

Janne Mende (author), Jochen Gahrau (trans.)  
*A Human Right to Culture and Identity? The Ambivalence of Group Rights*  
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**Quote:** "The wisdom of Mende's refusal to equate stable unity with bad stultification and transgressive abandon with good liberation cannot be emphasized too much."

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*A Human Right to Culture and Identity? The Ambivalence of Group Rights* takes on the highly vexed questions of collective rights, culture, and personal identity. In 2007 the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples.<sup>1</sup> However, this pronouncement did not so much resolve controversy as provide it with an official target. Thus, Janne Mende introduces her subject by reviewing the tensions within and debates about the human rights system in general and cultural rights in particular:

1. How are human rights to be reconciled with state sovereignty (3)?
2. Can they effectively protect people from abuse and indifference (4)?
3. Are they yet another form of Western imperialism (4-5)?
4. Are rights-bearers individuals, groups, both/neither (5)?
5. What kinds of groups qualify as rights-bearers--indigenous peoples, historically disadvantaged groups, both/neither (7-11)?
6. Is cultural perpetuation a legitimate and achievable aim of human rights (7-8)?

Mende's answers to these questions are as complex and challenging as the questions themselves.

Her book is divided into three parts. Parts 1 and 2 are theoretical. Part 1 examines liberal and communitarian views regarding culture, individual identity, and human rights. Part 2 presents Mende's account of the problematics intrinsic to these concepts. Part 3 undertakes empirical investigations of the history of indigenous rights, the politics of indigenous rights at the UN, and the current state of play regarding indigenous rights. The final chapter synthesizes Mende's theoretical and empirical findings.

Chapter 1 incisively analyzes three major theories of the relations among culture, individual identity, and human rights. Taking Charles Taylor as a representative of communitarian support for collective rights to culture, Mende explicates his dialogical account of individual identity and his view of culture as a necessary framework for the dialogical constitution of individual identity (21-23). Because diverse cultures supply value systems that enable individuals to develop their own identities, Taylor argues, collective rights must protect those cultures (24-25). After raising questions about whether individuals must have access to their ancestral cultures to form their identities, whether Taylor is endorsing an unduly totalizing conception of culture, and whether Taylor has the theoretical resources to resolve conflicts between individuals and their societies, Mende turns to Will Kymlicka's liberal justification of group cultural rights.

Kymlicka shares Taylor's conviction that the values and meanings encoded in cultures are central to the formation of individual identities and that this function provides grounds for preserving cultures (29-30). However, in contrast to Taylor, Kymlicka underscores the internal doctrinal heterogeneity of cultures and affirms the voluntariness of membership in a cultural group (30-32). Although Kymlicka avoids some of the objections that threaten Taylor's view, Mende maintains that the costs of doing so include privileging liberal minority cultures and liberal national cultures, oversimplifying the distinction between voluntary and forced migration, and vacillating between construing culture as dynamic and rigid (33-37).

Finally, Mende considers Susan Okin's liberal feminist critique of collective rights to culture. Because Okin prioritizes the individual over society and insists on the equality of female individuals, she unequivocally repudiates cultures that subordinate women (39-42). Whereas Taylor and Kymlicka take pains to show respect for non-Western cultures, Okin holds that feminist principles entail condemning them insofar as they oppress women. In this connection, Mende notes that Okin views culture as a site of power relations and suggests that Okin could strengthen her position by acknowledging that cultures are not immutable and by acknowledging the extent to which culture is implicated in the formation of personal identity (42-43). Still, Mende concludes, these amendments would leave Okin without a tenable criterion for distinguishing emancipatory from repressive cultural change (43).

The first focus of chapter 2 is the contrast between the individual and society, and the normative question of whether one should take precedence over the other. Mende invokes Theodor Adorno's concept of internal mediation to argue that the relationship between the individual and society is one of "always-reciprocal constitution and construction" or "co-dependent mediation" (49-52). That is, individuals are dependent on society to develop the very capacities, including consciousness, self-consciousness, and autonomous agency, that endow them with the power to criticize society and envision more just social relations (51). Likewise, society is dependent on individuals, but its institutions and the relations they enforce have an autonomous status (51-52). Neither the individual nor society has ontological or normative priority, and failure to adequately grasp this point mars Taylor's, Kymlicka's, and Okin's theories (52-53).

