Justice in Diversity

An Analysis of Minority Rights on the

Atlantic Coast of Nicaragua

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Abbreviations

AC	Alianza Costeña
ACARI	Association of Agricultural Clubs of the Coco River
ALPROMISU	Alliance for Progress of the Miskitu and Sumu Mayangna
CIA	US Central Intelligence Agency
CIDCA	Centro para la Investigación y Documentación de la Costa Atlántica
FSLN	Frente Sandinista de Liberación Nacional
ILO	International Labour Organisation
IPADE	Instituto para el Desarrollo y la Democracia
IPILC	Instituto de Promoción e Investigación Lingüistica y Rescate Cultural
MISATAN	Miskitu Asla Takanka Nicaragua
MISURASATA	Miskitu, Sumu, Rama and Sandinista united
NGO	Non Governmental Organisation
O.A.S.	Organisation of American States
OPROCO	Organisation for the Progress of the Atlantic Coast
PAMUC	Partido Movimiento de Unidad Costeña
PIM	Partido Indígena Multiétnico
PLC	Partido Liberal Constitucionalista
RAAN	Región Autónoma Atlántico Norte
RAAS	Región Autónoma Atlántico Sur
SEAR	Sistema Educativo Autonómico Regional
SICC	Southern Indigenous and Creole communities
SUKAWALA	National Association of Sumu communities
URACCAN	University of the Autonomous Regions of the Caribbean Coast of Nicaragua
YATAMA	Yapti Tasba Masraka Nanih Aslatakanka

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1. Introduction

1.1. Justice and Ethnic Diversity in Nicaragua

That the revolutionary fight of the Nicaraguan people to construct a new, multiethnic, multicultural, multilingual nation based on democracy, pluralism, anti-imperialism and the elimination of social oppression and oppression in all its forms, demands the institutionalisation of the Autonomy process of the communities of the Atlantic Coast of Nicaragua in as much as one recognises the political, economical, social and cultural rights of its inhabitants: it guarantees the equality in the diversity: it fortifies the national unit and the territorial integration of the nation; it deepens the democratic principles of the Revolution and alters in its deepest aspects the essence of the dependent and the exploited society which we inherited from the past (The Autonomy Statute 1997:2, M. H. translation).

In November 1986, in the midst of a bloody civil war, the National Assembly of Nicaragua passed a new constitution. It was a pioneer in Latin America as it laid down the mandate to establish two autonomous regions on the Atlantic Coast[1]. Additionally, the constitution recognised the specific social, political, economic, and cultural rights of the indigenous peoples[2] and the ethnic communities[3] of the autonomous regions. In September 1987 the autonomy rights and the organisational framework were specified in the Law 28 on the Autonomy Statute of the Atlantic Coast regions. Two autonomous regions were created: the Región Autónoma Atlántico Norte (RAAN) and the Región Autónoma Atlántico Sur (RAAS).

Although ethnic diversity is legally recognised in Nicaragua, the question of what role ethnic identity should play in organisation Nicaraguan democracy has not been settled. From the capital and the Pacific side there seems to be little interest in the implementation of autonomy. Even a subtle resistance to factoring ethnic differences into the structuring of the state can be detected. On the Atlantic side, the advocates of regional autonomy praise the scheduling of regional elections and various programmes and arrangements for the Atlantic Coast. However, they strongly criticise the flawed implementation of the Autonomy regime. The Constitution and the Autonomy Statute

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[1] The Atlantic Coast is the common term of the tropical lowland in the Eastern Nicaragua, today equivalent with the two regions RAAN and RAAS. It comprises approximately 43% of the national territory and about 10% of the population in the country (Ortega 2000:19,34).

[2] Indigenous people are the original population of the area (Perez 1997:29).

[3] Ethnic communities are the ethnic groups that have settled in the territory after the colonisation period, internal migration and demographic re-composition (ibid.:29).

are vague, and are thus not protecting the rights of the coastal peoples and communities. The costeños[4] are still facing cultural discrimination and political exclusion. Furthermore, the Atlantic Coast is economically marginalised and there seems to be no political will to invest in the region.

Hence, the ongoing dispute signals the importance of discussing the role of ethnic identity in the elaboration of a just and democratic Nicaragua.

Throughout the last decades a similar debate has emerged at the international level. Few, if any, democracies in the contemporary world of globalisation, immigration and cultural change are comprised of only one ethnic group[5]. Consequently, most democratic countries have to face the complex issue of how to create justice in an ethnically diverse society. Doing this implies a scrutiny of the perceptions of the rights and the obligations of all citizens. Furthermore, this reconsideration poses questions of how it is possible to avoid ethnic conflicts in accordance with the principles of justice and democracy.

The object of this thesis is to analyse the kind of institutional design that is best suited to meet the requirements of justice, to secure democracy, and to lay the ground for unity among the ethnically diverse Nicaraguan citizens. Hence, I base my discussion on the assumption that the institutional set-up of the Nicaraguan state has an impact on these three concerns.

I will go beyond today's Autonomy arrangement and compare two opposing perspectives on the role of ethnicity in the formal organisation of a democratic state. Furthermore, I will discuss the practical implications of the two perspectives for Nicaraguan society.

The two schools of thought under consideration here are multiculturalism and egalitarian liberalism. The multiculturalists believe that the state is obliged to explicitly recognise ethnic diversity of its citizens, often conferring special rights and

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[4] Costeños is a common term for people inhabiting the Atlantic Coast of Nicaragua.

[5] The concept ethnic group will be discussed in later chapters in relation to cultural group. Here I will only note that the conventional understanding of ethnicity and culture is that they should not, as often done, be treated as synonymous. As Thomas Hylland Eriksen says: "While ethnic identity should be taken to refer to a notion of shared ancestry (a kind of fictive kinship), culture refers to shared representations, norms and practices" (2001:1).

privileges based on ethnic group membership. This analysis will focus on the ideas of the Canadian political philosopher Will Kymlicka. Kymlicka is one of the main contemporary proponents of multiculturalism. Kymlicka defends the idea that ethno-cultural[6] minority groups should be protected through group-differentiated[7] rights. Brian Barry on the other hand, argues against special rights for ethnic minorities based on equality principals. In this thesis Barry will serve as the most important advocate of egalitarian liberalism. Like multiculturalism, egalitarian liberalism is not a homogeneous body of thought. The basic idea is that the state should be neutral in relation to the cultural and ethnic identities of its citizens. The state should not encourage any specific focus on cultural or ethnic identity, such as extending special protection to any particular cultural or ethnic group.

In relation to taking ethnic diversity into account in the organisation of the state, the case of Nicaragua is interesting. Nicaragua has made great strides in adopting the policies proposed by the multiculturalists. In a Latin American context this is extraordinary. As one of the first countries in Latin America, Nicaragua granted autonomy and special rights to ethnic groups. Hence, ethnic identity is a central concern in the organisation of the state institutions and policies.

A pertinent question is thus whether Nicaragua is on the right track. Do arrangements taking ethnic identity into account lead to a more democratic and more just society? Will it lead to fragmentation, or can it ensure unity between the citizens? The majority of political philosophers who have written on ethnic diversity build on empirical data from Europe, Canada and the United States. As Trygve Bendiksby pointed out in his analysis of on Guatemala, valuable insight can be gained by investigating situations in other parts of the world (2000). Through a nuanced debate on multiculturalism and justice Bendiksby discussed normative arguments in a Guatemalan context. He presented empirical evidence that both supported and weakened the arguments applied. Bendiksby concluded by suggesting a third model

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[6] Note here that Kymlicka refers to ethno-cultural groups. His understanding of ethnicity and culture will be treated in later chapters.

[7] In this thesis group differentiated rights will be used interchangeably with special rights for ethnic groups.

that contains elements from both the multiculturalist and the liberal egalitarian models. In this thesis I will do the same for Nicaragua. Consequently, I make use of the analytical framework of Bendiksby's thesis. This means that I will focus on justice, democracy and unity. I will pose many of the same research questions and discuss some of the theoretical contributions found in Bendiksby's analysis. However, because Nicaragua is not Guatemala, my conclusions will naturally not follow Bendiksby's.

In the rest of this chapter I will elaborate on the liberal paradigm, as both Kymlicka and Barry fall within the tradition of liberal political philosophy. I will then move on to the sources of data and research design of the analysis.

1.2. Theoretical framework

There is no single definition of liberals or liberalism. In the following I will however, pinpoint some of the values of the liberal tradition.

Liberalism regards the individual as the constituting entity. Consequently, for a membership in an ethnic group to be valuable, it has to be valuable to the individual. Hence the rights of the community can never be allowed to take precedence over the rights of the individual (Langhelle 1998:66).

Furthermore, every individual has the right to be treated like all other individuals. According to Kymlicka the fundamental idea of contemporary political theory is equality. "A theory is egalitarian in this sense if it accepts that the interests of each member of the community matter, and matter equally. (..) each citizen is entitled to equal concern and respect" (Kymlicka 1990:4). However, Kymlicka's conception of equality is controversial. Ann Phillips claims that equality can be understood in different ways. Phillips underlines the contradiction that can arise between equal power over outcomes and equality of the citizens' preferences. In some cases, guaranteeing the former comes at the expense of the latter: "that in order to give people equal power over outcomes we have to weight their preferences unequally; or that in order to protect minorities we have to give their votes some additional weight" (1995:36). Thus, we see that what can be called "just treatment" can be defined in at least two ways. Firstly, justice can be understood as outcome, or substance. Secondly,

the perception of justice can be procedural: "justice has to do with rules and procedures (process); to treat people in a just way is to apply the relevant rules for them in a correct way" (Langhelle 1998:64, M. H. translation).

Broadly speaking, political liberalism values moral pluralism. In a contemporary state the citizens have different and incompatible perceptions of what constitutes the good life. A liberal state must therefore take no position in relation to what is the good life. The goal of liberalism is according to Ronald Dworkin, quoted by Langhelle: "(…) that political decisions must be as far as possible independent of conceptions of the good life, or what gives value to life. Since citizens of a society differ in these conceptions, the government does not treat them as equals if it prefers one conception to another" (ibid.:65-66).

Rules and procedures are essential in order to guarantee all individuals the greatest possible amount of freedom to pursue their perception of the good life, without restricting the freedom of others (ibid.:66). Consequently, the main task of the liberal state is to offer equal rights and conditions for its citizens to make informed decisions about the good life.

In liberal states majority decision-making has precedence over other decision-making procedures. This follows from the principles of individual equality and liberty enshrined in the idea 'one man one vote'. However, majority decisions are not always apprehended as just. Minority groups often argue that majority decision-making puts them at a disadvantage. This is particularly the case when the decisions have a direct effect upon the minority groups. Consequently, demands for special protection of the culture of minority groups from the culture of majority groups are put forward.

1.3 Sources of Data and Research Design

1.3.1. Normative Analysis

Normative analysis constitutes an essential part of this thesis. Through normative analysis I will discuss how the theoretical contributions can measure up to the political liberal understanding of three concerns: justice, democracy, and unity within a state.

Empirical analysis will point to evidence in the Nicaraguan context that will either support or weaken the normative arguments.

According to Raino Malnes, normative comprehensions are centred on what is right and what is wrong in relation to how persons and organisations *should* act as well as how institutions and laws *should* be constructed (1997:100). "Normative analysis is systematically investigation of the content of such comprehensions and the premises they build on" (ibid.:100, M.H translation).

According to Engelstad et al. (1998:306), a successful normative reasoning has to include 1) justifications of right and wrong, and 2) a systematic mapping of all relevant considerations.

Firstly, it is essential to know a) the premises on which the argument is based, b) if the premises are valid, and c) whether the conclusion of the argument follows from the premises, in other words, that it is logically valid (ibid.:306).

Engelstad et al. argue that the value of the normative point of view is equal to the value of the reasons to accept it. Consequently, it is important to know the premises of the normative arguments. Normative justification can be founded on intuition. One's convictions are so strong that no argument or evidence can make one abandon them. Another way is to explain why a general principle is valid by pointing to an even more general principle, which supports it. The third option is concretised justification: "In order to investigate whether a general principle is valid, one deduces case specific considerations of the principle, and investigates how well they are in accordance with one's own intuitions about certain cases" (ibid. 309, M.H. translation).

It must however, be underlined that these kinds of justifications can never be definite. One's intuitions can often be prejudiced or even transitory. This makes it impossible to prove the validity of a general principle through showing that it corresponds with ones intuition on how things should be. Likewise, a hypothesis cannot be verified only through gathering data supporting it, as there is always a possibility that positive data can be replaced by negative data (ibid.:309).

Secondly, in order for a normative reasoning to be successful, all elements connected to the problem at hand have to be included in the argument. However, to what degree can an argument be complete? How can one know for certain that all elements that are relevant to precisely this problem have been included? This is a tricky question. Not only do humans have limited intellectual capacity, but we are selective when it comes to what we regard as relevant. Although I endeavoured completeness in my thesis, I can never be sure that I discuss all relevant arguments in the autonomy debate in Nicaragua or that I know all the relevant literature.

As pointed out above, normative justifications can never be finite. According to Raino Malnes, it is not likely that any normative problem can be solved so thoroughly that no new elements can appear or that new judgements are out of the question (1997:131). Consequently, this analysis does not seek to offer a final conclusion that would lead to justice for all and secure democracy and unity in Nicaragua. Nevertheless, as Malnes argues, a normative analysis can be of value as it examines the validity of normative conclusions.

1.3.2. A Case Study

The extraordinary situation of Nicaragua put the country at the centre of this thesis. A case study was the best alternative of research design. As Robert K. Yin asserts, a single case study is an appropriate design when "the case represents an extreme or unique case" (1994:39).

According to Yin, case studies are empirical inquiries that are used "when 'how' and 'why' questions are being posed, when the investigator has little control over events, and when the focus is on a contemporary phenomenon within some real-life context" (ibid.:1), and "especially when the boundaries between phenomenon and context are not clearly evident" (ibid.:13). A case study seemed suited to investigate *how* to organise the Nicaraguan state in order to meet the requirements of justice, to secure democracy, and to lay the ground for unity among Nicaraguan citizens. As the analysis concentrates on the conditions in Nicaragua from September 2002 to September 2004, it has to do with a contemporary phenomenon. It goes without saying

that the investigator could not control Nicaraguan society during the research. Nor was it possible to isolate the phenomenon from its context. Hence, in comparison to experiments, surveys, archival analyses and histories (ibid.:6), a case study was the preferred research design.

Although Nicaragua has adopted some of the policies proposed by the multiculturalists, this analysis does not attempt to carry out a test. All the same, I find it both relevant and valuable to conduct an analysis on ethnic differences in Nicaragua. Such a discussion has an obvious relevance to the present political situation, in which ethnic identity is constantly on the political agenda.

Case studies allow the use of multiple sources of evidence, a process called data triangulation. A case study that utilises several sources can generally offer more convincing results. Data triangulation reinforces the validity of the data since several sources of evidence provide multiple measures of the same phenomenon. Yin calls this correspondence 'construct validity' (ibid.:92). "*Construct validity*: establishing correct operational measures for the concepts being studied" (ibid.:33). Yin divides the sources into six main categories: "documents, archival records, interviews, direct observation, participant-observation, and physical artefacts" (ibid.:78), whereof I have applied the four primary. Although data triangulation is more expensive and time consuming than focusing on a single source, the advantages outweighed the costs.

In order to understand the multicultural situation in Nicaragua and to obtain access to the primary sources, fieldwork was necessary.

While conducting fieldwork, the researcher must bear in mind one's own prejudices to ensure that they are not affecting one's study of the surroundings and the people (ibid.:59). One way of handling bias is through thorough preparation and understanding. This is essential in interpreting the information and "of staying on target" (ibid.:58). As I had lived for nearly a year on the Pacific Coast of Nicaragua, I had a good understanding of that part of the country. Therefore, I concentrated my fieldwork preparations on collecting information about the Atlantic Coast.

Documentary information and archival records make up the primary source for investigation in this case study. Given the macro-perspective adopted in the empirical

part of the analysis, a thorough study of literature was fruitful. Drawing upon analysis of other scholars made it possible to arrive at a broader perspective of the central research topic. This was facilitated through the wealth of literature dealing with the ethnically and culturally diverse situation on the Atlantic Coast. The abundance of historical, political, economic and sociological research made it necessary to conduct systematic investigation. I completed most of this research during my field visits. I have consulted books written by social scientists and historians, articles in social science journals, articles in Nicaraguan magazines, and reports from both governmental agencies and Non-Governmental Organisations (NGOs). I also found useful information in survey data.

The amount of documents provides the opportunity to corroborate information from other sources. However, attention must be paid to the fact that the majority of the written material is produced for a specific purpose (ibid.:82). In this case, most of the literature clearly favours the autonomy arrangement and supports special rights for minority groups. Consequently, I took care not to consider the documentary information as strictly factual and to understand the conditions under which it was produced. Furthermore, I collected information about rival propositions and alternative perspectives.

As the documents are second-hand information, their reliability and validity are difficult for me to judge. Reliability is defined as "demonstrating that the operations of a study - such as the data collection procedures can be repeated, with the same results" (ibid.:33). The advantage is that the most of the documents used in this case study, were written by scholars. Moreover, the information from the documents is useful because it can be used to analyse and strengthen the data that I collected in my fieldwork.

During my field trips to the Atlantic Coast of Nicaragua, my discussions with people involved in the autonomy process became a key source of information. The majority of the discussions were informal conversations, where I made notes afterwards. I also corresponded extensively with several people over e-mail. In addition, I conducted some more formal interviews.

Yin draws a line between those interviews of an open-ended nature, a focused interview and those that entail more structured questions (ibid.:84-85). The latter is similar to a formal survey. The focused interview is more conversational, and is structured around a set of questions. The open-ended interview does not follow a strict pattern. This type of interview makes it possible for the respondent to talk freely about the issue in accordance with her own frames of references. I chose the open-ended interview as it allowed me to adapt each interview to suit the particular respondent. I asked my respondents for facts and for their opinions. The way I conducted the interviews made interaction possible. Thus, my respondents could correct me. The information I obtained by discussing my research was invaluable, which contributed to my understanding and interpretation of the situation on the Atlantic Coast.

As I have pointed out, most of my discussions were informal. However, I also conducted 18 open-ended interviews (8 in Spanish, 8 in English and 2 in Norwegian). The respondents were mainly people that were active in the public debate, such as politicians on local and regional level, social researchers in the area, people involved with NGOs, community leaders and people who had been active in the autonomy process. I sought out people with diverging opinions. Furthermore, I contacted people from different parts of the country, from different generations, and I tried to talk with as many women as men. Each interview took place with only the respondent and me present. The majority of the interviews were conducted in quiet cafes. Others were held at the office or in the home of the respondent. The interviews lasted from one to three hours.

I have not included the names of the respondents. The anonymity is meant to protect the respondents, given the controversial topic of the thesis (ibid.:143). Furthermore, I do not see any added value by including the names.

During an interview it is essential that questions posed are not leading, meaning that the questions should not mould the answers. Furthermore, questions must be clear. It is therefore necessary to be accurate in the formulation of each question and to use simple and familiar words (Hesselberg 1998:20-21). In order to reduce the risk of ambiguity or misunderstanding, I conducted two interviews in the manner of a 'pilot

study' in Managua. Before I went to the Atlantic Coast, I revised and corrected the questions. This exercise offered me valuable insight into the research topic.

Misunderstandings due to language problems as well as misinterpretations related to a different cultural context can easily occur during an interview conducted in a foreign language. Even when one has quite a good command of the foreign language, it is hard to grasp all the nuances. This will necessarily affect the reliability and consequently the validity. In this respect, my fluency in Spanish and English were valuable. Furthermore, in order to minimise any language- related problems, I used a tape recorder in the majority of the interviews. This was advantageous for the interpretation both because I could concentrate on the conversation and then review it several times. As a thorough transcription of all the interviews proved too time consuming, I only transcribed the main points of each interview. Some respondents might have felt uncomfortable having their interviews tape recorded, and been unwilling to disclose sensitive information. Most of the respondents however, had no objections to having their interviews taped. Nevertheless, in a few instances I put the tape recorder away and relied on hand written notes.

