibidem*, p. 129.

<sup>19</sup> *Ibidem*, p. 127.

<sup>20</sup> *Ibidem*, p. 101.

<sup>21</sup> *Ibidem*, p. 96.

<sup>22</sup> *Ibidem*.

must be limited<sup>23</sup> if a nation state accommodates too many immigrants and if a state pursues a politics of open borders to a large extent, the conditions to secure societal cultures become less advantageous. Moreover, it is not clear at all if Kymlicka wants to extend regular citizenship rights, including regular rights of political representation to immigrants or not. According to him, immigrants are seeking for national rights, and to a certain degree Kymlicka admits that immigrants as individuals, “without regard for their group membership,”<sup>24</sup> sustain full citizenship rights as every normal citizen in a state. This, however, does not apply with regard to their membership of a cultural group, which may affect societal cultures of national minorities in the country of immigration. Besides, the adjudication of citizenship-rights to immigrants is even more constrained by Kymlicka’s conceptional understanding of ‘immigration’ and ‘immigrants.’ As he points out in *Politics in the Vernacular*, immigrants are people “who arrive under an immigration policy which gives them the right to become citizens after a relatively short period of time – say, 3-5 years – subject only to minimal conditions”<sup>25</sup>. This positive assessment is, in contrast, only related to immigrants, who enter a nation state with the consent of the state they migrate in. However, this consent does not have to be based on moral or altruistic consideration, but can also be the result of political calculations, for example, if well educated immigrants are needed for the labour market of a state. Kymlicka himself states that “illegal immigrants or guest-workers or other migrants”<sup>26</sup> are excluded from the possibility of becoming citizens. In general, citizenship should be limited “to the members of a particular group, rather than all persons who desire it”<sup>27</sup>, and this limitation is also justified in the maintenance of societal cultures. The above-mentioned<sup>28</sup> individual rights, which are attributed to members of ethnic groups or national minorities as means of integration, cannot be extended to rights of political participation. Whereas members of national minorities are in a position to exercise political participation rights by means of their regular citizenship (for they are citizens of the nation state they belong to) and, beyond that, should be bearers of political self-determination rights as a special class of minority rights, it is not clear at all if immigrants and their descendants should even be bearers of general citizenship rights or not. Kymlicka does not present any ways of an adequate consideration of the needs and legal situation of immigrants.

This also applies to refugees fleeing from political persecution or severe poverty. In contrast to immigrants, refugees do not choose to give up their culture. But

“national rights of refugees are (...) rights against their own government. If that government is violating their national rights, there is no mechanism for deciding which other country should redress that injustice.”<sup>29</sup>

Indeed, this may be a correct description of the legal situation of refugees, but Kymlicka does not undertake a moral discussion about how to cope with this injustice. He only states:

“The best that refugees can realistically expect is to be treated as immigrants, with the corresponding polyethnic rights, and hope to return to their homeland as quickly as possible. This means that long-term refugees suffer an injustice, since they did not voluntarily relinquish their national rights. But this injustice was committed by their home

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<sup>23</sup> *Ibidem*, p. 125.

<sup>24</sup> *Ibidem*.

<sup>25</sup> W. Kymlicka, *Politics in the Vernacular. Nationalism, Multiculturalism, and Citizenship*, New York 2001, p. 153.

<sup>26</sup> *Ibidem*.

<sup>27</sup> W. Kymlicka, *Multicultural Citizenship*, p. 125.

<sup>28</sup> *Ibidem*, p. 4.

<sup>29</sup> *Ibidem*, p. 98.

government, and it is not clear that we can realistically ask host governments to redress it.”<sup>30</sup>

This evaluation does not really arise from a moral blindness to the needs of immigrants and refugees, but results from the defence and justification of the rights of national minorities who have formed a societal culture. Kymlicka’s aim is to strengthen the culture and legal position of indigenous peoples and natives, who, according to him, are discriminated against in modern nation states. This leads to the fact that Kymlicka sometimes overstates the meaning of culture and of societal cultures to the well-being of individuals. Individuals whose culture is degenerated have to be placed in a position to form societal cultures to gain more than polyethnic rights. Only in this case, Kymlicka becomes aware of the moral relevance for the situation of these groups. Legal interests of persons who do not belong to the majority culture, but who have neither performed a societal culture, are not recognized.<sup>31</sup> Kymlicka does not mention any ways of improving the legal situation of immigrants or refugees, for example by extending civil or self-government rights. If it is possible for a person to improve her legal situation independently of her being or not-being in a societal culture remains open.