The second focus of chapter 2 is the concept of culture. Mende begins by sketching the weaknesses of both static and dynamic conceptions of culture and questioning views that conflate culture with society (54-56). Here, too, she cites Adorno to develop a more convincing view. Adorno maintains that there are intermediary levels between the individual and society, and various kinds of groups--including cultural groups--can occupy these levels. With this scaffolding in place, it is possible to ask what conception of culture renders the debate regarding the collective right to culture intelligible. According to Mende, culture cannot be conceived as habitual patterns of thought and action that are inaccessible to reflection and deliberate reform, for a right to protect something we can neither know nor intentionally change would obviously be fatuous (60). What is required is that culture be understood as simultaneously dynamic and static--subject to internal critique and intentional change as well as to influence from outside sources, but not so volatile that it cannot organize social relations. This view acknowledges that culture makes a substantial contribution to the development of individual identities, while also making it possible to recognize that cultures harbor "both reflection-supporting and reflection-restricting dimensions" (60-61).

Chapter 3 examines the concept of identity from two perspectives--its assorted theoretical and political deployments and its relevance to the collective right to culture. Mende begins by noting the "heterogeneous and contradictory" ways the concept is used--on the one hand, as a marker of essential commonality, and on the other hand, as a multi-faceted site of fluid change (63-65). She then presents Derrida's deconstruction of the concept together with his attempt to formulate an emancipatory view of European identity and Adorno's dialectical view of the concepts of identity and nonidentity as internally and externally mediating one another (66-70). Importantly, she argues that both the static and the dynamic dimensions of identity contain possibilities for emancipation as well as repression (70-74). In my estimation, the wisdom of Mende's refusal to equate stable unity with bad stultification and transgressive abandon with good liberation cannot be emphasized too much. The remaining pages of chapter 3 explore the distinction between collective and individual identities and the interplay between them through a discussion of Jürgen Habermas's work on these issues.

Mende concludes part 2 by denying that theory can supply an abstract formula that balances "relations of stability and dynamics, identity and the nonidentical, internal and external attributions, and the individual and the collective identity" so as to ensure emancipation and prevent oppression (84). In light of the limitations of theory in this regard, she calls for empirical, context-sensitive inquiry into diverse identity constellations. Part 3 undertakes such an inquiry regarding indigeneity.

Chapter 4 chronicles the history of the movement for indigenous rights culminating in the adoption of UNDRIP. As is well known, the depredations of colonial powers did grave and lasting damage to indigenous groups, including lower life expectancy, higher poverty, and lost lands and cultural property (89). However, in the course of the twentieth century, indigenous groups organized locally and in the 1960s transnationally to assert their rights (91). Throughout this process, the International Labor Organization lent its support to the movement, and the UN finally passed UNDRIP in 2007.

Building on this history, Mende analyzes controversies concerning the concept of indigeneity--for example, how to distinguish peoples from ethnic minorities and how to identify persons who rightfully belong to a particular people (94-97). Further probing the concepts undergirding UNDRIP and the controversies associated with them, she notes that the declaration's various clauses reference the integrity and identity of peoples and their cultures and self-identification as both a collective and individual mechanism of delineating identity (98-99). Guarantees of indigenous self-determination, though often touted as necessary preconditions for other indigenous rights, raise questions regarding secession as well as questions regarding the freedom of group members and their rights to participate in the social, economic, and political life of the larger society (99-100). Closely related are difficulties that arise in connection with demands for the return of expropriated lands, territories, and resources as well as the establishment of appropriate procedures for managing indigenous lands, territories, and resources (101-03). Mende concludes her catalogue of the ambiguities embedded in UNDRIP by highlighting the potential for conflicts between the collective goods of culture, indigeneity, and identity and the collective right of self-determination they validate, on the one hand, and the rights of individual group members to autonomously shape their own lives, on the other hand (103-05).