The reliability of the interviews has an element of uncertainty. The most difficult aspect of interviews' reliability is knowing if the respondents has given me truthful answers. As Yin notes: "However, the interviews should always be considered *verbal reports* only. As such, they are subject to the common problems of bias, poor recall, and poor or inaccurate articulation!" (1994:85, original italic). I sought to lessen these dangers by corroborating the information given in the interviews with other respondents and in written documentation. The respondents' perception of me or the people with whom I was associated could also have affected the reliability. It is however, not feasible to estimate the degree to which a lack of candour compromised the quality of the interviews.

During my field trips, observation became an essential method of collecting data. Yin distinguishes direct from participant observation. In the latter the researcher takes on an active role within the context of study (1994:80). I chose the former method, as my purpose was to understand the context. The observation consisted of

watching the rituals of daily life on the Atlantic Coast, the relation between distinct communities and ethnic groups and the organisation of the communities. I also gained valuable insight by attending conferences and forums concerning multicultural issues and cultural arrangements.

A methodological problem related to observation is reversed observation, meaning that the people that the researcher is observing are also observing the researcher. In other words, the researcher herself influences what she is to investigate. One has to be aware that the consequences can both be negative and positive for the societies in question. Concepts and understandings can be introduced from the outside, which can lead to great changes. Reversed observation can also damage the reliability of the data. Yin suggests that in order to prevent this one can use several observers (1994:87). However, this was impossible within the scope of this research.

So how does my analysis of the ethnic diverse situation in Nicaragua correspond with other understandings of the same phenomenon? I have used triangulation in order to increase the construct validity. Furthermore, I have sought to strengthen the reliability through careful explanation of how and under which circumstances the information was gathered, including references to written sources throughout the text. In this way replication, which is the repetition of my study or those of other researchers, is facilitated. While analysing the case study evidence, I discussed my interpretations with people who knew the situation and as a result revised my analysis. Lastly, my familiarity with the Nicaraguan society, the Spanish and the English languages, my many field trips to the Atlantic Coast over a period of two years as well as living in Guatemala when conducting my fieldwork were essential for lessening cultural and language misunderstandings.

1.4 Structure of the Thesis

Chapter Two will present a historical overview of the ethnic situation on the Atlantic Coast of Nicaragua. The legal framework of the Autonomy regime will then be described, followed by a discussion of the claims from the Atlantic Coast.

In order to start the discussion on what justice should mean in the institutional setup of the Nicaraguan state, Chapter Three will present the characteristics of

Kymlicka's and Barry's ideal multiethnic democracy. I will then define how I understand the three primary concerns of this analysis: justice, democracy, and unity. I will discuss what Kymlicka and Barry comprehend by justice in a multicultural society. How do they normatively argue for their positions? As a continuation of this discussion I will close the chapter by looking at individual human rights in relation to group rights.

As Kymlicka builds his theory of multiculturalism on a particular understanding of ethnic identity and ethnic communities, I find it fruitful in our discussion on justice, to explore his understanding both theoretically and empirically. In Chapter four I will examine Kymlicka's conceptualisations of the terms in relation to different theoretical approaches. I will furthermore argue that Kymlicka's comprehensions of ethnic identity and ethnic communities are not representative for Nicaragua.

Democracy in Nicaragua is at the centre of attention in Chapter Five. Whereas multiculturalism asserts that political power to be given to ethnic groups, liberal egalitarianism opposes this. The two approaches will be discussed in relation to central standards of democracy and the situation in Nicaragua.

In Chapter Six the focus is placed on unity. I will investigate the two models' respective prospects for ensuring unity among the citizens of Nicaragua.

Chapter Seven brings the discussion to an end by an attempt to determine whether multiculturalism or egalitarian liberalism is the better approach to justice, democracy and unity in Nicaragua. I conclude by offering a third solution, which could guarantee unity within a Nicaraguan democratic state that could offer its citizens both equal rights and the right to be different.

2. An Ethnically Diverse Nicaragua

2.1. Demography8

Historically six ethnic groups have been identified to inhabit the Atlantic Coast of Nicaragua. Three of the groups, the Miskitus, Sumu Mayangnas and the Ramas have been termed indigenous peoples: the other three, the Creoles, the Mestizos and the Garífunas, have been characterised as ethnic communities.

The Miskitus occupy vast areas in RAAN, some areas in RAAS and the department of Jinotega. According to Claudia Garcia, the Miskitu is a "distinct social group, as a consequence of the mix between Indians, Europeans and Africans in the context of Anglo-Saxon colonialism" (1996:21). According to the majority of ethnographers, the Miskitus together with the Sumu Mayangnas and the Ramas belong to the large linguistic family Macro Chibcha. In RAAN the Miskitu population makes up approximately 58.5% of the total population. On the Atlantic Coast it is estimated to be about 102 000[9] (Ortega 2000:25-26).

The Sumu Mayangnas live in the central and the north central region of the Atlantic Coast; there are also some communities by the outlet of the river Rio Grande de Matagalpa. The Sumu Mayangnas are divided into three linguistic subgroups: the Panamahka, the Twahka and the Ulwas (Perez 1997:29). Studies show that 4.81% of the population in RAAN belongs to the Sumu Mayangnas and about 3.28% in total on the Atlantic Coast (Ortega 2000:29). In numbers there are between 9 000 and 10 300 Sumu Mayangnas in Nicaragua (ibid.:29).

The Ramas inhabit the islands south of the Pearl Lagoon in addition to areas around the rivers Kukra, Punta Gorda and Maiz. In numerical terms, the Rama comprises the smallest group, approximately 1 400 (ibid.:30).

The Creole population is a "biologically and culturally mixed group, descendants from Africans (or Afro-Americans from the isles of Jamaica, San Andres,

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[8] The demographic data of the Atlantic Coast of Nicaragua vary to a great extent. I have relied on data from Roque Roldan Ortega's book *Legalidad y Derechos étnicos en la Costa Atlántica de Nicaragua* from 2000.

[9] This number includes 5000 people from the Jinotega and 4120 from Managua.

and Providencia (Colombia) and Grand Cayman) mixed with Europeans and indigenous peoples" (Garcia 1996:17). They occupy the urban areas, such as Bluefields, the Pearl Lagoon, Corn Island, and Bilwi[10]. In addition there are some groups of Creoles in Managua and other cities on the Pacific Coast (Perez 1997:30). Their mother tongue is Creole[11]. Some of the Creoles came to Nicaragua as fugitives from slave ships, or from other American territories where they had been kept as slaves. Others immigrated, as free men from different countries in the Caribbean. There are about 36 400 Creoles in Nicaragua (Ortega 2000:33).

Mestizo is the term for the Spanish-speaking descendants of the Spanish conquerors. According to German Romero Vargas the Mestizos of Nicaragua have an African component, as they were mixed with the 'imported' slaves (Garcia 1996:18). The Mestizos are the overwhelming majority of Nicaraguans. In RAAN the Mestizos constitute about 35.63% of the population and in RAAS 51.73% (Ortega 2000:34). Mestizos live in large areas in both the autonomous regions, mainly in the rural areas. Since the end of the nineteenth century there has been a continuous flow of Mestizo migrants from the west towards the east (Perez 1997:30).

The physical characteristics of the Garífunas are typically African. As the Creoles, the Garífunas are "the product of a mixture of Indians and African slaves" (Garcia 1996:19). The Garífuna language however, is rooted in the language of the indigenous people of the Antilles. Some researchers therefore claim that the Garífunas are an indigenous group while others assert that they are an American-African ethnic group. Today the Garífunas in Nicaragua no longer speak Garífuna, but a type of Creole English. In a 1996 study, Dennis Williamson counted 3068 Garífunas (Ortega 2000: 31). The Garífunas are concentrated around the Pearl Lagoon in RAAS.

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[10] Bilwi is also called Puerto Cabezas and Port.

[11] A blending of Spanish and English forms the Creole language in Nicaragua.

2.2 Ethnicity in a Historic Perspective

2.2.1. Pre Colonial Time

At the time of the arrival of the Spanish conquerors several ethnic groups occupied the Nicaraguan territory. The majority inhabited the central and western part. These groups were Mesoamericans[12].

The Atlantic Coast was more sparsely populated. The inhabitants of this area belonged to the Macro Chibcha language group. Their origin is still uncertain; as some hypotheses trace their roots to the north while others to the south. Ethnohistoric analyses note that the central social units were families concentrated in small communities. The neighbouring communities developed some degree of interchange. The relationships among the ethnic groups however, were generally violent and wars were common (Buvollen 1986:4).

2.2.2. The Colonial Period

The Spanish presence transformed the lives of the indigenous peoples. The most devastating effect was the immediate decimation of the indigenous peoples as a result of warfare, the forced transfer of the indigenous people, contagious diseases, and enslavement in the mining areas in South America after 1540 (Perez 1997:43-45).

In addition to these demographical changes, a process of interaction among the indigenous, the Spanish, and the Africans began. The Africans were brought as slaves to the Pacific side of Nicaragua to work on the sugar plantations at the end of the sixteenth and at the beginning of the seventeenth centuries (ibid.:45). Later more Africans were to arrive, mainly from the Caribbean.

The shape that this process took can in the western part of Nicaragua be described as a deliberate making of a national identity (ibid.46). Here the Spanish conquerors exercised a direct rule based on total domination. The Spanish deliberately

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[12] Mesoamericans is a term for the indigenous peoples from the region from Southern Mexico to Guatemala and Honduras. Mesoamerican normally refers to the indigenous groups: Maya, Mixtec, Zapotec and Aztec.

sought assimilation[13] into their culture through evangelisation and force in order to consolidate the colonial state (ibid.:43)

On the Atlantic Coast the situation was quite different. It appears that the Spanish attempts to conquer the Atlantic Coast of Nicaragua in the seventeenth and eighteenth centuries were either half-hearted or that the tropical area was not prioritised. The terrain made the area almost inaccessible. Furthermore, the missionary and military incursions were put back by the resistance and hostility of the local peoples (ibid.:53). The Spanish conquerors never managed to obtain control of the Atlantic Coast.

The British on the other hand, came to command the area. The fact that Nicaragua was divided between two colonial powers is essential in understanding the contemporary division between the eastern and western regions. Two separate socio cultural and economic regions were created during the colonial period.

Whereas the Spaniards followed a model of direct rule, the British sought to rule indirectly, through local leaders. The first encounters took place between British colonisers and Miskitus around 1633 and 1634 and most likely in Cabo Gracias a Dios. At this early stage the relation was that of commercial and mutual collaboration. The Miskitus acted as middlemen. They soon became allies with the colonisers and were equipped with weapons. Consequently, the Miskitus became the dominant group on the coast. An ethnic hierarchy was taking form with the British on top followed by the Miskitus and with the Sumu Mayangnas at the bottom (Buvollen 1986:4).

As the loose political structure of the Miskitus made it difficult for the British to impose a model of indirect rule, the British named a Miskitu leader who later was crowned the King. By the Sumu Mayangnas this was partially met with a retreat to the inland and by assimilation into Miskitu (ibid.:4).

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[13] Assimilation will be discussed in more depth later, but here it is understood as "to make or be like" and "to absorb and incorporate".

In 1787, as the result of the London Convention between Spain and Great Britain, the British withdrew from the Atlantic Coast of Nicaragua (Perez 1997:76). The Miskitu King filled the power vacuum left by the British.

British interest in Nicaragua was renewed by the instability that followed Central American independence in 1821. A formal British protectorate was established on the Miskitu Coast (1824-1860). The Miskitu royal family, now living in Bluefields, was reappointed. The power centre was thus moved from the north to the Creole-dominated city in the south. This had two important implications. Firstly, it created a geographical gap between the indigenous communities in the north, and the Miskitu authorities in the south. Secondly, the shift meant an increasing political role of the Creole population. The urban English speaking Creole population soon gained a higher status than the indigenous peoples in the eyes of the British. Their ethnic position was further strengthened by the entry of the North American companies and the German Moravian church. As the Creoles spoke English, they generally held the best jobs. This was important in a time when the system of enclave economy[14] was about to fasten its grip on the Atlantic Coast and the control of the area was shifting into the hands of the North American companies. Similarly, the arrival of the Moravian Church in 1847 meant substantial changes in the community life and in the ethnic hierarchy. The Creoles converted early (Buvollen 1986:5). Consequently, they soon came to occupy central positions in the church. This became significant as nearly all the activities in the communities came to be organised by or around the church.

2.2.3. Nation Building

In 1860 nationalisation started. For the first time the Nicaraguan state attempted to establish institutions of a state character such as a legislative congress, a fiscal system, customs, and economic restrictions. In spite of the effort, political and juridical control within the entire Nicaraguan territory was not achieved. Least implications had the

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[14] Enclave economy is used to denominate economic zones that are completely founded with foreign capital, also called monopoly capitalism. All the production in the zone is oriented towards the metropolitan countries and the companies are in a non-committal relation to state regulation and economic control in the country where they are engraved (Perez 1997: 141)

nationalisation on the Atlantic Coast, which at the time held the status of semi autonomy under the name The Miskitu Reserve (1860-1894). It was not until the liberal President José Santos Zelaya in 1894 decided to incorporate the Atlantic Coast into the national state, that the Nicaraguan state became truly visible in the area. The Miskitu Monarchy was abolished and the area fell under Nicaraguan jurisdiction (Buvollen 1986:5).

According to José Miguel Gonzalez Perez this process was symptomatic of the liberal programme of the era (1997:134). In order to take advantage of the national resources and to modernise the institutions with the purpose of entering the world economy a centralised authority was essential. This implied "to create the nation under only one market, only one law and only one language…" (ibid.:134, M. H. translation). Nevertheless, the political and institutional relations between the central state and the Atlantic Coast continued to be tenuous. More important was the definition of the Atlantic Coast in the liberal programme as subordinated and dependent in the national state. For the Atlantic Coast people this meant a lower rank and the denial of the ethnic identities for an entire historical paradigm.

The liberals had been sceptical towards the increasing penetration of the North American companies. Hence, they sought to restrict and to redefine the terms of the enclave economy. The conservatives, on the other hand, who came to power in 1911, had strong attachments to North America. In effect, during the period that followed, the number of transnational concessions increased and the flexibility in the conditions of the North American companies aroused. The North American political and economic influence was so extensive that it has been termed neocolonialism.

Anastasio Somoza Garcia assumed power in 1937 (Ortega 1993:410). This did not lead to an immediate shift in the politics concerning transnational concessions. However, a programme of explicit and coherent integration was introduced. Specific cultural and economic programmes were designed to construct a strong state. On the Atlantic Coast this meant a vast programme of economic development and agrarian

reform on the agrarian frontier[15] between the Pacific and the Atlantic. It also implied the creation of a cotton industry. Both these projects brought an influx of Mestizo migrants and increased ethnic tension between Mestizos and the indigenous peoples. Furthermore, the state created forest reserves in order to harvest wood for export. The forest reserve arrangements did not incorporate the economic interests and the rights of the indigenous people in the area (Perez 1997:159).

Due to its history of colonialism, neo-colonialism and nearly half a century of Somoza family dictatorship, Nicaragua was a divided nation at the time of the Sandinista revolution in 1979. The relationship between the inhabitants of the Atlantic Coast and the Mestizo nation of the Pacific Coast was one of mutual distrust and racism. Infrastructure and market relations hardly existed between the east and the west. Thus, the gap dividing them had a historical, cultural, linguistic and economic character (Buvollen 1987:4).

2.2.4. The Revolution and the Autonomy Process

The goals of the Sandinista revolution: national political independence from the United States and to the end of the Somoza dictatorship, were not perceived as urgent by the population on the Atlantic Coast.

Firstly, the Anglo-American ties had historically been stronger than the bonds towards the Spanish- dominated Pacific Coast. As Charles R. Hale says, "few Miskitu had a negative association with U.S. imperialism. Indeed, a near-adoration for white North Americans was and is common in Miskitu popular perception" (1987:106). Economically, many of the coastal people living by the ports were both exposed to and dependent on American goods and money (Vilas 1987:74).

Secondly, the repressive and violent Somoza dictatorship had only marginally displayed itself on the east coast. Consequently, the Sandinista revolutionary vision did not immediately trigger the costeños for a united fight against a common enemy. The costeños rather regarded the revolution as an internal conflict between the

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[15] The agrarian frontier refers to the line between cultivated and uncultivated land in the central part of Nicaragua where the two autonomous regions border to the Pacific side of Nicaragua.

Mestizos of the west, a group that historically was defined as the main adversary (Perez 1997:189).

The Sandinista revolution arrived at the Atlantic Coast with an apparent lack of anthropological understanding of the ethnic groups living there (ibid.:186). The Sandinista revolution was based on the principle of national liberation from a class, not an ethnic perspective. Consequently, the ethnic groups on the Atlantic Coast were just as much victims of imperialist oppression as were the poor of the Pacific Nicaragua. The Sandinistas therefore incorporated the Atlantic Coast in the revolution as an impoverished region that had traditionally been exploited by foreign companies (Vilas 1987:70). The indigenous peoples were expected to join the national class oriented project (Buvollen 1987:7).

Vast development programmes were implemented in order to fight backwardness. This implied economic programmes, administrative modernisation, nationalisation of the natural resources, creation of an infrastructure, physical integration, re-activation of the fisheries, the forestry industry and the mining companies and the beginning of a socio cultural promotion in the communities on the Atlantic Coast (Perez 1997:189). The bottom line of this development programme stressed the unity of the Nicaraguan people. Nicaragua was regarded as only one territory whose official language was Spanish (ibid.:196). This policy, with a clearly visible central state, came to be interpreted by segments of the coastal people as a homogenising integrationist policy. In effect, one saw a resurgence of ethnic identification (Polanco 1997:119).

The manner in which some of the Sandinistas handled the religious question sowed the seeds of revolt within the Moravian Church as well as among a substantial proportion of the coastal people who sought to preserve their faith. Defying their own revolutionary leadership, some FSLN[16] people declared sectarianism, as in "religion is the opium of the people" (Vilas 1987:75). Combined with the anti-Communist sentiment within the Moravian Church and the Church's affiliation with the American

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[16] FSLN: Frente Sandinista de Liberación Nacional.

government, the ground was laid for conflict. Furthermore, the state expansion included taking over services previously provided by the Moravian church, such as public health and social security, threatening the power base of the church. This alienation of the Moravian Church was significant in the development of the revolution on the Atlantic Coast, as the Moravian church played a central role both in the community and in the formation of the ethnic identity (ibid.:75).

The growing disagreements between the Sandinista revolution and the coastal people breathed new life into the Miskitu and Sumu Mayangna organisation ALPROMISU[17] that had been established in 1974. The organisation was the product of the Capuchin mission, the Moravian Church and the U.S Peace Corps. The main objectives of the organisation were social development and improvement in cultural conditions. Probably in response to potential repression from the Somoza state, the organisation was rather timid in putting forward its demands. The Sandinista revolution opened up a space for public discussion where ethnic demands could flourish (Hale 1987:105). Some costeño students in Managua thus initiated the revival of ALPROMISU. The students however, criticized ALPROMISU for its ties with the Somoza family and formed MISURASATA[18] in November 1979. Initially MISURASATA combined the fight for indigenous rights with the goals of the Sandinista revolution (Buvollen 1986:6). The organisation emphasised its role as the representative of the multiethnic population of the Atlantic Coast. The government therefore let them articulate the demands of all the coastal peoples. However, it soon became evident that MISURASATA was dominated by the Miskitus (Perez 1997:187). Furthermore, the political development of the organisation took another direction than planned by the Sandinistas. The demands rapidly escalated and became more radical (ibid.:187). Controversies soon came into existence between the FSLN and the MISURASATA.

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[17] ALPROMISU (Alliance for Progress of the Miskitu and Sumu-Mayangna).

[18] MISURASATA (Miskitu, Sumu, Rama and Sandinista united).