An approach which enables a different perspective on the problems mentioned by Kymlicka is presented by Nancy Fraser’s principle of participatory parity. In contrast to Kymlicka, Fraser wants to dispense with group identities and considers the question of special rights for minority groups independently of their cultural status. In the second part I will briefly explain her account to take the discussion further by examining a framework for an inclusive perspective on the rights of national minorities, as well as of immigrants or refugees, which provides general prospects of changing the conditions for political participation and for rebuilding the *demos*.

## The Concept of Participatory Parity

In contrast to Kymlicka, Fraser does not strictly distinguish between different kinds of minority groups. This is why her account is based on an equal consideration of the social and legal status of religious and sexual minorities, of disabled persons, of national minorities, immigrant groups or gender-related forms of discrimination. An advantage of this strategy is that equality between different groups proves to be an absolute term within her account. A disadvantage, however, must be seen in the vagueness regarding practical questions: as Fraser’s approach is designed in a very broad and abstract way, she is not able to meet concrete practical issues, e.g. particular ways of changing the legal system of a nation state. Whereas Kymlicka’s account contains many proposals of how to modify states’ jurisdiction and is enriched by examples from American and Canadian history about different ways of integrating national minorities, Fraser does not regard questions like these. Nevertheless, by adding some further premises, her account provides a framework for a fair and balanced treatment of the legal needs of national minorities, immigrants and refugees.

### *Justice or Recognition?*

Fraser distinguishes between two different approaches to minority rights. On the one hand, the question of minority rights can be regarded within a redistributive framework. In this context, an equal redistribution of basic material and non-material goods (e.g. basic economic goods, health care, equal basic rights, a.s.o.) can be understood as a remedy for suffered injustice and place the members of minority groups in a better starting position in life.<sup>32</sup>

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<sup>30</sup> *Ibidem*, p. 99.

<sup>31</sup> This is also mentioned by S. Schmetkamp, *Respekt und Anerkennung*, p. 216.

<sup>32</sup> N. Fraser, “Soziale Gerechtigkeit im Zeitalter der Identitätspolitik. Umverteilung, Anerkennung und Beteiligung”, in: Nancy Fraser, Axel Honneth, *Umverteilung oder Anerkennung? Eine politisch-*

As these goods are redistributed to all the persons who suffered (or are still suffering) from injustice and unequal treatment, the redistributive account is universal and ignores cultural differences between minority groups. On the other hand, minority rights can be regarded from a more particularistic point of view.<sup>33</sup> In this case, a recognition-based account of minority rights aims at recognizing and appreciating the members of minority groups (ethnic, sexual, or others) in their alterity. This recognition is seen as a basic resource of the member's personal development and integrity as 'full' and equal human beings.<sup>34</sup> The position taken here is a particularistic one because recognition always means the recognition of a special culture, its "traits and identities" and "specific horizons of value."<sup>35</sup> Fraser criticizes recognition-based accounts of minority rights because a rigorous focusing on collective cultural identity may put moral pressure on individual members and promote separatism and segregation between social and cultural groups. Fraser therefore wants to combine both accounts by establishing the so-called model of status equality or the status model. Within the status model,

"what requires recognition is not group-specific identity but rather the status of group members as full partners in social interaction. Misrecognition, accordingly, does not mean the depreciation and de-formation of group identity. Rather, it means *social subordination* in the sense of being prevented from *participating as a peer* in social life."<sup>36</sup>

Recognition, especially institutional recognition of the individual's cultural background and identity, is indicated if individuals are seen as equal partners of political and social cooperation, if no one is prevented from participation by his or her group membership. This shows that the status model is not blind to culture-specific issues as a whole. It does not only regard cultural aspects as characteristics of a group or a community, but also as personal traits of the single members of the culture as *individuals*:

"It is unjust that some individuals and groups are denied the status of full partners in social interaction simply as a consequence of institutionalized patterns of cultural value in whose construction they have not equally participated and which disparage their distinctive characteristics or the distinctive characteristics assigned to them."<sup>37</sup>

These distinctive characteristics and identities of individuals are recognized if these individuals are put in a social and legal position to perform their interests and needs and to articulate their characteristics within the process of political decision-making. As the principle of participatory parity "presupposes the equal worth of human beings"<sup>38</sup>, it also requires a corresponding account of recognition. Recognition, therefore, is indicated if all "institutionalized patterns of cultural value express equal respect for all participants and ensure equal opportunity for achieving social self-esteem."<sup>39</sup> Even in Fraser's account, institutional questions of recognition play an important role, but in contrast to Kymlicka, Fraser's concept of recognition is more open: achieving personal and social self-esteem as a basic component of recognition is not only important for members of national minorities, but also for members of other minority groups and even for those (if there are any), who do not belong to any minorities at all. This so-called "*intersubjective condition* of participatory parity" leads to the

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*philosophische Kontroverse*, Frankfurt a.M. 2003, p. 29f.