Chapter 5 takes up discussions of indigenous rights in the UN Permanent Forum on Indigenous Issues and shows how the themes identified in chapter 4 enter into these discussions. Mende documents the tendencies of parties to this body to characterize indigenous groups as committed to ancient traditions while lauding them in the name of cultural diversity (110-18). Both states and giant corporations continue to despoil indigenous lands and displace indigenous peoples from their territories, and indigenous representatives lodge complaints about these practices in this forum (119). Issues of self-determination arise in demands for a voice in the implementation of UNDRIP, in demands for recognition of indigenous legal systems, and in demands that negotiations with indigenous peoples respect the value of free, prior, and informed consent (122-26).

In these diplomatic discussions, historical continuity and cultural distinctness are cited to justify indigenous claims, but individual human rights are also cited to justify them. In addition, individual human rights receive attention as a standalone topic, for poverty, police violence, and racism oppress individual members of indigenous groups (128-32). Finally, these discussions appeal to collective rights not only to buttress the preceding arguments but also to justify restricting the rights of group members to exercise their individual rights in ways damaging to the cultural group (132-33). Mende rounds off this chapter with a summary of the rather cursory attention to gender, age, disability, and class distinctions within indigenous groups, but she softens this criticism by noting that presenting indigenous groups as homogeneous may be an effective tactic for advancing indigenous aims (135-39).

Chapter 6 spotlights Mende's subtitle, *The Ambivalence of Group Rights*. Here Mende schematizes patterns of justification for collective indigenous rights claims and returns to a point she developed theoretically in chapter 2: Culture is neither inherently empowering

nor inherently repressive (149). Because indigenous groups are internally diverse, culture-based arguments for collective rights often clash with individual human rights (151-53). Yet historical claims of "having-been-there-first" do not suffice to justify collective indigenous rights, for precolonial histories of migration and armed conflict are contestable (154-56). Anchoring collective indigenous rights in past and ongoing violations of individual human rights and the suffering these violations inflict provides a third approach to justifying collective indigenous rights. Although this approach does not adequately address the mediated nature of suffering, it has the advantage of grounding these collective rights in an internationally accepted system of codified norms (156-57). Returning to the three theories she discussed in chapter 1, Mende observes that although their arguments for collective human rights to cultural preservation are not mirrored in the arguments being advanced for indigenous rights at the UN, the category of culture should not be jettisoned because it does strengthen arguments against racism and other systems of exclusion and oppression (158).

In a concluding chapter, Mende brings her principal themes into focus. Above all, she maintains that all of the considerations that can be adduced in support of collective rights can also be adduced to call them into question (161-63). The concepts of culture and identity have more emancipatory potential when they are understood in fluid terms. Yet a measure of stability and continuity, which have repressive potential, are also needed to defend collective rights to culture and identity (163-66). To address this conundrum, Mende recommends Adorno's approach to moral judgment, which combines internal critique with external critique in the search for "something 'better'" (171-72). This approach entails that human rights must be understood as an open-ended legal and moral project that aims to minimize acute suffering while ensuring human dignity (172-74).

I must be candid with readers of this review and acknowledge that, as an analytically trained philosopher of self, action, and human rights, I found Mende's book challenging, and I'm not altogether confident that I have done justice to her line of thought. Thus, I would urge that my comments here be read in conjunction with those of reviewers more conversant with some of the texts and traditions she discusses. Nevertheless, I'd like to make a couple of observations regarding what I find valuable in Mende's book. First, she creates an analytical apparatus that systematizes and clarifies reflection on the problematics of collective rights to indigeneity. Second, her appropriation of Adorno supplies a new (to the best of my knowledge) philosophical route to theorizing human rights as a work in progress, and this construal of human rights coincides with the practical approach to human rights that I subscribe to and that Charles Beitz and James Nickel also advocate (Nickel 2007; Beitz 2009; Meyers 2016). Mende's book ably explicates what's at stake in debates over the human right to culture and identity--freedom and constraint; emancipation and repression--and offers a promising way forward as we navigate these tensions.

### **References**

Beitz, Charles R. 2009. *The idea of human rights*. Oxford: Oxford University Press.

Meyers, Diana Tietjens. 2016. *Victims' stories and the advancement of human rights*. New York: Oxford University Press.

Nickel, James W. 2007. *Making sense of human rights*. 2<sup>nd</sup> ed. Malden, Mass.: Blackwell.

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<sup>1</sup> UNDRIP, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>