Just as this conflict erupted, the Sandinistas were at war with the US- supported Contras. Critical attitudes were therefore easily understood as counterrevolutionary, resulting in exaggerated reactions by the FSLN (Buvollen 1987:7). In effect, the Atlantic Coast became militarised. Nevertheless, it must be noted that this fear was not totally unfounded. By 1980 an alliance of indigenous and the North Americans had been activated (Hale 1987:109). Indigenous people were armed and trained by the CIA. Furthermore, the Contras and the US administration actively made use of the indigenous resistance to justify the war against the Sandinista revolution (Buvollen 1987:9). The Miskitu response soon took the shape of armed forces.

In February 1981 the separatist charges led to the arrest of the entire MISURASATA leadership. In effect, the level of conflict escalated. In the middle of 1982 there was a split in the Miskitu. Steadman Fagoth led one faction of MISURASATA, called MISURA, from Honduras. They launched attacks in the north of Nicaragua, which resulted in forced evacuation by the Sandinistas of thousands of Miskitus from the banks of the Rio Coco to the resettlement Tasba Pri[19]. Approximately half of the inhabitants fled to Honduras. MISURA defined itself as an ally with the fighting counter revolutionaries supported by the U.S. Another faction of the Miskitus had a base in Costa Rica. This faction preserved the name MISURASATA and was led by Brooklyn Rivera. MISURASATA made radical demands about territory and autonomy for the indigenous people (Perez 1997:224).

In 1984 there was a shift in the atmosphere between the fighting parties. According to Buvollen, this change was mainly due to the Sandinistas' admission of their many misdeeds on the Atlantic Coast. In a radio interview, Commander Omar Cabezas expressed it this way: "the Indians took to arms against our mistakes" (Buvollen 1987:9).

Charles R. Hale (1987) explains the beginning of the reconciliation in terms of four steps taken by the FSLN. Firstly, the FSLN promoted Miskitu leadership and

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[19] The evacuation to Tasba Pri was according to the Sandinistas done to protect the indigenous people living by the Rio Coco from attacks. However, the Nicaraguan government was heavily criticised for violating human rights, especially by the US.

political expression. By 1984 the Miskitus occupied the highest political positions in the communities in Tasba Pri. The FSLN encouraged the establishment of the new indigenous organisation MISATAN[20]. Secondly, the FSLN opened a dialogue with MISURASATA and some segments of MISURA. In October 1984 President Daniel Ortega invited Brooklyn Rivera to return from Costa Rica in order to join talks between MISURASATA and the government. Important advancements were produced. However, as the disarmament was not being complied with, the Sandinista forces were not pulled out of the region, and other disagreements arose, forcing the talks to end in stalemate (ibid.: 116,117). FSLN then started local negotiations with MISURA-officers. The results were promising, as several local ceasefires were arranged (Buvollen 1986:13). A third initiative taken by the FSLN was the modification of the military policy in relation to earlier evacuations of Miskitu communities. As the FSLN started to negotiate with the Miskitu combatants, the civilians could return to the evacuated communities. At the same time the Sandinista military presence was decreased (Hale 1987:119). Lastly, In November 1984 the FSLN formally announced intentions to recognise the autonomy of the Atlantic Coast. The FSLN organised a National Commission on Autonomy and appointed two regional commissions representing the south and the north. In June 1985 the three commissions agreed upon a working document, which drew the basic guidelines of the autonomy project (ibid.:119). The principles were presented for broad consultations in the communities of the Atlantic Coast.

In November 1986 the National Assembly passed a new political constitution and in September 1987 Law No. 28 on the Autonomy Statute for the Regions on the Atlantic Coast was approved. The two autonomous regions, RAAN and RAAS, were created.

The process of finding a political solution to the problem on the Atlantic Coast thus started in wartime. The concession of autonomy was a tactical move by the FSLN, to thwart the promise of indigenous independence and to restore the legitimacy

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[20] MISATAN: Miskitu Asla Takanka Nicaragua (Miskitu Organisation in Nicaragua) was formed in July 1984.

of the revolutionary programme on the Atlantic Coast. As Juliet Amalie Hooker states: "The FSLN also believed that in this way a new regional identity could be formulated, one that, at least to a certain extent, would supersede specific group identities and also be Sandinista, in recognition of the FSLN's vanguard role in promoting autonomy at the national level" (2001:308).

2.3   The Autonomy Regime

In the following section the juridical recognition of the autonomy and the special rights for the indigenous peoples and the ethnic communities of the Atlantic Coast will be presented[21]. Initially the emphasis will be put on the relevant articles in the Nicaraguan Constitution of 1986, including the reforms of 1995. The focus will then turn to the Autonomy Statute for the Regions on the Atlantic Coast.

2.3.1. The Nicaraguan Constitution

Article 5 states that political, social and ethnic pluralism is one of the fundamental principles of the Constitution (http://www.asamblea.gob.ni). The Nicaraguan people are described as multi ethnic (art 8). Article 11 declares that Spanish is the official language. However: "The languages of the communities on the Atlantic Coast of Nicaragua can also be used officially in the circumstances determined by the law". Article 27 stresses that all persons are equal under the law and possess equal rights for protection. There shall be no discrimination based on birth, nationality, political credo, raise, sex, language, religion, opinion, origin, the economic position or social condition. Article 33 states that all detained persons have the right to be immediately informed in a language, which he or she understands, and to be assisted by an interpreter without any costs. As far as political rights are concerned, Article 49 says that everybody is allowed to constitute an organisation. Among other groups, the communities on the Atlantic Coast are mentioned by name. Article 89 incorporates the communities on the Atlantic Coast into the Nicaraguan population.

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[21] All quotes in this section have been translated from Spanish by the author.

> The communities of the Atlantic Coast are an indissoluble part of the Nicaraguan people and as such hold the same rights and have the same obligations. The communities on the Atlantic Coast have the right to preserve and to develop its cultural identity in the national unit, to equip itself with its own forms of social organisation and to administer its local matters according to its traditions. The State recognises the communal forms of property of territories of the communities of the Atlantic Coast.

Similarly, the right to use and to benefit from the waters and forests of the communal land is recognised. Article 90 points to the right of the communities of the Atlantic Coast to free expression and the preservation of their languages, art and cultures. Article 91 obliges the state to create laws that protect individuals against discrimination based on language, culture and origin. Article 121 acknowledges that the indigenous peoples and the ethnic communities of the Atlantic Coast have, within their regions, the right to intercultural and bilingual education. According to the Constitution, the state has the responsibility of protecting the "archeological, historical, linguistic, cultural and artistic heritage" of Nicaragua (Article 128). Article 180 says: "The communities of the Atlantic Coast have the right to live and to develop under the forms of social organisation that correspond to their cultural historical traditions. The State guarantees to the communities the benefit of their natural resources, the effectiveness of their forms of communal property and the free election of their authorities and the members of the Parliament". It also guarantees the preservation of their cultures and languages, religions and customs. The Autonomy Law is referred to in Article 181, which affirms that: "the State will organise by means of a law, the regime of autonomy for the indigenous peoples and the ethnic communities of the Atlantic Coast". Furthermore it asserts that the Regional Councils should approve the concessions of the natural resources that the State grants on the Atlantic Coast. This means that the Regional Councils have a right to veto decisions taken by the Central Government concerning the natural resources on the Atlantic Coast.

2.3.2. The Autonomy Statute for the Regions on the Atlantic Coast

The Autonomy Statute (Oficina de Desarrollo de la Autonomía de la Costa Atlántica de Nicaragua 1997) creates two autonomous regions RAAN and RAAS with administrative centres in Bilwi and Bluefields, respectively. The citizens of these

regions, as Nicaraguans, hold the same constitutional rights and obligations. The historical rights of the communities of the Atlantic Coast will be exercised within a specified territory, namely RAAN and RAAS. Furthermore, the Autonomy Law lays down the organisational structure within the regions. The two Regional Councils will consist of 45 democratically elected members for four-year terms. Each of the ethnic groups in the respective regions must be represented. Additionally, the regional Members of the Nicaraguan Parliament will also sit in the Regional Councils. The Regional Councils' main responsibilities are to participate in the planning, implementation and the evaluation of the national plans and programmes for the respective regions. Furthermore, the Regional Councils can initiate economic and administrative actions of regional interest in relation to the use of natural resources, the preservation of cultural traditions, promote trade with other Caribbean countries and encourage favourable conditions for the regional market. The Regional Councils are also in charge of the administration of the programmes for public health, education and social services in coordination with the respective national Minister. The Regional Councils do not hold legislative powers (Perez 1997:303). Between the members of the Regional Council a Regional Coordinator is elected for a period of four years. The Regional Coordinator is to represent his region, be responsible for the execution of the decisions of the Regional Council and offer periodic information of his management to the Regional Council (ibid.:304).

The Autonomy Law establishes the right of the inhabitants of the communities on the Atlantic Coast "to define and decide their own ethnic identity" (Article 12). Article 5 states that the languages of the communities of the Atlantic Coast will be used officially in the autonomous regions. Article 11 states that the communities of the Atlantic Coast have the right to preserve and develop their languages, religions and cultures. Furthermore, it underlines the right to education in their mother tongue or in Spanish "through programmes which capture the historical patrimony, the system of values, traditions and characteristic of the environment, in agreement with the national educative system". The same article also refers to natural medicine in the national health care system.

Article 14 states that the national defence within the Atlantic regions will be in the hands of the national army. The budget of the Autonomous regions will be composed of regional taxes and designated funds from the general national budget in addition to a special fund for development and social promotion.

The Autonomy Law promotes the rational utilisation of the communal waters, forests, land and the defence of its ecological system. Furthermore, it declares communal property on the Atlantic Coast as not negotiable and inalienable. Article 9 says "the property rights of communal land will be recognised and they should benefit in right proportion to their inhabitants by means of agreements between the Regional Government and the Central Government".

These are the fundamental principles of the Autonomy Law. In addition to the national laws however, Nicaragua has ratified several international conventions, which obligate the state to respect and protect the principles of tolerance and the coexistence of different cultures, languages and expressions of thought within its borders. Among these international agreements are The Universal Declaration of Human Rights, The American Declaration of the Rights and Duties of Man, The International Pact of Economic, Social and Cultural Rights, the UN Convention of Civil Rights and Politics and the American Convention of Human Rights of the O.A.S. (Ortega 2000:73). In relation to the legal recognition of the group rights of the indigenous, ILO Convention No. 169 of 1989 is perhaps the most important. However, Nicaragua has not ratified the ILO Convention No. 169.

To summarise, the Constitution, the Autonomy Law and the international conventions ratified by Nicaragua should provide a legal base for the recognition of specific rights for ethnic groups. Nevertheless, it is claimed that the practical implications of the laws have not met the expectations. Before we turn to these claims however, we will have a quick look at the people behind them.

2.4   Voices from the Atlantic Coast

According to Roque Roldan Ortega, the origin of the modern stage of ethnic and indigenous movements on the Atlantic Coast can be traced to the 1960's and the

1970's (2001:219). It was a time of economic crisis and aggressive mining and forestry by foreign concessionary companies. In 1969 ACARI[22] was founded. ACARI presented socio-economic demands. In 1974 ACARI was replaced by ALPROMISU, which had a more explicit indigenous rhetoric. The first Creole organisation, OPROCO, was founded in 1968,[23]. OPROCO worked for economic and social development on the Atlantic Coast and demanded the appointment of more people from the Atlantic Coast to government posts. The Sumu Mayangna organisation SUKAWALA[24] was born in 1974. Two years later, Creoles and Garífunas in RAAS established SICC[25]. The political and structural changes of the revolution resulted in a proliferation of ethnic based organisations. The Atlantic Coast witnessed a growth in the number of ethnic and indigenous movements, the former organisations fragmented and their claims became more radical. This it was in a time of increasing global indigenous activism.

One of the most well known indigenous organisations today is the political party YATAMA[26], which originated in MISURASATA. YATAMA has generally been considered a Miskitu party, despite its multiethnic rhetoric. YATAMA has been important in regional politics since the first regional elections in 1990.

More generally, the ethnic and indigenous organisations on the Atlantic Coast vary in terms of ethnic affiliation, ideology, aims, organisational structure, strategies and size. Some organisations work for better conditions for only one ethnic group, others are geographically based while still others concern themselves with the entire Atlantic Coast. Some focus on socio-economic development and distribution, others emphasise natural resources and land rights, and some fight for political rights and participation. Finally, some concentrate on education, research and/or the revitalisation

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[22] ACARI: The Association of Agricultural Clubs of the Coco River.

[23] OPROCO: Organization for the Progress of the Atlantic Coast.

[24] SUKUWALA: the National Association of Sumu communities. SUKUWALA was established with the help of Moravian pastors and capuchin missionaries.

[25] SICC: the Southern Indigenous and Creole communities.

[26] YATAMA: Yapti Tasba Masraka Nanih Aslatakanka

of different groups' traditions, languages and cultures. It is no surprise, therefore, that the indigenous peoples and the ethnic communities on the Atlantic Coast do not speak with a single voice. Nevertheless, I will discuss the central demands of most of these organisations.

2.5   Claims from the Atlantic Coast

In spite of the formal establishment of the Autonomous regions, it is argued that the autonomy is nothing but a paper-thin arrangement in which none of the previous central governments have shown any interest (Perez 1997).

The main claim is for the implementation of 'real autonomy' for the indigenous peoples and the ethnic communities of the Atlantic Coast. However, what is 'real autonomy'? A study from 1998 states that: "As much the Miskitus as Mayangnas conceive the Autonomy, as their rights, principally the right to have the communal land at their disposal and to manage the natural resources. Additionally, they talk about the right to preserve their culture, tradition and language" (Wani 1998, No. 23: 27, M. H. translation). In other words, the Miskitus and Mayangnas regard autonomy primarily as the inherent and fundamental historical rights to govern their homelands and control their natural resources as well as the right to maintain their cultural distinctiveness. The Mestizos on the other hand, see autonomy as a form of legal and institutional decentralisation. However, "What unites the three (groups) is the demand for the power to control their own resources and to vindicate the right to the self-determination" (ibid.: 27, M. H. translation). In order to ensure these rights, two essential factors have been identified: the funding of the autonomy process, and the specification of the Autonomy Statute.

Firstly, the lack of money is one of the most important factors in the faulty implementation of autonomy. Managua not only underfunds the Atlantic Coast, but the central government plunders the natural resources of the region. Juliet Amalie Hooker argues that:

> The Autonomy Statute's vagueness about the financing of the Autonomous Regions is detrimental. As long as they remain entirely economically dependent on the central government, it will be difficult for the regions to be truly autonomous, since the transfer

> of decision-making power over local economic resources is one of the key components
> of successful decentralisation (2001: 278).

In other words, the autonomous regions are left with no real power to govern themselves, as they do not possess the economic resources to do so.

Secondly, both the Constitution and the Autonomy Statute have been criticised as ambiguous. As Perez points out, the Constitution contradicts itself when it recognises the rights of the communities of the access and the benefits of the natural resources in the communal territories in the Article 180 and at the same time Article 102 says: "The natural resources are national patrimony. The preservation of the atmosphere and the conservation, the development and the rational exploitation of the natural resources go to the state; it can agree to contracts of rational operation when the national interest requires it" (1997:298).

Similarly, the Autonomy Statute is vague when it promotes rational utilisation of the communal waters, forests, land, and the defence of its ecological system without clarifying the operational political level or the obligations of the different institutions of the autonomy regime (ibid.:304). Several key issues concerning the relationship between the central and the regional level are furthermore absent or not specified in the Constitution, such as the characteristics, the legislative capacity, the functions and competencies of the regional government organs and are, according to Héctor Díaz Polanco, consequently left in the hands of the central government (1997:122). In other words, the statutory and legislative justifications are controlled by the state. These absences and ambiguities have led to structural problems in the internal operation of the autonomy regime (Perez 1997:299-300).

Since 2002 however, the National Assembly of Nicaragua has approved two central legislative documents, the Law on Communal Land[27] and the decree of the Autonomy Statute.

Although the Autonomy Statute declares the right of communal property, the lack of a decree that specified the norms and procedures has for 15 years hindered the

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[27] Law Number 445: "The law of the Regime of Community Property of the Indigenous peoples and the ethnic communities of the Autonomous regions of the Atlantic Coast of Nicaragua and of the Rivers Boca, Coco, Indio and Maiz". The law was approved by the National Assembly the 13th of December 2002.

implementation of this right. In 1996 the Government initiated a project to legalise communal land. Six years later, after pressing demands, broad consultations, and the work of different commissions, the National Assembly passed a new law on communal land. The enforcement of the law is restricted to the Atlantic Coast and some surrounding zones in which are home to the ethnic groups defined as belonging to the autonomous regions: those living near the rivers Boca, Coco, Indio and Maiz. The law equally refers to the indigenous peoples and the ethnic communities of this area. The objective of the law is to regulate the use and the administration of the communal lands through demarcation and giving title. In addition, the law deals with the relation among the political levels. The law stipulates that the communities have the right to manage and utilise the natural resources of the region. The profit from these resources is to be distributed equally among the communities, the municipal government, the corresponding autonomous region, and the central government. Furthermore, the law states that the communities are to participate in the approbation of concessions through consultations at every level of the transaction. Concerning third persons, that is: "the natural or juridical persons, different from the communities that allege rights of property within communal land or indigenous territory" (Jarquín 2003:15), the law differentiates among four situations. Firstly are those who have a document of title, but have not actually been in possession of the land, and do not hold the right to the land if their document of title predates 1987. Secondly, persons who both have a document of title and are in the possession of the land are allowed to continue to use the land. However, the land cannot be sold, only returned to the community. Thirdly, the land occupied by persons who have a document of title with legal errors will be returned to the community. Lastly, those who are utilising the land or living on communal land without a document of title have to abandon the land (ibid.:6-18).

Hence, the new law clarifies many of the ambiguities in the Constitution and in the Autonomy Statute in relation to the right to land and natural resources on the Atlantic Coast of Nicaragua.

Equally important, in July 2003 the long demanded decree of the Autonomy Statute became a reality. The decree specifies how to put into practice the vague wordings of Law No. 28. In short, it is expected that both the decree and Law No. 445 will be central juridical tools in the implementation of the autonomy regime. It is however, too early to discern the real effects of these new achievements.

One element of the costeños claim to preserve their culture, tradition and language has been the call for intercultural and bilingual education. Special treatment in education for the ethnic minority groups in order to counter assimilation has for years been a central demand of the costeños. In 1996 an educational program for the Atlantic Coast was initiated. As a result of workshops and seminars, SEAR[28] appeared in 1997. SEAR offers a new model for education founded on the principles of the Autonomy Statute. Everybody shall have the opportunity to bilingual education, and the values of interculturalism, solidarity and equality are to be incorporated in every subject. Among other changes, this implies that the cultural heritage and the history of the Creoles, Garífuna, Mestizos, Miskitu, Rama and Sumu Mayangna will be equally present in the curriculum (Instituto de Promoción e Investigación Linguística y Rescate Cultural (IPILC) URACCAN 2002). SEAR is integrated in the National Plan for Education 2000-2015, but has not yet been granted statutory status. Although the transformation of the education system in accordance with SEAR has started, it will be a long process. The implementation depends on the political will to continue the work, funding, and the human capital to teach in the required languages. SEAR embodies one of the perennial demands from the costeños: the preservation of their culture, tradition and language.

In addition to the claim for the right to communal land, to manage the natural resources and to preserve their culture, Atlantic Coast communities demand social justice. The inhabitants of the Atlantic Coast are economically discriminated against in comparison to the rest of the country. Statistics show that the Atlantic Coast is marginalised in important respects. Nicaragua's Strengthened Growth and Poverty

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[28] SEAR: Regional Autonomy Educational System

Reduction Strategy of July 2001 states: "Nicaragua's ethnic and indigenous groups (e.g. Miskitus, Mayangnas, Ramas, Creoles), which live mainly on the Atlantic Coast, are among the poorest in the country. These groups are often excluded from the social benefits enjoyed by others and from the main political and economic processes that affect the country" (Government of Nicaragua 2001:12). Furthermore: "Although rural areas showed a high incidence of poverty and extreme poverty in 1998, they experienced the biggest decline compared to 1993, with the exception of the rural Atlantic, where extreme poverty increased significantly" (ibid.:6). The Atlantic Coast also has a lower level of access to infrastructure and public services and a higher unemployment rate than the rest of Nicaragua.