<sup>33</sup> *Ibidem*.

<sup>34</sup> Indeed, Kymlicka's concept of recognition is based on this approach.

<sup>35</sup> N. Fraser, "Recognition without ethics", p. 22.

<sup>36</sup> *Ibidem*, p. 24.

<sup>37</sup> *Ibidem*, p. 26.

<sup>38</sup> *Ibidem*, p. 30.

<sup>39</sup> *Ibidem*, p. 29.



preclusion of “institutionalized norms that systematically depreciate some categories of people and the qualities associated with them.”<sup>40</sup>

### *The Inter- and Intragroup Level of Peer Participation*

Moreover, in terms of cultural minorities, it is important to distinguish between an intergroup and an intragroup level of participatory parity.<sup>41</sup> On the intergroup level, participatory parity regulates the relation between “*minorities vis-à-vis majorities*”<sup>42</sup> and provides an equal participation in social interaction for the members of minorities as well as for the majority. On the intragroup level, in contrast, “participatory parity [...] serves to assess the *internal effects of minority practices* for which recognition is claimed – that is, the effects on the groups’ own members.”<sup>43</sup> Thus, Fraser takes up an issue that is also mentioned by Kymlicka: even Kymlicka excludes those societal cultures from being recognized, which put certain internal restrictions on their members, e.g. concerning traditional gender roles.<sup>44</sup> Although this problem is not pursued in his account, it plays a central role in Fraser’s approach. The principle of participatory parity, therefore, is not only important to regulate the relation between different groups of the population, but also has certain impacts on the structure of a single group itself. If certain members of a group are denied participatory parity within this group, they are not recognized in their individuality and, compared to other group-members, they take up a socially subordinated status.

## Conclusion and Outlook

Despite the common consideration of intra-group subordination in both theories, I would like to mention some differences between Fraser’s and Kymlicka’s approach and I will argue, that Fraser provides a more adequate framework for a normative analysis of minority rights. Even though her account lacks detailed information about political implementations of participatory parity, it enables comprehensive discussions about citizenship and political membership. This can be seen, first, in the inclusiveness of her account. The concept of participating as a peer within the social and political system of a nation state does not bind the option of adjudicating special rights for minorities on the formation of a societal culture. Instead of separating distinct categories of group members, whose legal status may be different, Fraser holds that “all potentially affected by political decisions should have the chance to participate on terms of parity in the informal processes of opinion formation to which the decision-takers should be accountable.”<sup>45</sup> In this manner, questions concerning citizenship, different ways of political participation a.s.o. are initialized: regardless of their political citizenship, individuals should have the right to participate as peers in political life. However, as the access to political participation is mediated within legal categories, the so-called “all-affected principle”<sup>46</sup> ultimately has to provide legal categories and individual rights which guarantee the participation of every person in political life. This is why Fraser cannot avoid questions concerning the legal status of group members, and it is astonishing, that, in this context,<sup>47</sup> she does not enforce a further discussion about the various ways citizenship and

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<sup>40</sup> *Ibidem*. Italics in original.

<sup>41</sup> *Ibidem*, p. 34.

<sup>42</sup> *Ibidem*, p. 34.

<sup>43</sup> *Ibidem*.

<sup>44</sup> W. Kymlicka, *Multicultural Citizenship*, p. 36.

<sup>45</sup> N. Fraser, “Transnationalizing the Public Sphere. On the Legitimacy and Efficacy of Public Opinion in a Post-Westphalian World”, in: N. Fraser, *Scales of Justice. Reimagining Political Space in a Globalized World*, New York 2009, p. 95.

<sup>46</sup> *Ibidem*.

<sup>47</sup> Nevertheless, there are further domains, for example concerning citizenship, gender equality or sexual

political membership in a state can be rearranged. In contrast to Kymlicka, who justifies special rights for members of national minorities besides their regular citizenship, Fraser cannot limit to undertaking a similar particularization of citizenship, but has to develop criteria, which could re-define the *demos* of a nation. Whereas there have been improvements concerning the rights of permanent residents,<sup>48</sup> there are still many deficiencies for other groups, especially for refugees and asylum seekers<sup>49</sup>. In fact, Fraser considers the social interaction between these groups, but omits discussing their concrete legal status. However, as the redistributive scenario of participatory parity “must reach beyond the distribution of rights and goods to examine institutionalized patterns of cultural value,”<sup>50</sup> it may have to exceed juridical issues, but it also includes questions of rights. Therefore, before dealing with institutionalized discrimination of social groups, participatory parity must be reconsidered as a question of rights and legal participation.