However, these numbers are regionally based. The discussion is often couched in ethnic rhetoric, stressing the disadvantaged ethnic minority groups. It is true that the majority of members of ethnic minority groups live within the two autonomous regions, and that these regions are among the poorest in the country. However, there is no perfect match between belonging to one of the ethnic minority groups and being poor. Most Nicaraguans live beneath the poverty line. Moreover, many of the poorest inhabitants of the autonomous regions are Mestizo migrants living on the agricultural frontier. It is therefore important to underline that ethnic identity does not determine economic position. Consequently, it is essential to distinguish demands for social justice from demands for cultural justice (Bendiksby 2000:19). The former normally requires equal treatment of individuals through a system of redistribution based on economic needs, not cultural affiliation. Cultural justice, on the other hand, often calls for differential treatment of groups in order to compensate for the disadvantages stemming from culturally biased social institutions.

In summarising the demands from the indigenous peoples and the ethnic communities on the Atlantic Coast of Nicaragua, we see that they are both demanding to put a stop to unjustified differential treatment, through economic marginalisation, and at the same time claiming special group rights.

3. Justice in an Ethnically Diverse Democracy

This thesis seeks an institutional design of the Nicaraguan state that would make it just, democratic and ensure that its citizens share a feeling of unity. I focus on two alternatives: multiculturalism (as presented by Kymlicka) and egalitarian liberalism (as defended by Barry). I will start by presenting the main characteristics of how these two philosophers would organise a multiethnic democracy. From there I will investigate the implications of their models. The concerns of democracy and unity will be dealt with in later chapters. In this chapter, I will discuss what Kymlicka and Barry understand by justice in a multicultural society and how they argue their positions. I will close the chapter by looking at individual human rights in relation to group rights.

3.1 Organising Democracy

The dividing nucleus between Barry and Kymlicka is the role of the state in relation to ethnic identity. From this nucleus stem two distinct organising principles of political power in a democracy.

3.1.1. Territorial Organisation

According to Barry, all citizens in a state should hold the same citizenship with an identical set of rights and obligations. The principle of equal opportunity is thus important. Only those public policies and the legislation that offer citizens the same opportunities can be just. It is not the task of the state to directly protect selected cultures through special group rights. The state should be neutral, implying that its institutions cannot make distinctions on the basis of ethnicity, culture, creed, colour, language or gender (Barry 2001:12).

Barry argues that the best principle to follow in the decision making process is majority rule. The electoral districts should be multi-member and the voting systems should be based on proportional representation.

In relation to power sharing, Barry favours territorial organisation. Borders between different units in the state are to be drawn according to administrative convenience. Ethnic or cultural groups are not to be granted separate institutions.

Depending on the situation, the state can be federal or unitary. In a federal state, political power is shared between the central and the local units. The decision-making competence is specified in the written constitution. In order to change the constitution, both levels of government have to agree. According to Barry, the federation must have a symmetrical character, which means that the federal units possess equal powers. In an asymmetrical federation, on the contrary, one or more local units are given more decision-making powers than others federal units (ibid.:313). In a unitary state, local units can also hold political power. However, the political decision-making competence is not stipulated in the constitution; instead, it is rather delegated from the central government to local units. This implies that the central unit can at any time increase, reduce, or withdraw political power from the local units.

3.1.2. Ethnic Organisation

Kymlicka argues that the state is to take on an active role in promoting ethnic and cultural diversity. A comprehensive theory of justice in a multicultural democracy therefore has to include both universal rights as well as certain group-differentiated rights for minority cultures (2001:77). Kymlicka defends three sets of group-differentiated rights: self-government rights, accommodation rights[29], and special representation rights (2001).

Self-governments rights concern devolution of political power to national[30] minorities, normally involuntarily incorporated into a larger state. One alternative to organising self-government is federalism. For federalism to function as a mechanism for self-government however, the national minority must constitute a majority in one of the federal subunits. This means that most of the members of the group and few non-members of the group must live in the same territorially concentrated area and that there are few non-members of the group living in this area. Hence, Kymlicka understands self-government as delegating political power to a political unit that is

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[29] Previously termed polyethnic rights by Kymlicka

[30] Nation is used by Kymlicka as "a historical community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and culture" (1995:11).

essentially run by members of the national minority to a large degree corresponding to their ancestral land (1995:27-30).

Accommodation rights are defined as various rights given to ethnic groups and religious minorities in order for them to maintain their cultural practices and identities without hindering their opportunities in the mainstream institutions. Accommodation rights are to ensure that linguistic and institutional integration is not synonymous with complete cultural assimilation. Common examples are public funding and legal protection for cultural practices (ibid.:30-31, Kymlicka 2001:51).

Special representation rights are to guarantee that the diversity of the population is reflected in the country's political institutions. Representation can be sought through the reservation of a fixed number of seats in the legislature for members of minority groups. An alternative to guaranteed representation is to make the political parties more inclusive. An opening up of the party structure can make it easier for members of minority groups to become party candidates and leaders and can thus, although not necessarily, increase their representation. In contrast to self-government rights and accommodation rights, special representation rights should be regarded as temporary. Society should work for the elimination of exclusion and hence the need for special representation rights would disappear (Kymlicka 1995:31-33).

Both federal and unitary states can be ethnically organised. A federal state would be one in which the local units would be structured according to ethnicity, with the intention that an ethno-cultural minority group could constitute the majority within its own federal unit. The federation can either be symmetrical or asymmetrical.

In a unitary state, Kymlicka suggests that majority decision-making should be regulated through either special representation rights with quotas, meaning a fixed number of legislative seats for each ethno-cultural group, including veto rights or/and by self-government or autonomy.

3.2   Justice, Democracy and Unity

As emphasised earlier, my point of departure is that the formal organisation of a state has consequences for justice, democracy and unity. Barry and Kymlicka have different

visions of the multiethnic state. In order to decide which one of the solutions is better suited to Nicaragua, we would have to discuss both the normative bases of their theories, and look closer at Nicaragua itself. In this chapter I will concentrate on the main arguments presented by our two philosophers for their views on what justice should mean in a multiethnic society. By justice I refer to the fundamental values of political philosophy as presented in Chapter One. However, before I do that, I will present how I understand democracy and unity.

The legitimate form of a democracy, its scope and its limits, are highly contested issues in contemporary philosophy. Political philosophers offer diverging answers to which norms laws and policies should be founded on as well as the central features of the decision making process. Anne Phillips is among the philosophers to challenge the traditional definition of democracy as 'one person one vote'. She contends that this definition fails "to address either the composition of the citizen body or the problems associated with simple majority rule" (1995:27). Phillips finds the definition offered by the Democratic Audit of the UK more useful, "which identifies popular control and political equality as the two key principles of democracy, and takes these as the benchmark against which to evaluate contemporary democracy" (ibid.:27).

One way of ensuring popular control in a representative democracy is to have a system in which the political representatives have to be accountable to the citizens.

> Accountability is first a relationship between two sets of actors (actually, most of it is played our between organisations) in which the former accepts to inform the other, explain or justify his or her actions and submit to any predetermined sanctions that the latter may impose. Meanwhile, the latter who have become subject to the command of the former, must also provide required information, explain how they are obeying or not obeying and accept the consequences for what they have done or not done (Schmitter 2004:3).

There are numerous subject matters for accountability[31], but what is of interest in this thesis, is political accountability. Political accountability is the relationship between the citizens and their elected political representatives. "The core question in terms of democratic theory is how to tame and exploit the coercive power of specific

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[31] Schmitter mentions other subject matters such as: "ethical behaviour, financial probity, social esteem, sexual relations, functional interdependence, familial obligation, patriotic duty, etc." (Schmitter 2004:3).

institutions, especially the permanent institutions of a regime that exercises a putative monopoly of the legitimate use of that power over a given population and within a given territory, I. e. a modern state" (ibid.:3-4). In order to be effective, political accountability has to be institutionalised. That is to say that "it has to be embedded in a stable, mutually understood and pre-established set of rules" (ibid.:4). In a representative democracy this means that all citizens hold identical rights and obligations to be informed about actions and their justifications and to judge the actions of their representatives (ibid.:4). This requires clear channels of information between the citizens and their representatives. One feature of political accountability is that the

> rulers can be investigated and held to account for actions that did not transgress the law or result in personal enrichment or violate common mores. They may have simply made bad political choices that failed to produce their intended effect or cost vastly more than initially announced. And rulers can even be held accountable for not making a good or bad choice – just for having failed to act after promising to do so as a condition for getting elected or selected (ibid.:4).

Elections are one mechanism to control the rulers in democracies. "Since officials typically seek re-election or election to a higher office, this potential sanction is often regarded as a powerful inducement to them to explain their actions to electorates and attempt to serve their electorates interests" (Keohane 2002:15). Electoral accountability alone is arguably insufficient to measure political accountability. Nevertheless, I believe that important findings can be done in relation to popular control in Nicaragua through examining the electoral turnout on the Atlantic Coast. I will look at national, regional and municipal elections held in the period 1990 to 2002.

There are two interpretations of political equality. "Does counting equally refer only to our starting positions, or does it extend to our influence on outcomes? Does the emphasis on individual equalities also extend to equalities between social groups?" (Phillips 1995:30). In Nicaragua every citizen has the same formal right to vote, to stand for election and to form an opposition party. However, given Nicaragua's history of excluding minority groups from the political arena, few members of minority groups take part in politics. Due to the costeños' belief that Mestizo dominance is one of the major deficiencies in the political system (Hooker 2001), I find it fruitful to look at disparities in participation among ethnic groups in public institutions. Popular

participation in public institutions might not only influence electoral outcomes but also the legitimacy of the democratic system. I will therefore explore political equality as equality in political participation by members of the different minority groups. Juliet Amalie Hooker argues that equality should be understood this way:

> A democratic society is therefore legitimate only if it ensures equal access to participation among citizens. If the state is accused of systematically excluding a group from equal access to citizenship or of treating its members as second-class citizens due to a condition they cannot change (such as their race, ethnicity, nationality, religion, or gender, for example), the legitimacy of the state is thrown into question" (2001:4).

Phillips argues along similar lines that participatory equality is important because: "Participatory equality – in the sense of a rough equality between all relevant social groupings – has entered sufficiently deeply into our understandings of democracy to stand almost independently of what we might later discover are its political effects" (1995:33). Moreover, "political equality involves some degree of equality in participation, and it treats the systematic absence of particular social groups as a self-evident failing of democracy" (ibid.:31).

Unity among the citizens is essential to the survival of a democracy. This is primarily because trust makes a democracy work. Without trust and a sense of solidarity among the citizens it is hard for them to make sacrifices for the common good, to reach compromises, or to create stability. Hence, within multiethnic democracies multiple ethnic identities have to find a peaceful way of living together. One can argue that in some special cases the division of a country along ethnic lines would be the optimal solution. However, the number of ethnic identities in the world is so high that it would hardly be possible to form that many viable states. Additionally, the plethoras of ethnic groups in today's world are intermixed and often occupy the same land. Thus, clear-cut borders would be impossible. A pressing task is therefore to find the key to unity in the multiethnic democratic state.

I share Brian Barry's view that unity is understood as solidarity among citizens. He quotes Andrew Mason:

> A sense of belonging to a polity is needed to underpin a politics of the common good, but a shared national identity is often unnecessary. If there is a widespread sense of belonging of this kind, then citizens will feel part of the polity of which they are members, and as a result they are likely to have a sense of sharing a fate with others who are also part of it (Barry 2001:80).

Barry adds: "it is not enough for people to feel that they belong themselves unless they also feel that others belong and those others feel that everybody else belongs" (ibid.:80). Hence, unity is more than having the same passport. At the same time, unity is not the same as either ethnic[32] or national identity[33], but rather as political unity. Firstly, political unity does not have to be based on cultural similarity, as ethnic and national identities generally are. Secondly, political unity does not embody the nationalist claim that political boundaries should be coterminous with cultural boundaries. It is thus possible to feel a sense of political unity with the entire population within the state borders, independently of one's ethnic or national identity.

Below I will discuss the arguments of Kymlicka and Barry on what justice should mean in a multiethnic democracy.

3.3 Kymlicka and Equitable Treatment

According to Kymlicka, justice in a multiethnic society means equitable treatment, which is not the same as identical treatment. Kymlicka argues that identical treatment in a multiethnic society implicitly favours the identities, needs, and interests of the majority. Equitable treatment on the other hand, takes the fact that minorities are at a profound disadvantage into account. Hence, in order to ensure justice in a heterogeneous population it is not enough to look at the procedures and disregard the outcome.

This section discusses Kymlicka's two main arguments for his theory of multiculturalism. I will add three other arguments mentioned by Kymlicka. Due to the scope and focus of this thesis, there are several arguments found in the multiculturalist debate, which will not be touched upon here.

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[32] Ethnic identity will be defined and discussed in chapter four.

[33] Nationalism and national identity will be discussed in chapter six. Here I will only point out that I understand nationalism as does Thomas Hylland Eriksen: "Like ethnic ideologies, nationalism stresses the cultural similarity of its adherents and, by implication, it draws boundaries vis-à-vis others, who thereby become outsiders. The distinguishing mark of nationalism is by definition its relationship to the state. A nationalist holds that political boundaries should be coterminous with cultural boundaries, whereas many ethnic groups do not demand command over a state" (1993:6).

3.3.1. Minority Disadvantage

The founding principle of liberalism is individual freedom and autonomy, meaning that individuals can make free and informed choices about how to live. Kymlicka asserts that liberal theory requires minority rights because membership in a 'societal culture' is an essential precondition for individual freedom:

> modern states invariably develop and consolidate what I call a 'societal culture' – that is, a set of institutions, covering both public and private life, with a common language, which has historically developed over time on a given territory, which provides people with a wide range of choices about how to lead their lives (2001:53).

In other words, what enables individuals to revise their ways of life is a societal culture that makes options available to them. In addition, this societal culture offers us the means to identify experiences as valuable. "Whether or not a course of action has any significance for us depends on whether, and how, our language renders vivid to us the point of that activity" (1995:83). How this is done is moulded by our history, our tradition, and conventions. Furthermore, "[u]nderstanding these cultural narratives is a precondition of making intelligent judgements about how to lead our lives" (ibid.:83).

Similarly, liberalism values the principle of equal opportunity to participate in shared institutions. Diffusion of a common language and institutions make this participation possible. Hence, "To ensure freedom and equality for all citizens involves, inter alia, ensuring that they have equal membership in, and access to, the opportunities made available by the societal culture" (2001:53).

Liberal freedom and equality thus require membership in a societal culture. Consequently, most people have an interest in maintaining their cultural bonds. But can this access to one's societal culture justify special rights to protect particular cultures? Or should the state refrain from either promoting or inhibiting the expression of any single culture?

Kymlicka rejects the idea of responding to cultural differences with 'benign neglect'. "The state unavoidable promotes certain cultural identities, and thereby disadvantages others" (1995:108). Public institutions implicitly or explicitly serve the interests and identities of the majority, because liberal states have engaged in modernisation through 'nation-building'. Nation-building is

> a process of promoting a common language, and a sense of common membership in, and equal access to, the social institutions based on that language. Decisions regarding

> official languages, core curriculum in education, and the requirements for acquiring citizenship, all have been made with the intention of diffusing a particular culture throughout society, and of promoting a particular national identity based on participation in that societal culture (2001:27).

As the neutral state is nothing but an illusion, compensation is needed when people suffers disadvantages because of their culture and not because of their choices. Group-differentiated rights are necessary in order to guarantee members of minority cultures identical opportunities to live and work in their own language and culture, just as members of the majority cultures do (1995:126). "Hence special rights compensate for unequal circumstances which put the members of minority cultures at a systematic disadvantage in the cultural market place. I will call this the 'equality argument" (Kymlicka 2001:147). A central question in this respect is whether people can have their context of choices necessary for individual freedom provided by another culture than their own. Kymlicka insists that leaving one's culture has high personal costs. Although all individuals are free to leave their culture at will, nobody should be forced to do so. Kymlicka argues that national minorities, especially those that have been involuntarily incorporated into a larger state, have the same right to maintain their own societal culture by engaging in their own competing nation-building as the majority. Thus, individual freedom of national minorities cannot be said to be secure. Hence group-differentiated rights, as in self-government, can be a mechanism to improve the conditions of disadvantaged national minorities.

Immigrants[34] on the other hand, have, according to Kymlicka, traditionally accepted the integration into the larger societal culture. Instead of demanding their own nation-building they rather claim fairer terms of integration, namely that it is recognised that integration is a long-term process, and that the common institutions show equal respect for, recognition of and accommodation of identities and practices of the immigrants as of the majority (ibid.:30). Kymlicka thus seems to accept that immigrants can have their options provided by the majority culture if they are granted

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[34] Kymlicka makes a clear distinction between national minorities and immigrants. I will elaborate on the definitional difference in the next chapter.

accommodation rights in order to maintain their practices even as they integrate into common institutions.

In short, Kymlicka argues that "we can see minority rights nor as unfair privileges or invidious forms of discrimination, but as compensation for unfair disadvantages, and so as consistent with, and even required by, justice" (2001:33).

If we now turn our attention to Nicaragua, we can see a certain support for Kymlicka's defence for differentiated rights on equality principles. An assumption similar to Kymlicka's that a state is not culturally neutral was one of the main arguments behind the claims for autonomy and differentiated rights. This can be interpreted as a reaction to a long history of elites trying to assimilate other ethnic groups into their Spanish-speaking culture. Several attempts at nation building have been made by the central state, often resulting in arrangements offering the members of the majority culture advantages in comparison to the minority cultures of the Atlantic Coast (Perez 1997). Important instruments in this nation building process have been the education system and the media. Throughout history only one picture of Nicaragua has been communicated, that of a homogenous Hispanic Mestizo Nicaragua (Hooker 2001). Although we find local radio stations on the Atlantic Coast today, and the multicultural educational model SEAR is taking form, the minority cultures of the Atlantic Coast are still deprived of a voice both in the national media and in the national education system. Thus, the predominant picture of Nicaragua remains monolithic.

If we look at the prioritising of the Spanish language, Nicaragua has practically one official language, as all public institutions are run in Spanish. According to Kymlicka this leads to the danger of marginalisation of the non-Spanish-speaking minorities. Moreover, Kymlicka predicts the death of minority languages unless they are used in public life (2001:27,156).

Empirical evidence thus indicates that the Mestizo majority is in a position of cultural and political domination. Consequently, the laws and institutions of today's Nicaragua merit our attention. Accepting the majority institutions, although liberal in nature, without any accommodation of differences could lead to the interpretation of

equality as meaning conformity with the Spanish-speaking culture. However, equality must be understood as the right to have one's cultural differences respected in addition to the right to choose to change one's identity if one pleases.

3.3.2. National Self-Determination and the Role of Historical Agreements

Kymlicka's second argument is that national minorities are 'colonised' minorities, meaning that "distinct cultural communities which were previously self-governing" (2001:148). Their homeland, which they used to govern, has been incorporated into the state against their will. The issue is not that the national minority occupied the land first; it is the questioning of the political boundaries. The equality argument states that all citizens have the right to be treated with equal respect by the state. However, Kymlicka claims that the question of who should be governed by which state precedes which rights the state should guarantee its citizens. As the national minorities have lost their independence through coercion and colonisation, one can argue that it is a violation of their inherent right to self-government. 'Peoples' are under international law entitled to self-determination, as in an independent state. The point that Kymlicka makes is not that all national minorities should seek independence, but rather that only those incorporations into larger states that were voluntary acts of federation are legitimate (ibid.:149).

What follows from this, is that the way in which a particular group was incorporated into a state gives grounds for certain group-differentiated rights. If the incorporation was voluntary, certain rights might have been put down in treaties. Kymlicka argues that there are both moral and legal reasons for respecting these historical agreements. If it was an involuntary incorporation, such as colonisation, then the national minority can point to the right to self-determination under international law. Renegotiation of the terms of federation can turn it into a more voluntary federation (1995:116-120).

Hence, the national self-determination argument may justify the same rights to self-government and special representation rights as the equality argument.

Barry claims that Kymlicka's entire historical argument is built on sand. "That one's ancestors were involuntarily incorporated in a state does not in itself make any case for separate institutions. It may just as well lead to a demand for integration on equal terms with other citizens" (2001:218). Kymlicka assumes that national minorities will necessarily demand different arrangements from those made by immigrants. While the former, according to Kymlicka, will seek to maintain separate institutions, the latter will wish to integrate and acquire citizenship. Barry points to several groups that would not fit into Kymlicka's description, among them, the Cuban immigrants in Miami. "It should be an embarrassment to Kymlicka that the Cubans in Miami actually satisfy all his criteria for a national minority, with their own economic, social, political and educational institutions" (ibid.:218). Barry states that about two-thirds of second- generation Cuban Americans speak English as their first language. According to Barry, this phenomenon is not comprehensible within Kymlicka's set of principles "even though the history of the world has been full of it: a self-sufficient national minority whose members choose to assimilate linguistically to a larger society" (ibid.:219). In short, claiming that the demand for separation follows automatically from being what Kymlicka terms a national minority makes no sense. Barry argues that there is an inherent fallacy in Kymlicka's definition of the different groups. I agree that Kymlicka's definitions of the different minority groups are problematic as are their postulated goals[35]. As the historical argument builds its foundation on exactly these phenomena, the argument loses some of its validity.

Furthermore, if we look to Nicaragua, we will notice several problematic issues in relation to Kymlicka's historical argument. It is not clear which policies should follow from the argument.

Upon the arrival of the Spanish and the British colonisers in Nicaragua, the indigenous ethnic groups had their own self-governing systems. In spite of this, the indigenous populations hardly participated in any negotiation with the colonisers about the incorporation of their homelands into either the Spanish or the British

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[35] I will continue this discussion in chapter four.

colonial state. The treaties about political boundaries that were signed were concluded between the two colonial powers. The independence of Nicaragua in 1821 hardly brought any relief from the subordination of the indigenous peoples by the Mestizos. In the 1850's and 1860's the United States and Great Britain signed a series of treaties on the incorporation of the Miskitu Reserve into the Nicaraguan state, generally without the participation of the indigenous. Thus, it was not until the discussion of autonomy for the Atlantic Coast started in 1984 that the ethnic minorities actively negotiated the terms for incorporation[36]. The Autonomy Statute resulted from consultations with the communities of the Atlantic Coast.

The Autonomy Statute laid the foundation for a set of group-differentiated rights, thus justifying group-differentiated rights on the Nicaragua's Atlantic Coast. However, it is worthwhile to ask whether the agreement can be said to be fair and voluntary. After all, it took place during a bloody civil war. It can be argued that the law was enacted under duress and thus cannot be said to be voluntary and therefore must be renegotiated.

Another central issue in relation to the right to negotiate, is to whom it was given. Were all ethnic groups on the Atlantic Coast given the same opportunity to participate? Who represented them? Who set the terms and issues to negotiate? Does the law reflect the demands from all the ethnic groups, from only one, or that of the state?

Even if we accept the Autonomy Statute as a historical agreement that justifies group-differentiated rights, it is still difficult to interpret. The wording, as previously shown, gives room for divergent comprehensions of the rights. Hence, it is hard to

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[36] An exception might be the Convention of the Mosquitia. According to the Treaty of Managua signed between England and Nicaragua in 1860, the formation of an independent Miskitu Reserve was allowed (Perez 1997:117). The Treaty of Managua established that a total incorporation of the Miskitu Reserve into the Nicaraguan State was possible if agreed upon by the inhabitants of the reserve. Thus, in order to make the incorporation legal, president José Santos Zelaya, had to consult the inhabitants of the Miskitu Reserve. In November 1894 a meeting was held with 80 representatives of indigenous communities. In the Convention of the Mosquitia the representatives approved to be incorporated into the Nicaraguan State. The legality of the Convention has however been questioned. Critiques claim that the indigenous representatives were forced to sign the treaty by the national authorities. Consequently, one can ask, whether the incorporation was that of a voluntary federation.

pinpoint the group-differentiated rights that follow from the agreement and how they should be implemented.

Historic arguments are furthermore, troublesome whenever claims are based on notions of compensatory justice. How can anyone be held responsible for something committed by his or her ancestors? How can the descendants of the exploited groups be fairly compensated by the descendants of the exploiters? Kymlicka acknowledges this difficult normative question. He says that it would be wrong to take the historical compensation idea to its extreme, and thereby return all of the expropriated land around the world. "This would create massive unfairness, given that the original European settlers and later immigrants have now produced hundreds of millions of descendants, and this land is the only home they know. Changing circumstances often make it impossible and undesirable to compensate for certain historical wrongs" (1995:110, n.5). As a result, according to Kymlicka, land claims should not be based on a historical compensatory argument, but rather on the equality argument. What is essential is not to turn the clock back, but to "provide the sort of land base needed to sustain the viability of self-governing minority communities, and hence to prevent unfair disadvantages with respect to cultural membership now and in the future. In short, the equality argument situates land claims within a theory of distributive justice, rather than compensatory justice" (ibid.: 110, n.5).

The implication of the principle of redistribution can however, be enormous if poor people from overpopulated areas can make claims to land that traditionally has belonged to others. Hence, by avoiding the problematic issue of compensatory justice, Kymlicka faces new complications. In 2001, Kymlicka modified his position: "Many people will feel uneasy with the idea that justice could, even in principle, endorse settlement policies that encroach on the homelands of indigenous peoples. This suggests that liberal justice is unable to take proper account of the legitimate values and claims of communities and cultures" (2001:138). Kymlicka argues that a fair theory would have to be more 'community- or culture sensitive' by combining "a commitment to international (and intercultural) redistribution, environmental protection, and respect for cultural differences" (ibid.:151). Kymlicka, however, fails

to explain exactly how one is to reconcile these three contradictory considerations. I will discuss this further in Section 4.4.4.

In addition to Kymlicka's main justifications for group-differentiated rights one can find several other arguments. I will shortly mention three of them.

3.3.3. The Intrinsic Value of Cultural Diversity

As cultural diversity can be argued to increase the richness of people's lives it should not be an obligation but rather in everyone's interest to protect cultural diversity. Kymlicka is sceptical of putting too much weight on this argument. For a culture different from one's own to be valuable, it has to offer more options and expand the range of choices for the individual. According to Kymlicka, it is much harder to leave one's societal culture than to make different choices within that societal culture. Thus, preserving distinct cultures can reduce diversity within the majority culture compared to assimilation. When a minority is forced to integrate into the majority culture, this might actually provide more realistic choices for the members of the majority culture, as the cultural elements of the minorities enrich the majority culture. The degree of this cultural contribution however, depends on the manner of assimilation.

Another problematic issue is that the diversity argument implies that the members of the minority have an obligation to preserve their culture in order to enrich other's lives. This clearly deviates from the principle of free choice of the individual, and is thus anti-liberal. Consequently, cultural diversity cannot in itself justify group-differentiated rights. Kymlicka recognises that the protection of minorities does benefit the majority, but adds: "But these diffuse benefits are better seen as a desirable by-product of national rights, rather than their primary justification" (1995:123).

Barry however, is far fiercer in his criticism. He is unable to understand how cultural survival can become an end in itself. "Human beings then become mere ciphers, to be mobilised as instruments of a transcendent goal" (2001:67). Barry emphasises that cultural diversity is not an unqualified good: "diversity is desirable to the degree, and only to the degree, that each of the diverse groups functions in a way

that is well adapted to advance the welfare and secure the rights of its members"
(2001:134).

In short, the intrinsic value of cultural diversity does not function as a valid
normative argument.

3.3.4. The Respect for Identity

Inherent in the human being is the need for one's own identity and to be recognised
and respected (Kymlicka 2001:47). Cultural membership is important in the formation
of individual identity. As its membership is based on belonging rather than
accomplishment, it provides a permanent foundation for self-identification. What
follows from this, is that the dignity and self-esteem of a culture's members will be
threatened if the culture is not respected or is discriminated against (Kymlicka
1995:89). Group-differentiated rights can, according to Kymlicka, thus serve as a
mechanism for the recognition and equal respect for all in a multicultural society.

However, the normative tenability of this argument is dubious. If cultures are to
be equally respected because individuals are embedded in them, then all cultural
memberships should be protected as long as the members claim that their membership
is important to their identity. Hence, taken to its logical conclusion, the state is
obligated to protect, for instance, members of the Ku Klux Klan[37]. Barry similarly
emphasises: "The obvious problem with this argument is that illiberal cultures
typically – I am tempted to say necessarily – are committed to violating the canons of
equal respect. Equal respect for people cannot therefore entail respect for their cultures
when these cultures systematically give priority to, say, the interest of men over the
interest of women" (2001:127). Consequently, I see no other choice than to dismiss
this argument on moral grounds.

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[37] Ku Klux Klan: secret white supremacist organisation of white Protestant men in the United States.

3.3.5. Cultural Relativism

According to the cultural relativists, every culture has its own valid standards of justice. As there are no such things as universal values, another culture cannot interfere in another on the basis of justice. The requirements for justice can only be found in the common understandings of the members of a particular society. Kymlicka rejects this argument. Firstly, the causal arrow, according to Kymlicka, is pointed in the wrong direction.

Let us take slavery as an example. A liberal understanding of justice would disapprove of slavery because it is immoral. Cultural relativism, on the other hand, would regard slavery as wrong only if the slaveholding society disapproves of it. Secondly, Kymlicka argues that cultural relativism does not solve the problems at hand. This follows from the idea that each culture can be said to rightly act on the foundation of its own morality. Hence, when there is a conflict between two cultures, a general conception on justice cannot be applied to solve it, as both cultures can act according to their respective moral codes. "More generally, cultural relativism reduces intercultural relations to issues of mutual advantage, rather than issues of justice" (2001:145).

Despite Kymlicka's declaration to the contrary, Barry accuses Kymlicka of abandoning liberalism in favour of cultural relativism. According to Barry, Kymlicka states that national minorities should be self-governing and that a liberal state should not intervene to prevent what it considers to be violations of liberty and equality. In consequence, a third party cannot intervene in a country or in a national minority to improve the human rights situation. Barry argues that this is what gives Kymlicka away as a cultural relativist: "For he agrees with them that it would be 'cultural imperialism' for liberals to bring pressure to bear on regimes that violate human rights in an attempt to increase the number of people in the world who enjoy their protection" (Barry 2001:140).

Whether this proves that Kymlicka is not a liberal can be discussed at length. However, here I limit myself to the fact that Kymlicka emphasises that he believes in the universality of liberal principles. Thus Kymlicka does not support the idea that

justice is relative. Kymlicka recognises that there are groups and countries that are illiberal, but just as international politics has followed the principle of non-intervention, the same should be the case with national minorities. When a national minority is illiberal, Kymlicka says: "Liberals have a right and a responsibility, to speak out against such injustice. Hence liberal reformers inside the culture should seek to promote their liberal principles, through reason or example, and liberals outside should lend their support to any efforts the group makes to liberalise their culture" (1995:168). Consequently, I cannot see how Kymlicka could be branded a cultural relativist.

3.4 Barry and Identical Treatment

Justice is for Barry synonymous with impartiality. Inspired by John Rawls, Barry argues that justice is secured if the procedures are identical for all citizens. In other words, Barry does not differentiate between identical treatment and equitable treatment. Consequently, Barry dismisses differentiated treatment based on equality principles. According to Barry, what matters, are equal opportunities for all regardless of ethnic or cultural identity. Uniform laws and rules are to define the same choice set[38] for everybody in that society. Within this choice set the individuals are free to make rational decisions in order to meet their personal preferences. As people have different preferences concerning outcomes as well as diverging perceptions of which actions are called for to reach certain goals, people will necessarily act differently (2001:32). However, Barry insists that this does not affect justice. The essential is equal opportunities, and the opportunities are equal only as long as a society's laws produce identical choice sets.

According to the multiculturalists, cultural practice and religious belief need to be accommodated to serve justice. This is explained by the different impact a law can have on different people due to their religious belief or cultural practice. Barry

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[38] A choice set is the framework of rules that defines the legal actions of individuals. Within this framework the individuals can make their own choices on how to act.

criticises this idea, which he terms The Rule-and-Exemption-Approach. Its essence is that rules should generally apply to everybody, however with the exception of members of cultural or religious minority groups. This could, for instance, mean that a Sikh is allowed to drive his motorbike without wearing a crash helmet. According to Barry this would violate the classical liberal ideal of equal rights (ibid.:34). A law that orders everybody that drives a motorbike to use a crash helmet is not unjust. Nobody is forced to drive a motorbike. The law only says that those who want to, have to wear a helmet. Any law will naturally be apprehended as more disadvantageous and burdensome to some people than to others. "The essence of a law is the protection of some interests at the expense of others when they come into conflict. Thus, the interests of women who do not want to be raped are given priority over the interest of potential rapists in the form of the law that prohibits rape" (2001:34). Hence, inequality of impact cannot generally be taken as a proof of unfairness.

Furthermore, Barry rejects the idea that costs derived from preferences are fundamentally different from costs derived from beliefs. According to Barry, beliefs and preferences are equally owned by the individual. They are not a result of pressure from the outside.

> we cannot change our beliefs by an act of will but the same can be said equally well of our preferences. It is false that the changeability of preferences is what makes it not unfair for them to give rise to unequal impact. It is therefore not true that the unchangeability of beliefs makes it unfair for them to give rise to unequal impacts (Barry 2001:36).

In other words, it is not more just to provide differential treatment on the grounds of religion or cultural practices than on the grounds of personal preferences. "The critical distinction is between limits on the range of opportunities open to people and limits on the choices that they make from within a certain range of opportunities" (ibid.:37). Only the primary constitutes a question of justice. The differential impact of a general law cannot in itself serve as evidence that this law is unjust. If there are valid reasons to establish a law, no one should be exempted from following it. If someone however, can argue for the reasonability of an exemption, it would signify that the very fundament for the law is not solid enough to even have a law in the first place.

Roland Pierik criticises Barry for not offering an alternative remedy for inequalities generated by cultural differences. Barry says that the multiculturalists'

response to these problems "is in most instances ill-advised" (Barry 2001:24), however according to Pierik, Barry does not himself develop a satisfactory solution.

> For Barry, liberal egalitarianism boils down to redistribution through welfare-state institutions (but he does not raise the question of whether redistribution is a sufficient interpretation of the liberal-egalitarian ideal), equal treatment (not even *treatment as equals* as defended in Dworkin's famous abstract egalitarian claim), and universal rights" (Pierik:752-753).

What Pierik is referring to is Barry's total reliance on uniform rules. "If uniform rules create identical choice sets, then opportunities are equal" (Barry 2001:32). Pierik however, claims that the different effect of a universal law on Sunday closing, for instance, will have on Christians and Muslims as the Muslims worship on Friday is of great importance to equality principles. Pierik therefore argues that Barry is wrong in refusing to accept that universal laws can have an unjustified and inegalitarian effect on individuals (Pierik 2002:753). Barry, on the other hand, insists that cultural differences do not make up a valid argument for special treatment because: "within a liberal state all groups are free to deploy their energies and recourses in pursuit of culturally derived objectives on the same terms" (2001:318). Pierik answers that,

> These terms might be universal, but the problem is that they are determined without the consent or even the participation of cultural minorities. They entered the game after it had already begun, and the terms were already fixed. This generates problems for liberal egalitarianism which are not simply 'invented out of nothing by the multiculturalists' (Pierik 2002:753).

This is to say that Barry ignores that universal laws are the product of a process in which the ethnic minorities neither have been involved nor have approved.

3.4.1. Group Rights Lead to Fragmentation

Barry argues that if ethnic or cultural cleavages are politicised through group-specific rights, society becomes fragmented and there exists an imminent danger of conflict due to the enduring nature of cultural cleavages (1991:146). If ethnic or cultural groups are granted separate institutions, the degree of reciprocity, mutual trust and cooperation will decrease. Citizens have to cooperate in the shaping of the fate, "and that can come about only if members of minority and majority groups actually share in the running of their common institutions" (2001:89). Barry thus argues that "there is every reason for making deliberate attempts to draw up geographically based administrative units that cut across communal boundaries" (ibid.:89).

In the extension of this argument, Barry claims that the unitary republican citizenship, "in which all citizens share the identical set of common citizenship rights" (ibid.:21), can act as an important instrument in handling ethno/cultural conflicts. According to Barry, a model of unitary republican citizenship solved the "wars of religion that made much of Europe a living hell in the sixteenth and seventeenth centuries" (ibid.:21). "In direct opposition to Kymlicka, indeed, I maintain that the relatively peaceful incorporation of a wide range of religions and cultures in the past half century is a tribute to the ability of what he calls the 'earlier model' to 'deal with issues of ethnocultural diversity'" (ibid.:21).

Barry argues that the most important factor in the liberal solution to the religious wars in Europe was to depoliticise the cause of the conflict: religion. As religion was privatised, the state became neutral in its relation to the different religious groups and treated all religious groups equally. By privatising ethnicity/culture, one can ensure peaceful co-existence through a legal framework identical to all individuals. By supporting the privatisation of culture, egalitarian liberalism has been criticised for being 'inhospitable to differences' or blind to differences. Barry repudiates this critique (ibid.:68). On the contrary, the point of depoliticising culture is exactly to avoid conflict, as cultural differences are so important to people.

Kymlicka opposes the idea of privatising culture. As a state never can be neutral and always will have cultural content, such as a shared language or history, culture cannot be privatised. Anne Julie Semb agrees with Kymlicka that a state cannot be culturally neutral. However, Semb argues that we do not have to leave the idea of a civic nation[39]. The crucial point is that the criterion for membership in a civic nation is not based on descent, but on choice.

> The point about a civic nation is not that it is non-cultural, but rather that membership in such a nation is based on characteristics that it is possible to acquire. This makes membership in such a nation fundamentally open and voluntaristic. In order to become a member of such a nation, one may have to learn the national language, thereby perhaps becoming bi-lingual, as well as acquire knowledge about the national history (Semb 2000: 12).

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[39] A civic nation is here understood as a nation that is not based on ethnicity.

Semb elaborates: "Nations can, furthermore be neutral in the sense that the nation is depicted as a community that transcends rather than mirrors ethnicity" (ibid.:12). An important premise is, however, that in order to transcend ethnicity, "the choice of national language, national symbols etc. ought to be supra-ethnic compromises" (ibid.:12). By choosing a national language that is not the dominant language, but rather a language of no group in the state, one can avoid the charge that nation building is ethnically motivated. In short, although one admits that a culturally- neutral state is impossible, one can still argue for a civic nation.

A separate matter is how to reach such a supra-ethnic compromise in real societies. In Nicaragua, it would be close to a utopian exercise to make the Mestizos agree to such a compromise. The Mestizos have for centuries ruled the country without taking notice of the other ethnic groups. Picturing the tremendous changes that a supra-ethnic compromise would demand seems unrealistic in Nicaragua, a country in which the power relations are extremely unequal.

3.4.2. Multiculturalism Diverts Attention from What Really Matters

As a corollary, Barry claims that through focusing on special cultural rights, the multiculturalists divert attention from what is really important in society: redistribution. According to Barry, the multiculturalists are wrong; culture is not the problem (2001:317). Social and economic inequalities are the main source of conflict in societies. Barry contends that the state should take an active role in redistribution in order to combat economic inequalities. Barry accuses Kymlicka of sacrificing social and economic rights in favour of cultural rights. "It (multiculturalism) diverts political effort away from universalistic goals. But a more serious problem is that multiculturalism may very well destroy the conditions for putting together a coalition in favour of across-the-board equalisation of opportunities and resources" (ibid.:325). Barry continues: "But this kind of particularistic focus will still tend to make cultural minorities weak partners in endeavours to redistribute income from rich to poor across the board or to improve the quality of schools and other public services generally" (ibid.:325).

Although Kymlicka embraces social and economic rights, he focuses on inequalities between groups more than between individuals. Kymlicka does not specifically offer a solution to how to secure economic redistribution within the groups. His argument seems to be that if the groups are equally well or poorly off, then they will, by virtue of being members of the same group with strong attachment to each other, provide each other with sufficient goods. Hence, it can be argued that Barry protects social and economic rights of the individual more specifically than does Kymlicka.