This aspect can be supported by some further remarks. If the status model is interpreted in a more context-sensitive way, it can be assessed that the principle of participatory parity is quite open to special treatments: for example, it does not prevent members of minority groups from granting political self-representation rights or similar legal claims. If certain members of minority groups are not adequately considered in political life, they are also prevented from participating as peers, and the modus of political decision-making has to be changed. This change of political decision-making can be promoted by adjudicating special rights. On the one hand, for example self-representation-rights may be an important condition for members of minority groups to act as peers in social life, and in this case they have to be warranted. On the other hand, self-representation-rights or other rights for minorities can be the result of political decision-making, of a political process, which is based on the all-affected-principle. So if participating as a peer requires special goods – special representation rights for minorities – these goods mark an improvement of political decision-making and of participatory parity. They have to be granted not only to the members of national minorities, who have build up a societal culture, but, potentially, also to individuals belonging to other minority groups with a less distinctive cultural identity.<sup>51</sup> Nevertheless, in Fraser’s account, adjudicating special rights must not lead to a separation of the population and to particularistic scenarios. This is why justifying special rights is only legitimate within the limits of constituting the *demos* and of achieving participatory parity between the members of different groups. From this point of view, special rights are only legitimate if they support the process of participating as peers. If they exclude rightholders from equal participation, they are not

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subordination, especially in view of Same-Sex-Marriage, which are widely discussed by Fraser. See N. Fraser, “Recognition without Ethics?”, p. 33 f; N. Fraser, “After the family wage. A Postindustrial Thought Experiment”, in: N. Fraser, *Justice Interruptus. Critical Reflections on the Postsocialist Condition*, New York 1997, p. 50.

<sup>48</sup> A very complex account of political membership can be seen in citizenship of the European Union, which provides extensive political and social rights for citizens of EU-States living in another member state than their original European home country. For more information concerning the Citizenship of the European Union see Antje Wiener, “Europäische Bürger-schaftspraxis”, in: Jürgen Mackert, Hans-Peter Müller (eds.), *Moderne (Staats)Bürgerschaft. Nationale Staatsbürgerschaft und die Debatten der Citizenship Studies*, Wiesbaden 2007, p. 261-284. Beyond that, the legal situation of permanent residents has improved in some ways. There are concepts of dual citizenship, possibilities to gain full citizenship, or, if permanent residents retain the citizenship of their home country, improvements concerning basic liberty rights. See for an overview S. Benhabib, *The rights of others*, p. 160 ff.

<sup>49</sup> They are, for example, excluded from employment opportunities, co-determination of their legal resident or freedom of association. S. Benhabib, *The rights of others*, p. 162 f.

<sup>50</sup> N. Fraser: “Recognition without ethics”, p. 28.

<sup>51</sup> This is why political representation rights may not only be justified for national minorities (for example the Danish minority in Schleswig Holstein, one of the German federal states), but also for immigrants or their descendants (for example fellow citizen from Turkey or other large immigrant groups).

justified. Therefore, a strong federalism, which may be the result of an intense exercise of political self-government-rights, does not mark an adequate mode of political constitutionalism.

And, beyond that, as Fraser is concentrated on a just interaction of individuals and groups, which is sensitive for both individual needs and cultural differences, a prescribed preference of selected groups is unjustified. For this reason, Fraser's account also shows a better way of responding to the tension between the universalistic and particularistic aspects of immigration ethics. Whereas Fraser considers the universal dimension of human rights and tries to find, although in a broad sense, possibilities for their political implementation, Kymlicka to some extent disregards the universal connotation of those rights, which are up to every human being and not only to members of certain national minorities. Due to all these aspects, I would ultimately like to argue for Fraser's concept of participating as a peer in social life: the status model offers a well-balanced consideration of the political status of members from different social, cultural, religious and sexual groups. It does not only ensure a just political treatment of minorities, but also enables ways of communication and of a discursive organization of social and political life, which is sensitive for different needs and claims. And finally, the status model shows a more distinguished and modern concept of state and nationhood: it does not refer to the so-called *ius sanguinis*, which adheres political membership to cultural and political ancestry, but includes all those who are affected by certain decisions, in the process of social and political decision-making.