It is however, hard to measure whether this critique actually will be translated into practice. To draw a conclusion, one would have to run an empirical test, which is far beyond the scope of this thesis. I must however, stress that both models most likely would lead to improvements of social and economic rights for the citizens of Nicaragua. Nicaragua is a society with hardly any redistribution. Its main problem is not that attention is drawn away from redistribution because there is too much attention on ethnic issues, but rather that there is no functioning liberal democratic state. Money that should be spent on ensuring the social and economic rights of the citizens is embezzled by officials at every level, from top politicians to the lowest civil servant. Civil service positions are to a great extent occupied by unqualified personnel who are appointed on the basis of nepotism and political favouritism, not on the bases of merit. Hence, both the liberal egalitarian model and the multiculturalist model would, if implemented, most likely improve the prospects for economic redistribution in Nicaragua.

3.4.3. Cultures Cannot be Bearers of Rights

According to Barry, a state is not supposed to participate actively in a programme for cultural survival. The state is strictly to ensure that all cultures have the possibility to survive. Only the members of the culture themselves can, through their actions, decide whether their cultural traditions shall be preserved. The rationale is that only the individuals can be bearer of rights, not cultures.

As far as language is concerned, Barry defends identical treatment if one condition is met: that the language communities are large enough to offer equal education and employment opportunities to its members. If this is the case, Barry does not see any problems in separate schools in their own language. The state however, cannot be neutral in relation to language. A state has to decide which language/languages its institutions shall utilise. The most common result is that the public institutions use the dominant language. All the citizens have then the right to learn the national language and thereby hold the same opportunities to education and jobs, without suffering discrimination. We see here that Barry strictly focuses on social and economic concerns, without taking into account the meaning of culture for the individual.

3.4.4. Misguided Critique of Assimilation

Egalitarian liberalism is often accused of being 'assimilationist'. Barry replies that much of the assimilation that has occurred in history has been at odds with egalitarian liberalism. Hence, it is important to distinguish different kinds of assimilation. Barry terms the form of assimilation that is at odds with egalitarian liberalism 'absorptive assimilation' (2001:81). It has either been brutally enforced or it has been termed 'voluntary assimilation' as in "deliberately aimed at by one group and ratified by the other" (ibid.:75). Barry rejects 'absorptive assimilation' as its underlying conditions have often not been liberal. Minority groups have sought assimilation as an escape from stigmatisation and discrimination.

A kind of assimilation that Barry defends, however, is 'additive assimilation'. In order to make a democracy work, Barry believes that the citizens must share a civic nationality. "The crucial point is that, just as the acquisition of a new identity may not require complete acculturation[40], so it may not require the giving up of an old identity" (ibid.:81). This means that to obtain a civic nationality the people must feel that they belong to the nation beyond the formal passport and that they are recognised as

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[40] "Acculturation is the process by which an individual comes to acquire cultural practices belonging to the tradition of another group" (Barry 2001:73).

belonging by the other citizens. Although it might be necessary to acquire some cultural elements, particularly the national language, it does not imply that one has to give up a distinct identity.

If we accept Barry's distinction, how can we then prevent unjust assimilation? Barry answers that "compulsion to prevent these pressures from being effective is at the best a very inferior alternative to taking measures aimed at ending the unfair treatment that is the root of the problem" (ibid.:76). In relation to the unjust assimilation in history, Barry sums up:

> The whole point of egalitarian liberalism, in contrast with this, is to ensure that people who are different are treated equally. Assimilation is not therefore necessary to ensure equal treatment. By the same token, any assimilation that does occur cannot be objected to on any grounds recognised by "difference blind" liberals" (2001:76).

In other words, the only solution is to treat people equally. Furthermore, if coercion is absent and the background institutions are just, one cannot prohibit people who wish to assimilate from doing so (ibid.:76). That would be to place an intrinsic value on culture, earlier rejected.

3.5   Individual Rights and Group-differentiated Rights

In a liberal theory of justice, group-based rights should never supersede individual rights. The well being of a single person cannot legitimately be sacrificed for the benefit of the collective. Consequently, many liberals regard individual rights and group rights as mutually exclusive. Kymlicka argues that group rights do not conflict with individual rights; rather, they complement each other. Kymlicka emphasises, however, that it is essential to distinguish amongst the collective claims that groups can make. He divides these claims into 'internal restriction' and 'external protection'. The former deal with "*intra-group* relations – the ethnic or national group may seek the use of state power to restrict the liberty of its own members in the name of group solidarity" (1995: 36, original italic). As individual oppression can occur through limiting the right of the group members to question and revise their tradition, Kymlicka argues that 'internal restrictions' should be rejected. "External protections involve *inter*-group relations- that is, the ethnic or national group may seek to protect its distinct existence and identity by limiting the impact of the decisions of the larger society" (ibid. 36, original italic).

According to Kymlicka, liberals should support 'external protections' that counteract unfairness between groups. 'External protection' is meant to make the minority groups less vulnerable to the economic and political power of the majority (ibid. 37). This can be done, for instance, by granting special group representation rights within the political institutions in order to ensure that the voices of the minority are heard. Self-government rights can protect the minority from the decisions of the majority. And lastly, accommodation rights can prevent discrimination against specific religious and cultural practices. The individual members of a group, some units of the group, or the group as a whole can exercise group-based rights. Who should exercise group-based rights depends on what is practical for the right in question. Kymlicka insists, however, that 'external protections' are only justified when they put the groups in a more equal position. External protection is not to be employed to distribute privileges to one group over another in the language of cultural preservation. This was the case in South Africa under apartheid. Furthermore, it is essential that external protection only is to protect the survival of different groups, not allowing groups to impose restrictions on their members. The basic rights and liberties of the individual members of these groups are still to be protected by the traditional human rights. In short, group-differentiated rights and individual rights can work together to ensure both equality among groups and freedom within groups.

Chandra Kukathas opposes special arrangements for minority cultures as the members are sufficiently protected by their individual rights. However, Kukathas insists that minority groups, including illiberal ones, have the right to be let alone by the larger society. Consequently, illiberal treatment of the members is permissible, but only as Kukathas states, if the members are free to leave their culture (Okin 1998:95).

Susan Moller Okin criticises both Kymlicka and Kukathas from a feminist perspective. Firstly, she argues that the differentiated treatment defended by Kymlicka can undermine individual freedom by supporting paternalistic cultures. Kymlicka's denial of group rights to cultures with 'internal restrictions' is insufficient because it is based primarily on formal and public restrictions and discrimination. However, much of the discrimination against and control of women on cultural grounds takes place

within the private sphere. As it happens within the household, this type of discrimination is impossible for the authorities to detect. Consequently, far fewer minority cultures than Kymlicka foresees could legitimately claim special group rights on the basis of liberal principles (ibid.:102).

> I contend, however, that the very grounds of his liberal defence of group rights require him to take these very private, culturally reinforces kinds of discrimination into account. .. At least as important to the development of self-respect and self-esteem as one's culture is *one's place within that culture*. And at least as important to one's capacity to question one's societal roles is *whether one's culture instils in and enforces on one particular social roles*. To the extent that their culture is patriarchal, in both these respects the healthy development of girls is endangered (ibid.:103-104, original emphasis)

As far as Kukathas is concerned, Okin claims that the very same objections that Kukathas raises against differentiated treatment can be raised against leaving illiberal minority cultures alone. In relation to the heterogeneity of a group Kukathas says: "it is not always the case that the entire cultural community is eager, or even willing, to preserve cultural integrity at any price" (ibid.:99). Then Okin asks: "What if elites, or men, have interests different from those of the masses, or women? What if the "acquiescence" by some in cultural practices stems from lack of power, or socialisation into inferior roles, resulting in lack of self-esteem or a sense of entitlement?" (ibid.:99) By neglecting the sense of inferiority that females in some cultures feel, Okin criticises Kukathas for not realising the importance of power differentials.

Although Barry opposes the particular group-differentiated rights advocated by the multiculturalists, he accepts certain group-based benefits. Firstly, Barry accepts some pragmatic group- based exemptions. Barry exemplifies this by noting that over half of the male Sikh population in Great Britain are construction workers. As many do not wear helmets at work, a law ordering this would imply that a great proportion of them would have to find another job. This would have such a social impact that it would be hard to defend. A job has more to it than the salary, such as promoting social integration. Hence, Barry sketches a gradual stop to the exemption. Barry underlines however, that this exemption should not be taken to justify other exemptions (Semb 2001:4).

Furthermore, Barry says that egalitarian liberalism can support special measures to members of a disadvantaged group. "Any disadvantage for which the victim is not responsible establishes a prima facie claim to remedy or compensation. The implication is that special measures to help the disabled are fully justified – and indeed required by justice – as a way of compensating for disadvantage" (2001:114). It is however, important to note that, contrary to Kymlicka, Barry makes a distinction between who exercises the special right. If the right bearer is an individual, entitled to it by virtue of her membership in a group, the group-based policies can run into problems of either under- or over inclusive policies. Under-inclusive policies are targeted at only one of many disadvantaged groups, for instance, inner cities. Such policies can create resentment, as members of other underprivileged groups will not receive support. Over-inclusive policies can become unpopular because all the members of a group are offered benefits, whether they need them or not.

Consequently, Barry argues that where the right bearer is an individual, universalistic policies "that track individual deprivation are not only more equitable than group-based policies; they may well also be a good deal better able to attract and sustain political support" (2001:115). Where the group is the right-bearer, however, the situation changes. Here we find two central principles: the protection of the individual from coercion, and the freedom of association. Freedom of association arises from the premise, "If the fulfilment of individuals depends on the flourishing of groups, it follows that groups must have rights of self-government" (ibid.:117). Barry insists that it is illiberal to favour claims of freedom of association from liberal groups over claims from illiberal groups. "It is no part of liberalism, as I understand it, to insist that every group must conform to liberal principles in its internal structure" (2001:147). The essential is that such groups must be defined as voluntary associations with a right of exit for its members. As Barry puts it: "This includes freedom of association for groups whose norms would be intolerable if they were backed by political power but are acceptable provided that membership in the group is voluntary" (ibid.:150).

Barry identifies a potential conflict between the two principles and tries to structure it through a classification of different costs for the member. First, there are intrinsic costs. The state should not and cannot prevent them. An example might be excommunication, which is a legal action taken by the Catholic Church. Secondly, we have associative costs. As these are results of people's actions that should be permitted by a liberal state, the state could do something about them, but it might be futile. For instance, your co-religionists are free to break off social contact with you as a response to your excommunication. Lastly, there are illegitimately imposed external costs. The state both can and should do something about them. As Barry's example, if your employer is Catholic and fires you as a result of your having been excommunicated, "[t]his is a gratuitous loss which the employer has no right to impose on you" (2001:151). Barry identifies that a membership of a group need not necessarily be voluntary even though the costs are permissible.

Conflict can still be generated between the principles, "because the costs are legitimate, the law cannot prevent them from being imposed; but because they render membership non-voluntary, they open the group to public intervention" (ibid.:152). When the two principles clash, Barry says that a practical way of resolving it would be to favour the principle of freedom not to associate "simply because the situation is one in which not much can be done by the state to protect individual interests. Even if, therefore, we are inclined to say that the pressure exerted by the group is oppressive, we may conclude that there is nothing for it but to permit it to continue" (2001:152). Hence, the practical consequence would be that the state does not stop groups from oppressing their members.

Here we should recall Okin's critique of Kukathas about the importance of power differentials within the group. Furthermore, in relation to Barry's emphasis on voluntary membership, one could ask, as does Okin, whether exit from a minority membership really is a viable option. Andreas Føllesdal argues that because of the possible thoroughgoing social consequences, it is often not feasible. "The impact of membership on members often serves to diminish their ability to deliberate about options, and the costs of exit are often so high as to make that option unavailable in

practice. Thus a formal exit option is insufficient to justify internal restrictions" (Føllesdal 1996:24). Consequently, minority groups should not be given a blank check to violate the rights of their individual members. Human individual right norms should never be subordinated to group-based rights.

3.6 Conclusion

In this chapter we have seen that Kymlicka and Barry disagree on how to organise a state composed of numerous ethnic or cultural groups. In our discussion of the two positions, some preliminary conclusions can be drawn.

I pointed out several shortcomings in Kymlicka's historical argument. National minorities are, according to Kymlicka, also colonised minorities that lost their independence through force. Conquest and colonisation violated their inherent rights to self-government. As Kymlicka's system of distinguishing between groups is proved to be problematic and the historical argument is based on it, the validity of the argument is shaken.

Nor is it clear exactly which rights should follow from the argument. Furthermore, if historical agreements in themselves are to function as fundament for group-differentiated rights, one could ask whether the agreements and the conditions under which they came about can be said to be just. Connected to the historical argument is also the frequently heard demand for compensatory justice. However, can we today expect the descendants of the exploiters to fairly compensate the descendants of the exploited?

I dismissed the validity of the argument of the intrinsic value of cultural variety and the argument about the respect for identity.

Based on the equality argument, I have accepted what Kymlicka has said about the importance of culture in order to secure freedom for the individual. Furthermore, I have supported Kymlicka's observation that in contemporary democracies majority cultures are often unfairly privileged. Hence, I believe that cultural differences must be accommodated in order to reach true equality. Nevertheless, this is not to say that the

solution to the problem is necessarily the kind of group-differentiated rights defended by Kymlicka.

Here we should bear Okin's critique in mind. If we do not take care in the granting of group-differentiated rights, we might end up violating the rights of some individuals, such as women in patriarchal societies. I do share Okin's objections about Kymlicka's distinction between internal restriction and external protection. It is not sensitive enough to detect violations in the private sphere. A group can appear to be liberal in the public sphere but its individuals can nevertheless discriminate or be discriminated against in the home. Group-differentiated rights as defended by Kymlicka, might therefore end up protecting illiberal groups Thus, only those groups that can prove themselves impeccably liberal can be served group-based rights. The fact that it would be almost impossible to sort out the truly liberal groups, and the violations of human rights are at stake, makes me favour arrangements in which rights are tied to the individual and not to the group.

By abandoning the idea of group-based rights, the question of whether differences can be accommodated within the framework of egalitarian liberalism follows naturally. Barry claims that this is fully possible through a citizenship where all citizens are given identical rights and culture is a private matter. However, as we have seen, Barry was accused of ignoring the fact that the universal laws that he defends are the product of an unfair process in which the excluded cultural minorities not have been involved. Nor have they approved of it. And furthermore, according to Roland Pierik, Barry does not develop an alternative to the multiculturalists that goes beyond a democratic welfare state. For instance, how is it possible to avoid unjust assimilation? I believe that a more specific accommodation of differences is needed to end the unjust privileges of the majority groups.

In the next chapter, I will continue the discussion on justice. I will show that there might be good reasons to be sceptical of Kymlicka's multiculturalist theory.

4. Ethnic Identity in Nicaragua

In the previous chapter I concentrated on the main arguments of the philosophers presented in this thesis. In this chapter I discuss some of the most widely used terms in the debate on group-differentiated rights. I will begin by posing the question of what an ethnic group really is. I will investigate which groups can legitimately claim special rights and what kind of rights they can claim. I will do so by introducing Kymlicka's criteria for distinguishing among groups. Then I will apply his criteria on the ethnic situation on the Atlantic Coast of Nicaragua. From there I will move on to present several understandings of ethnic identity and ethnic group in relation to culture in the Nicaraguan context. I will show that Kymlicka's understandings of ethnic identity, ethnic group, and culture are problematic and that this will have implications for the issue of justice.

4.1   National Minorities and Ethnic Groups

If some groups are to be granted special rights, it is quite essential to have clear criteria. Firstly, which groups have legitimate grounds to make claims? And secondly, what kind of claims can they make? Kymlicka offers answers to both questions.

In response to the first question, Kymlicka takes pains to note that his theory of multiculturalism only refers to ethno-cultural groups. Kymlicka does not include "'new social movements' – that is, associations and movements of gays, women, the poor, the disabled – who have been marginalised within their own national society or ethnic group" (1995:19). Furthermore, as discussed in Section 3.5, Kymlicka distinguishes liberal from illiberal groups. While the former category legitimately can claim external protection, the latter's claims will be regarded as an illegitimate claim for internal restriction.

Kymlicka argues that the mode of incorporation of the minority groups into the larger society not only affects the nature of the group but also determines the type of rights to which the group is entitled. Kymlicka presents two categories of groups: national minorities and immigrants. He then adds a third category: colonisers.

Kymlicka's use of 'nation' is closely related to the idea of a 'people' or a 'culture'. A state can contain several nations.

> The category of national minorities (or what others call 'homeland minorities') includes indigenous peoples, like the Innuit in Canada or Sami in Scandinavia, but also includes other incorporated national groups, like the Catalans in Spain, Scots in Britain, or Quebecois in Canada. These latter groups are sometimes called 'stateless nations' or 'ethnonational groups', to distinguish them from the indigenous peoples (2001:122).

According to Kymlicka, a national minority can be recognised through three criteria: it had been self-governing when it was incorporated into a larger state; the people wish to identify themselves as a self-governing group; and the people possesses a complete societal culture.

> cultural diversity arises from the incorporation of previously self-governing, territorially concentrated cultures into a larger state. These incorporated cultures, which I call 'national minorities', typically wish to maintain themselves as distinct societies alongside the majority culture, and demand various forms of autonomy or self-government to ensure their survival as distinct societies (1995:10).

Hence, national minorities both will and can assert their rights to self-government and special representation.

Immigrants, on the other hand, have, according to Kymlicka, voluntarily uprooted themselves from their national community in order to enter another society. The immigrants constitute different ethnic groups. Their members share a cultural origin, however they do not make up an institutionally complete society and they do not live in a geographically concentrated area.

> Immigrant groups are not 'nations', and do not occupy homelands. Their distinctiveness is manifested primarily in their family lives and in voluntary associations, and is not inconsistent with their institutional integration. They still participate within the public institutions of the dominant culture(s) and speak the dominant language(s) (ibid.:14).

Immigrant groups will not and cannot seek self-government or special representation rights. However, they will and can claim fairer terms of integration through accommodation rights.

In addition, Kymlicka shortly mentions a third category of colonisers. If immigrants have settled together and obtained self-governing powers and have thereby managed to be in the possession of a complete societal culture, Kymlicka terms them colonisers. The colonisers have sought to reproduce their old society within the new.

> There was a fundamentally different set of expectations accompanying colonisation and immigration – the former resulted from a deliberate policy aimed at the systematic re-creation of an entire society in a new land; the latter resulted from individual and familial choices to leave their society and join another existing society (ibid.:95).

The colonisers can, according to Kymlicka, legitimately claim self-governments rights and special representation rights as national minorities.

Brian Barry practically dismisses Kymlicka's system of concepts, deeming it futile to attempt to categorise groups in this way. There is no automatic correspondence between Kymlicka's criteria and the demands and rights of minority groups. Barry elaborates on his arguments through empirical evidence on groups that would not fit within Kymlicka's model. As mentioned earlier, one of these groups is Miami's Cuban community. The Cuban immigrants in Miami would actually meet Kymlicka's criteria as a national minority, by their complete set of societal institutions, but they would not identify themselves as one (Barry 2001:219). Barry does not only take this as evidence that the categories do not distinguish among types of groups, but also cites it to support the inconsistency of the entire multiculturalist model. In the next section, I will explore if it makes sense to draw an ethnic map of the Nicaraguan society on the Atlantic Coast with Kymlicka's clear-cut borders .

4.2   National Minorities and Ethnic Groups in Nicaragua

The Nicaraguan Autonomy Statute states that six ethnic groups on the Atlantic Coast are entitled to special rights: the Miskitus, the Rama, the Sumu Mayangnas, the Garífunas, the Creoles, and the Mestizos. They enjoy the same set of rights. Let us now see how these six ethnic groups fit into Kymlicka's categories.

I would like to start with an examination of which groups could pass as national minorities. Kymlicka's first criterion says that the group had to have been a self-governing people when it was incorporated into a larger state. The Miskitus, the Rama, and the Sumu Mayangnas would qualify. As far as the Garífunas and the Creoles are concerned, one could argue that they were self-governing by the time of the reincorporation of the Miskitu Reserve into the Nicaraguan state in 1894. However, I would consider the attempts of the British to create a Miskitu kingdom as the first creation of a state. Consequently, not the Garífunas, the Creoles or the Mestizos ran their own societies by the time of the colonisation of the territory that is today's

Nicaragua. Hence, if we consider these historical events as incorporation into a state, none of the three latter groups constitute national minorities.

Kymlicka's second criterion is that the people wish to identify as a self-governing group: "national minorities require certain guarantees regarding their lands, cultural institutions, and political self-government" (2001:124). Kymlicka insists that it does not necessarily mean 'self-determination' in the narrow sense of Article 1 in the UN Charter of Human Rights. "Many national minorities do not need, and do not want, their own independent state. They want some form of autonomy within a larger state, rather than seeking secession" (ibid.:124). In Nicaragua all six groups express to varying extent that they identify themselves as self-governing groups when it comes to the traditional land, natural resources, and their cultural institutions. However, most members of these ethnic groups do not claim a political self-government based on ethnicity[41]. They rather claim special representation rights within a system of territorial autonomy. Hence they do not seek secession, but they do demand certain rights to enable them to control the above-mentioned areas. In Nicaragua, it is assumed that these rights are best guaranteed within a state of polyethnic autonomous regions in which all groups are represented in political institutions on the regional level (Hegg and Ortega 2001). We see that it is hard to say whether Kymlicka would regard the different ethnic groups as self-governing groups, as they do not seek self-government by ethnic criteria. Kymlicka argues that immigrants that have recently settled in an area would seldom assert claims for self-government. "There is simply no evidence from any of the major Western immigration countries that immigrants are seeking to form themselves into national minorities, or to adopt a nationalist political agenda" (Kymlicka 2001:161). Hence, those that do put forward such claims would then be likely to fall within the categories of national minorities or colonisers. In the case of Nicaragua, this would mean that if the groups could be said to identify themselves as self-governing, none of the groups could be termed immigrants.

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[41] An exception is the political group, YATAMA. Some factions are radical in their claims for autonomy in the meaning independence, either for the Miskitu people or for the indigenous peoples of the Atlantic Coast.

The third criterion for being a national minority, which also goes for colonisers, states, that a people possesses a complete societal culture. This is perhaps the most difficult criterion to assess and if we follow the conclusion in Chapter Three, perhaps the most important criterion. If a societal culture is necessary to individuals' freedom, then in relation to liberal justice, what should matter is whether the group is able to provide its members with a societal culture essential to their individual freedom today, and not the mode of incorporation (Bendiksby 2000:38). On the Atlantic Coast one could say that all six groups provide their members with meaningful ways of life in private spheres. Most of the members of the ethnic groups live on traditional land. Generally the members of the different ethnic groups share a distinct culture and a language[42]. These groups generally demand the protection of their social practices and culture. However, at the same time we see that in public institutions such as schools, media, law, economy and government, Spanish is the dominant language. Furthermore, one can say that all six groups demand an active part in the common economic and political spheres within their respective autonomous regions. In the urban centres the pattern is somewhat similar, although perhaps less distinct.

To my knowledge no extended study has mapped interethnic relations in Nicaragua's urban centres. However, some of my informants told me that members of an ethnic group tend to live in the same zones in these urban centres. Even some of their social institutions are separate. The most visible evidence of this is found in Bilwi, where the Creole Moravian church stands next to the Miskitu Moravian church. Furthermore, the close informal networks of friends have historically tended to be monoethnic. However, this is changing. Members of the different ethnic groups intermingle more than in the past and intermarriages are commonplace. Consequently, one could not argue that the intimate sphere is monoethnic, but one could say that members of the same ethnic group most likely dominate an individual's intimate

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42 Some of the groups do not use their original language. This is the case for the Rama people of whom only about 35 people speak Rama. Today the Rama people speak a distinct form of Creole English. Much the same goes for the Garífunas, who have almost lost their language. The Garífunas in Nicaragua speak Creole English.

sphere. At the same time the members of the different groups share most of the public institutions and interact in daily life.

An interesting question is thus whether members of the Atlantic Coast ethnic groups are provided with the context of choice necessary for their individual freedom according to Kymlicka's theory. If one were faithful to Kymlicka's definition of a societal culture, one would have to say no.

> By a societal culture, I mean a territorially-concentrated culture, centred on a shared language which is used in a wide range of societal institutions, in both public and private life (schools, media, law, economy, government, etc.). I call it a societal culture to emphasise that it involves a common language and social institutions, rather than common religious beliefs, family customs, or personal lifestyles (Kymlicka 2001:25).

An exception could be the Mestizos, whose mother tongue is Spanish. One problem with this definition, however, might be that the Mestizos do not occupy one specific territory. If one argues, however, that the relevant territory is the Atlantic Coast or Nicaragua as a whole, it would not contradict the definition of a societal culture.

In short, none of the groups on the Atlantic Coast of Nicaragua would, according to Kymlicka, qualify as a national minority, as in a people or a nation. Not even the Rama, the Miskitus or the Sumu Mayangnas who are considered indigenous peoples, would be entitled to self-governing rights or representation rights. The Mestizos, on the other hand, could claim all types of rights by virtue of being colonisers. Their ancestors came voluntarily, the groups can be said to be in the possession of their own societal culture, and they identify themselves as a self-governing group.

Iris Marion Young, herself a multiculturalist, accuses Kymlicka of being too categorical in this respect. It is neither realistic nor desirable to put all groups into these mutually exclusive categories. Young rather prefers to place the groups along a continuum.

> Whether a cultural group can be thought of as a societal culture, which Kymlicka calls a nation, whose practices and institutions cover a full range of human activities, is certainly a matter of degree, rather than the either/or distinction Kymlicka makes it. Whether a cultural minority dwells within a larger society because of voluntary actions on the part of its members is also a matter of degree. Cultural minorities vary along a continuum, finally, in the degree and manner in which they wish to integrate into a larger society and the degree they wish to be separate, and the degree to which the larger society welcomes their participation also varies (1997:50).

Furthermore, Young criticises that Kymlicka's only options for cultural groups are separation or integration. Hence, what distinguishes a national minority from an ethnic group is that the former seeks and has the right to seek separation whereas the latter seeks and is expected to seek integration into the majority culture. Young, however, claims that reality is much more complex and states that Kymlicka ignores the difference between:

> inclusion in economic opportunity and political decision-making, and inclusion in the dominant national culture. Many of those groups Kymlicka classifies as ethnic minorities today demand inclusion in economic and political life at the same time that they reject the expectation that they should become socially and culturally integrated (ibid.:51).

Hence, according to Young, Kymlicka's two mutually exclusive categories should be more nuanced. As shown, the empirical evidence favours Young's continuum over Kymlicka's two alternatives; either you possess a societal culture or you do not. Within Young's framework, all six of the groups could claim group-differentiated rights. According to Kymlicka's theory, neither the Creoles, the Garífunas, the Miskitus, the Ramas, nor the Sumu Mayangnas would fit within the categories of national minorities, immigrants or colonisers. Then, what kind of groups are they? What kind of rights can they legitimately claim?

Kymlicka himself recognises the existence of anomalies: groups that do not fit within his categories. However, he does not see any need to revise his model simply because of some exceptional cases. Kymlicka argues that in order to comprehend the anomalies, we first have to understand the conventional cases. This is because "the demands of in-between groups are often a complex hybrid of different (and sometimes contradictory) elements drawn from the more familiar models of ethno-religious marginalisation, immigrant integration, and separatist nationalism" (2001:31). In spite of his awareness of this problem, Kymlicka does not give us specific guidance on how to treat groups that fall outside his model. In Nicaragua's case this would include all of the groups, except the one group, in which the ancestors of its members violently conquered already occupied land. If only one out of six groups can be categorised, this might signify that Kymlicka's model is not applicable to Nicaragua.

Anne Julie Semb argues, as does Kymlicka, that in order to work out a proper public response to ethno-cultural differences, it is important to distinguish between

two distinct kinds of cultural communities: nations and ethnic groups. Semb however, criticises Kymlicka for assuming that "every culturally distinct group that has a long-standing territorial base is, by definition, a nation" (Semb 2000:5). Semb claims that a nation should be distinguished from an ethnic group by the former's desire to establish some form of political autonomy. Hence, the role that a group played in the state-making process, emphasised by Kymlicka, is of no importance.

> I believe it is more fruitful to regard it an empirical question whether members of such groups have developed a separate national consciousness and thus aspire to establish a separate sovereign state or some other form of "politically separate existence", or can combine their ethnic or cultural identity with the larger national identity and thus perceive themselves as members of ethnic groups within the nation" (ibid.:5).

Thus a nation is a cultural community that has developed a national identity and this "involves some sense of political community, however tenuous" (ibid.:3). What generates this feeling of nationality varies from common religion, shared history, or the experience of living together under the same political institutions. If a group has developed a national identity, this signifies that "markers of ethnicity have become the basis for incompatible national identities" (ibid.:1). This would call for different solutions than if the members of a group can hold a larger national identity in addition to their distinct ethnic or cultural identity at the same time. Semb realises however, that it might be difficult to distinguish one kind of group from the others.

> Many nations have an ethnic origin, and ethnic groups may be transformed into nations. The degree to which an ethnic group has developed a national consciousness may sometimes be a question of considerable dispute within the group itself, and the answer may certainly change over time. It may also not be clear who properly belongs to the group and who does not (ibid.:5).

Despite these problems, Semb deems it important to distinguish among the categories of groups in order to find the best remedy for the society at hand.

4.3 Ethnic Identity, Ethnic Communities and Culture

How can one characterise an ethnic group, and what is the relationship between an ethnic identity and culture? Earlier anthropological theory regarded culture and ethnicity as synonymous. In the 1960's however, there was a shift in the general understanding that the two phenomena were separate. "While ethnic identity should be taken to refer to a notion of shared ancestry (a kind of fictive kinship), culture refers to shared representations, norms and practices" (Eriksen 2001:1). It is possible to have

one but not the other. Thus, there can be ethnic differences without cultural differences, just as there can be cultural variation within an ethnic community (ibid.:1).

Ethnic identity has been understood differently within the scholarly discipline of anthropology. The main battle lines have been drawn between the primordialists and the instrumentalists. The primordialists have argued that ethnic identity is inherent and given. "According to Shils, primordial attachments to kin, territory, and religion were characterised by 'a state of intense and comprehensive solidarity', 'coerciveness', 'ineffable significance', 'fervour and passion', and 'sacredness'" (McKay 1982:62). The instrumentalists on the other side, have criticised a primordial comprehension of ethnic identity for its "psychological reductionism, its inability to account for social change and its disregard for political and economic influence, it fails to provide a comprehensive theoretical explanation of ethnic phenomena" (ibid.:65). The instrumentalists have denied that ethnic identity is primal and predetermined. Ethnic identity rather is open to rational and calculated manipulation by the individuals for political purposes. Ethnic identities are fluid and variable (ibid.:64).

A related anthropological debate has taken place between an essentialist and a constructivist understanding of ethnic or national communities. Essentialism supports the idea that ethnic communities grow organically out of "pre-existing cultural communities" (Eriksen 2001:2). Constructivism on the contrary, argues that ethnic communities are consciously created and moulded (ibid.:2). The existence of ethnic communities can be said to result from perceived differences between individuals. Ethnic communities are constantly changing as a consequence of social contact and evolving interpretations.

According to Thomas Hylland Eriksen, studies of identity have replaced cultural studies and this has "entailed an intense focus on conscious agency and reflexivity; and for many anthropologists, essentialism and primordialism appear as dated pre-Darwinian biology" (Eriksen 2001:3). Eriksen sums up the central orthodoxies of contemporary anthropological understandings of ethnicity and the politics of identities this way:

- Although ethnicity is widely believed to express cultural differences, there is a variable and complex relationship between ethnicity and culture; and there is certainly no one-to-one relationship between ethnic differences and cultural ones.
- Ethnicity is a property of a relationship between two or several groups, not a property of a group; it exists *between* and not *within* groups.
- Ethnicity is the enduring and systematic communication of cultural differences between groups considering themselves to be distinct. It appears whenever cultural differences are made relevant in social interaction, and it should thus be studied at the level of social life, not at the level of symbolic culture.

Ethnicity is thus relational, and also situational: The ethnic character of a social encounter is contingent on the situation. It is not, in other words, inherent (2001:3-4).

Eriksen accepts the constructivist understanding that ethnicity is a social creation in a constant process of change. However, he argues that the instrumental comprehension places too much emphasis on choice and strategy of the individual in political identity analysis. Eriksen argues that due to the importance of personal experiences, ethnic entrepreneurs do not manipulate the identity as easily the instrumentalists claim. Strong collective identities are embedded in personal experiences.

Kymlicka's treatment of culture and ethnicity is puzzling. It is difficult to draw a clear picture of his conceptions of the nature of and the relationships among the different phenomena. Kymlicka's discussion of ethno-cultural groups might signify that he strictly refers to groups that are both ethnic communities and cultural groups. Hence, he seems to regard culture and ethnic identity as separate but connected phenomena. Although Kymlicka does not define the distinction between them, he seems to understand culture as the more stable underlying ethnic identity. We can draw this conclusion from Kymlicka's statement about national identities. "But it is important not to confuse the heroes, history, or present-day characteristics of a national identity with the underlying national identity itself" (1995:185). By underlying national identity I interpret, as does Bendiksby, that Kymlicka is referring to culture as distinct from national identity or ethnic identity (Bendiksby 2001:41).

When it comes to a multiculturalist understanding of the nature of ethno-cultural groups, Kymlicka argues that it must be:

fluid in its conception of groups and group boundaries (i.e. it must accept that new groups may emerge, older groups may coalesce or disappear); voluntary in its conception of group affiliation (i.e. it must accept that individuals should be free to decide whether and how to affiliate with their community of descent); and non-exclusive in its conception of group identity (i.e. it must accept that being a member of one group does not preclude identification with another group, or with the larger American nation) (2001:265)

Hence, at first sight, Kymlicka seems to have adopted a constructivist understanding of culture and ethnicity. Kymlicka recognises the fluid character of groups and that changes occur. This is furthermore underlined by Kymlicka's critique of an primordialist understanding: "As da Cunha notes, this misunderstands the nature of ethnic identity, which is dynamic not static" (ibid.:141).

However, in another line from the same book, Kymlicka shows a rather primordialist comprehension of both ethnicity and culture. He argues that granting group rights would not lead to an escalation of demands from other groups, as in a slippery slope, as ethno-cultural groups are relatively stable: "we need to show that ethnocultural groups do not form a fluid continuum, in which each group has infinitely flexible needs and aspirations, but rather that there are deep and relatively stable differences between various kinds of ethnocultural groups" (2001:59). Here Kymlicka seems to agree that there is something inherent within the cultures or within the ethnic identities that make them different from each other.

Furthermore, if we look more closely at the previous quote, Kymlicka claims that some groups might disappear. Equally, Kymlicka says, "it would not be surprising if there is very little left of some cultures" (Kymlicka 1995:100). These statements make no sense from a constructivist point of view. Cultures cannot die. They can only change as a result of choices taken by their members. Culture should be understood as processual. According to Eriksen, cultural differences cannot be measured and are therefore analytically elusive (Eriksen 1993:136). "Group identities must always be defined in relation to what which they are not – in other words, in relation to non-members of the group" (ibid.:10). This is to say that, as the individual's culture is what this person both shares and does not share with others of different cultural or ethnic identities a culture cannot get thinner. It is a relation, not a property.

Juliet Amalie Hooker criticises Kymlicka's understanding of culture as synonymous with a "nation" or a "people" in addition to his use of this definition to distinguish national minorities from ethnic groups. "The problem is that by using culture in this way Kymlicka ends up reifying the same concept he sought to deconstruct at the outset of his analysis: the idea of a single, unitary national culture

that serves as the foundation for civic solidarity (2001:59)". In other words, Hooker claims that Kymlicka's point of departure is to challenge "the notion of bounded, separate, and internally uniform national cultures" (ibid.:59), however, he ends up adopting this essentialist understanding.

Kymlicka's problematic perception of culture might be due to his emphasis on 'societal culture' in place of 'culture' in relation to personal freedom. A 'societal culture' was previously defined as "a territorially-concentrated culture, centred on a shared language which is used in a wide range of societal institutions, in both public and private life (schools, media, law, economy, government, etc.)" (Kymlicka 2001:25). 'Culture' on the other hand is defined as "common religious beliefs, family customs, or personal lifestyles" (2001:25).

> Indeed, my use of the term 'societal culture' is in conflict with the way the term culture is used in most academic disciplines, where it is defined in a very thick, ethnographic sense, referring to the sharing of specific folk-customs, habits and rituals. Citisens of a modern liberal state do not share a common culture in such a thick, ethnographic sense – indeed, the lack of a common thick ethnographic culture is part of the very definition of a liberal society. But it equally essential to modern liberal forms of governance that citisens share a common culture in a very different, and thinner, sense, focusing on a common language and societal institutions (Kymlicka 2001:25).

From these definitions, we can see that it might make sense for Kymlicka to measure a societal culture and even declare it dead if a culture is not represented in societal institutions. Trygve Bendiksby made a similar argument, quoting Thomas Hylland Eriksen:

> The question of to which degree one 'culture' is different from another, and the degree to which a 'culture' possesses the characteristics of a 'societal culture', are separate issues. In other words, it is not cultural differences in itself which is of relevance for Kymlicka's view on the relationship between culture and freedom, and hence for the justification of group-differentiated rights (Eriksen in Bendiksby 2000:42).

Thus what complicates Kymlicka's theory is not that the freedom of the individual is dependent on the cultural surroundings, but rather the connection Kymlicka makes between a 'societal culture' and his categories of ethnic identity: national minority, immigrants and colonisers (ibid.:42).

4.4   Ethnic Identity in Nicaragua

4.4.1. Markers of Ethnic Identity

If we are to draw borders between ethnic groups, how can we distinguish one from another? What makes a Miskitu a Miskitu? In other words, what do all the members of the Miskitu group have in common that no member of the Rama group has? During my fieldwork I investigated this question. Unfortunately, little ethnographic research has been done on this topic. Hence, I basically had to rely on my informants and other people with whom I discussed it. In general, language, shared myths of origin, a common culture and the attachment to traditional land are important markers of ethnicity.

4.4.1.1.   Language

The role of language in ethnic identity varies greatly on the Atlantic Coast. If one asks a Creole what is most important for the Creole identity, the Creole language would most likely be rated as central. Equally, if a Miskitu were to describe what makes him a Miskitu, the language would be one of the most obvious markers. As far as the Sumu Mayangnas are concerned, language as an ethnic identity marker is more complex. The Sumu Mayangnas are divided into three different language groups: the Panamahka, the Twahka, and the Ulwas. I have not been able to find analyses on the relationship between the identity as a Sumu Mayangna and the identity as member of one of the language groups. Mark Jamison however, has studied linguistic variation and ethnic identity among the Sumu Mayangnas and the Miskitus. Jamison argues that the traditional explanation that the Miskitu raids wiped out so many Sumu Mayangna communities during the sixteenth and seventeenth centuries must be modified. The decrease in numbers is partly a consequence of Sumu Mayangna groups that have started to speak Miskitu or Spanish. Through the change of language, the Sumu Mayangna communities were converted into Miskitu or Mestizo communities (Jamison 2001). According to Jamison, this is a process that continues today.

Jamison's study shows that language can be decisive for ethnic identity. It also shows that ethnic identity is fluid. I would add that during my field study I met a family that spoke Miskitu as their first language but identified themselves as Ulwas.

We could interpret this phenomenon in two ways. Either language is not as an important identity marker as Jamison claims, or that this family is in a process of change. In other words, their descendants most likely will identify themselves as Miskitus.

In other situations, language is not valued as the central marker of ethnic identity. An individual that identifies himself as a Rama need not speak Rama. All the same he is a Rama. The Garífunas in Nicaragua have lost their original language; nevertheless, there is no doubt that they exist as a group. In short, while language can be an important marker of ethnic identity, it is not necessary to have a common language to feel that one belongs to a community (Anderson 1998).

4.4.1.2. Shared Myths of Origin

Some of my informants mentioned shared myths of origin as a marker of ethnic identity. According to José Idiáquez, the Garífunas' shared myths of their origin are particularly important for their ethnic identity. The religious rituals, based in the cult of the ancestors and mixed with elements from Catholicism, are present in every stage of a Garífuna's life. Idiáquez claims that the power and the wisdom that arrive from the spirits of the ancestors permeate the lives of the Garífunas (Idiáquez 2001:13). The Garífunas' God manifests himself through the universe, the land, the sea and the heaven. The land is sacred because the Garífunas inherited it from their ancestors. The sea is the symbol of autonomy of the Garífunas. God and the ancestors live in heaven, which is the source of the light of the sun (ibid.:20).

Idiáquez argues that the shared myths of origin of the Garífunas are essential to their ethnic identity and survival. The other ethnic groups on the Atlantic Coast also have their own myths of origin. However, it is not certain to what extent the individuals that identify themselves as members of a group today really share these beliefs. Within the different ethnic groups on the Atlantic Coast we find a variety of religions. Hence, it is hard to measure the significance of a shared myth of origin for ethnic identity.

4.4.1.3. Land

It is commonly argued that the members of the indigenous groups have a special and sacred connection to their land, which is important in their ethnic identity. Keeping control of their ancestral land therefore becomes a key part of their members' identity, and thus to their personal freedom. Gerald Mueller Riverstone, claims that for the Ramas

> the identity, the history and the geography are strongly intertwined. They inhabit a landscape with many stories in which every turn of the river or the road in the forest seems to evoke a narrative of events in the past. In this way the landscape can be understood as an archive of the shared memory and the collective identity of the Ramas (Riverstone 2003:9 M. H translation).

In other words, the ethnic identity is closely connected to the traditional land. However, does not such an understanding come close to a primordialist definition of ethnicity? Taken to its logical conclusion, would it not mean that only those cultivating the land in a traditional manner could identify oneself as a member of that particular group that have been occupying the territory? Someone living in the urban centres or who has taken another occupation cannot thus be a Rama. As there are individuals that identify themselves as Ramas even though not living on the traditional Rama land, we see that the land is not inevitably a marker of ethnic identity although land in certain situations for certain individuals perhaps acts as a source for ethnic identification.

4.4.1.4. Culture

I have defined culture as "shared representations, norms and practices" (Eriksen 2001:1). Cultural differences can be found among the different ethnic groups. Generally one could claim that a Creole has norms and practices that a Miskitu does not. However, there is no perfect overlapping of culture and ethnicity. To explain this, we can picture two people who identify as Miskitus. X is educated and lives in the urban centre of Bluefields while Y is a farmer living in Las Minas. X would most likely have more in common culturally with a Sumu Mayangna or a Rama living in Bluefields than with Y. Equally, the cultural distance between Y and a Sumu Mayangna farmer in Las Minas would probably be smaller that to X. Furthermore, is it not likely that a Miskitu woman living in a community perhaps feel closer culturally to a Mayangna woman from a community, than to a Miskitu man?

On the Atlantic Coast there are few common cultural markers such as dress code or other visible markers shared by all members of an ethnic group. In short, we could state that a shared culture cannot always be as a marker of ethnic identity. As Barry argues: "Even if we want to say that there is a women's culture, a black culture or a gay culture, the extent to which members of the group identity with such a distinctive group culture varies greatly from one member to another" (2001:307). Eriksen claims that: "In some cases, groups may actually become culturally more similar at the same time that boundaries are strengthened" (1993:38). He continues: "It would therefore be misleading to argue that ethnic boundaries contain 'cultures'. Cultural differences relate to ethnicity if and only if such differences are made relevant in social interaction" (ibid.:38).

4.4.1.5. Relational Self-identification

Based on the discussion above, I will argue with Eriksen (ibid.:11), that there is no such thing as a fixed set of common criteria to demarcate groups. As Michael Moerman (1965) found when studying the Lue in Thailand: "Since language, cultures, political organisation, etc., do not correlate completely, the units delimited by one criterion do not coincide with the units delimited by another" (Eriksen 1993:11). Moerman concluded that: "(s)omeone is Lue by virtue of believing and calling himself Lue and of acting in ways that validate his Lueness" (ibid.:11). As one does not always share cultural traits with one people, "cultural boundaries are not clear-cut, nor do they necessarily correspond with ethnic boundaries" (ibid.:34). What it thus boils down to is self-identification. As self-identification is relational, this signifies that it is a product of contact with what one identifies with 'others'. In addition to identify oneself as different from the 'others', one must also be recognised as different by others.

If however, relational self-identification is the only relevant criteria, we would have to discard Kymlicka's definitions of national minorities, immigrants, colonisers and societal culture as criteria for entitlement to group-differentiated rights. If one Rama claims to be a Rama and the "others" recognise him to be a Rama, then the Ramas exist, even though their language is almost extinct and they do not possess a

societal culture. Hence, the cultural background that is important to the freedom of the individual does not have to be the societal culture that Kymlicka defends. It can be the local community, or the urban culture, which is dominated by the Mestizo culture. Here again we see the problem with Kymlicka's use of societal culture. It is not that the cultural background is insignificant for identity, but rather the link Kymlicka argues in favour of between a societal culture and his categorise of ethnic identity: national minority, immigrants and colonisers.

4.4.2. Costeño Identity

Costeño identity has, according to several of my informants, been important since long before the incorporation of the Miskitu Kingdom into the Nicaraguan state. The geographical distance between the Mestizo dominated Pacific Coast and the Atlantic Coast, the colonial history of separation and affiliation to different colonial powers, cultural differences, and the continuing discrimination from the Pacific part of Nicaragua towards the inhabitants of the Atlantic Coast have been essential elements in the shaping of a costeño identity. A survey earlier referred to conducted by Hegg and Ortega shows that the costeño identity is an important source of identity. In 2001, 63.2% of those questioned felt as much or more costeño than a member of their ethnic group (Creole, Garífuna, Mestizo, Miskitu, Sumu-Mayangna and Rama). Approximately 30% responded that they felt more costeño than member of their ethnic group. Thirty-three percent felt that they were as costeño as a member of their ethnic group, while 29.7% felt more like a member of their ethnic group than costeño (Hegg and Ortega 2001:18-19).

4.4.3. Multiple Identities

Ethnic identity is only one of many possible identities the individuals possess and can choose between (Eriksen 1993:31). An individual might identify herself as a Miskitu in relation to a person that identifies himself as a Rama, however other times the individual might call herself a costeño, at others a Nicaraguan, or a Latin American. In other situations she might prefer to identify herself as a woman, a mother, a Catholic, or a Sandinista. According to Eriksen "it is an empirical question when and how ethnic

identities become the most relevant ones" (ibid.:31). Consequently, the importance of a specific ethnic identity will vary among individuals.

4.4.4. A Contradiction?

If we turn to Nicaragua, we see that the legal and political recognition of difference can have unexpected consequences. Let us look at the new law on collective land rights: Law 445. While the law might solve some important problems it might very well create others. There is reason to believe, that if the law is properly implemented it will put a stop to migrants from the east settling on traditional communal land, the capitalistic speculation in the purchase of communal land, foreign companies' exploitation of the natural resources, and the previously unspecified relationship among the regional and national administrations. There is no doubt that these are critical issues in present day Nicaragua. However, is a law on collective land rights the solution?

Firstly, as the relationship between the ethnic groups is changing through interaction and intermarriage, and there are no clear- cut boundaries between the ethnic groups, it is still uncertain where to draw the borders. The mapping will therefore be highly contested. Furthermore, who is entitled to rights? Eriksen recognises this problem. He argues that in order to grant group rights, there must be a subject, hence something stable (1997:4). However, ethnic groups are not static. Ethnicity is relational and situational. Hence, it would be difficult to draw the borders between the groups and to connect legal rights to something that is always changing. An appropriate question would be whether it is possible to defend a regime of communal land rights without adopting a rather outdated primordialist understanding of ethnic identity as stable and inherent.

Nevertheless, if we were to grant collective land rights, the preferable criteria to follow, as argued above, would be self-identification. This however, does not solve all the problems, as other difficulties present themselves when borders are drawn between the ethnic communities and rights are connected to membership in the ethnic groups.

First of all, the law can interfere in the process of group creation and change. This is because the law might make it more attractive to become a group member if land is tied to group membership. According to David Miller, there is an inherent contradiction in recognising the fluidity of group identities and placing certain groups within the political system by giving them special rights denied to others. In contemporary societies, as a consequence of social mobility and cultural mixing, most people have multiple ethnic identities. "Ethnic identities are in flux (in the sense that people can move more freely between them, and many choose to adopt a hybrid or composite identities)" (2000:70). This means that the self-ascribed ethnicity depends on choice. By politically recognising one specific ethnic identity, it is highlighted in comparison to other possible identities. "The political recognition of group identities may be important because it fixes and consolidates identities which in the free play of civil society would otherwise become amorphous" (ibid.:70). "What is now fluid and uncertain would become clearly specified for all those who chose to accept the politically-defined identity" (ibid.:71). Hence, political recognition interferes in the process of group changes. Group rights will make it more lucrative to identify oneself as a member. It will also present group membership as something more important and more real than other identities. Similarly, Barry argues that if minority rights are granted in a society, these rights in themselves give the incentive to continue demanding special rights, as they contribute to our understanding of reality. "This is that multiculturalist policies are not simply a passive adaptation to an ineluctable fact of cultural diversity. Rather, multiculturalism actually creates the reality which is then, in a circular process of self-reinforcement, appealed to as a justification for a further extension of multiculturalist policies" (2001:315).

Structuring society into groups and thus freezing group relations might in fact heighten the risk of ethnic conflict. This is because, as clear-cut boundaries are drawn between different groups, mutually exclusive categories are created. This can easily lead to a greater gap between the groups and an understanding of the other, resulting in polarisation. In other words, if being a Miskitu gives you the right to the land, in contrast to your Mestizo neighbour, the ethnic difference is made highly relevant in

everyday life. A picture of them and us is manifested. Consequently, the law on collective land rights might provide a breeding ground for conflicts between adjacent ethnic groups.

Another concern is that, if the political discussion is concentrated on groups, then the freedom of the individual might become restricted. It is not so that all individuals necessarily value ethnic identity. To some people, their ethnic identity might not matter. However, the implementation of group rights would make it difficult to maintain this perception of the insignificance of ethnic identity. Furthermore, a discourse centred on groups might omit individual variation. Thomas Hylland Eriksen is reluctant to politicise culture. Eriksen argues that we cannot ignore the importance of variations within the group: "The mere fact that the formal leaders of an ethnic group invoke particular values and traditions does not imply that all members of the group support them. This is why it can be dangerous to accord special rights to groups, for groups inevitably consists of persons with often highly discrepant values and interests" (1997:8). It might thus be difficult to grant rights to a group as the members have diverging worldviews and different ways of leading their lives. A rich person and a poor person, or an old person and a young person within the same group might differ considerably. Consequently, the fact that culture is important to freedom has to be understood in the way that the particular culture of each individual is important to the freedom of that individual. This includes, "[t]he right to have an ethnic identity must also include the right not to have one" (ibid.:10). A law on collective rights to land might make this difficult and thus restrict the freedom of the individual.

If we recall the arguments for group rights discussed in the previous chapter, we can see many of them applied in the claim for collective land rights. I will however, only address one here, that of the historical right of the group to cultivate the land of its ancestors. This commonly heard argument on the Atlantic Coast has already been critiqued on normative grounds. The normative objections are obvious if we look at the implications of Law 445. Are we to return all the land that was wrongly taken from the indigenous in Nicaragua? Does this include the return of land to different Sumu Mayangnas from the descendants of the Miskitus who conquered the land from

Sumu Mayangnas? The Sumu Mayangnas have for generations been driven off by the Miskitus (Jamison 2001). How is it justified that the Mestizos or Miskitus of today shall pay for the misdeeds of their ancestors? How far back are we supposed to go, if history itself is the justification? And what will happen to indigenous groups or ethnic communities occupying the traditional land of another group[43]? As explained in the previous chapter, Kymlicka admits these difficulties. However, what does it really mean in the context of Nicaragua when Kymlicka states that a just theory of land would have to be more 'community- or culture sensitive' by combining "a commitment to international (and intercultural) redistribution, environmental protection, and respect for cultural differences" (2001:151)? A commitment to international (and intercultural) redistribution would mean that poor people from over populated areas not only in Nicaragua, but internationally could make a justified claim to land on the Atlantic Coast. The second concern, however, says that only those who use the land in a sustainable manner are entitled to it. The third concern of 'respect for cultural differences' might imply that the indigenous peoples traditionally occupying the area have the right to the land. Hence, Kymlicka's solution contains three often contradictory concerns and it does not give much guidance on the question of land rights in Nicaragua.

To summarise, it would be fruitful to pay attention to the arguments of Hylland, Eriksen, and Miller. Collective rights might freeze ethnic relations, interfere in group changes and exacerbate intergroup conflict. However, the land law is too new to draw any conclusions.

4.5   Conclusion

Based on the analysis in this chapter, there are ample reasons to be hesitant to grant group-differentiated rights in accordance with Kymlicka's multiculturalism. The

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[43] An example can be seen in Monkey Point. The area is traditional Rama land, but a community of Creoles has for generations been living there.

entire foundations of Kymlicka's theory are on shaky ground as Kymlicka seems to build his theory on outdated understandings of ethnic identity and culture.

Kymlicka's principal argument for group-differentiated rights is that membership in a societal culture is fundamental for individual freedom. In order to guarantee individual freedom, cultures have to be protected through group-differentiated rights. Based on a constructivist understanding of culture I rejected Kymlicka's implication that cultures can die if they are not safeguarded. Furthermore, although I agree that the cultural context of individuals might be important for their freedom, I questioned the connection Kymlicka makes between a 'societal culture' and his categories of ethnic identity: national minority, immigrants and colonisers. If the cultural context of individuals is always tied to particular identities, the result is a primordialist understanding of ethnic identity.

What complicates Kymlicka's theory even further is that his criteria for who can claim what rights are directly linked to his definition of the mutually exclusive categories of ethnic identity. As ethnicity is relational and situational, it might be impossible to divide society into a predetermined and finite number of groups. I found that these categories do not fit the ethnic reality of Nicaragua. I therefore discard his criteria for entitlement to group-differentiated rights. If however, such rights were to be granted, relational self-identification should be the only relevant criterion.

Group-differentiated rights might interfere in the process of group change. There is apparently a contradiction in recognising the fluidity of group identities and granting special rights to certain groups. Group-differentiated rights might freeze ethnic relations and heighten the risk of ethnic conflict.

Since the individuals are expected to identify with a definite set of groups, multiculturalism depends on a degree of homogeneity within the groups. This is problematic as ethnic identity varies greatly among individuals. Group-differentiated rights might therefore restrict the freedom of the individual.

Egalitarian liberalism avoids the problem of selecting some groups for special rights. Since much of the discrimination endured by members of minority groups has

been a result of illiberal institutions, it is not self-evident that cultural plurality in society calls for group-differentiated rights.

Illiberal and dysfunctional institutions rule Nicaragua. On the Atlantic Coast one of the major threats to justice today is the drug trade. Most of my informants claimed that drug money rules the civic and political institutions. Furthermore, there is widespread ethnic, gender and class-based discrimination. Hence, in Nicaragua, justice and equality should not exclusively be considered in terms of ending ethnic and cultural discrimination. It is also a matter of abolishing corruption and nepotism, economic inequalities and gender inequalities. Both egalitarian liberalism and multiculturalism would demand these changes as they would require ending discrimination through institutions and policies that satisfy the demands of justice.

5. Democratic Organisation of the Nicaraguan State

The objective of this chapter is to investigate how our two models meet two key criteria of democracy: popular control and political equality. As I stated in Chapter Three, I will look at electoral turnout on the Atlantic Coast. As far as political equality is concerned, I understand political equality as extending beyond the formal starting position as well as extending to equalities between social groups. My understanding stems from a history of exclusion as well as a widespread recognition of Mestizo political supremacy. Hence, I will investigate equality in participation by studying how members of minority groups actively participate in political institutions on the municipal, the regional and the national levels. The question that follows is which of the two models of institutional design could lead to a more democratic Nicaragua.

5.1 Popular Control and Political Equality in Nicaragua

5.1.1. Popular Control

One way of investigating popular control is to focus on political accountability. Political accountability can, although insufficient, be measured in terms of voter participation on election day. Unfortunately, it is impossible to obtain data on the extent to which the electorate votes in a retrospective manner, to sanction or reward incumbent candidates, or whether they vote to select the candidate that they believe will do best in the future. The lack of this kind of data will naturally weaken the data's possibility to judge whether accountability really increases popular control in Nicaragua. Nevertheless, I find it worthwhile to look at the electoral turnout. Although there is universal suffrage in Nicaragua, voter participation is low on the Atlantic Coast.

From 1990 until 2002 there were nine elections on the Atlantic Coast of Nicaragua (three national, four regional, and two municipal) (Chávez 2002:28-37). In the 1990, 1996 and 2001 national elections, the percentages of the electorate in RAAN and RAAS that participated were 79%, 57% and 67% respectively[44]. The comparable

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[44] I could not obtain statistics on participation of members of the ethnic groups.

averages in the rest of the country were 7%, 19% and 10% higher than in the autonomous regions (ibid.:31). In the 1996 and 2000 municipal elections, 57% and 38% of the electorate participated. This was 19% and 26% lower participation than the nationwide average (ibid.:32). In the 1990, 1994, 1998 and 2002 regional elections, the turnout was 78%, 74%, 57% and 41% (ibid.:36). Hence, we clearly see two trends. Firstly, participation is distinctly lower in the autonomous regions than in the rest of Nicaragua. Secondly, there is a serious drop in participation in the regional elections.

How are we to interpret this? Is the low turnout due to distrust in the political system and a lack of interest in politics, or is it a result of administrative problems?

A common answer on the Atlantic Coast is that the low participation is due to administrative problems. The electoral processes have been plagued with problems. The two autonomous regions have the lowest population density, the fewest roads and the weakest infrastructure in the country. RAAN and RAAS make up 46% of the national terrain but have only 8.26% of the accessible roads (ibid.:29). This results in difficulties with communication, the spread of information, and difficulties of getting to the polling station for the electorate. Furthermore, there has been a general lack of training of the personnel that organise the elections and inefficiency of the administration. This has led to problems with voter registration. People have come to the polling station and been forbidden to vote because they were not registered. The lack of documentation and identity cards has also discouraged some people from voting. The autonomous regions have a higher percentage of papers and documents that have not been distributed than the rest of the country[45]. A survey conducted after the 2000 municipal elections showed that 61.7% of those that did not participate were hindered by factors beyond their control (ibid.:34). The remaining 33.7% however, did not vote for political reasons; the process, the candidates, lack of interest, and as a reaction of the exclusion of YATAMA[46].

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[45] In RAAN and RAAS in the elections in 2000 9% of the electorate had not received their electoral documents, while in the country as a whole the percentage was 6%. In 2001 the relation was that of 7% and 2% respectively (Chávez 2002:31).

[46] According to the new Electoral Law of 2000 YATAMA did not fulfil the criteria for running for the campaign as a political party. This led to demonstration and violence both before and during the polling day.

During my fieldwork I noticed a general mistrust in a political system that had never delivered what it promised. Economic development was still absent, the coast faces large-scale unemployment, living conditions are deplorable, while public institutions are characterised by rampant corruption. The growing power of the drug trade is crucial in this context. Many of my informants told me that voting was pointless, since the politicians were controlled by drug traffickers and not by the voters.

Obviously, there are some obstacles to popular control through elections.

5.1.2. Political Equality

Participatory equality among ethnic groups has come to be apprehended as central to political equality. Not only is equality in participation regarded as just, but equal participation in all public institutions is considered to permit better decisions and increase the legitimacy of the political system. Hence, equality in participation is fundamental for improving the quality of democracy.

Let us start on the community level, where we find the greatest participation. Generally, all men in the community join together in public discussion. Decisions are normally reached by consensus. This type of community can be said to be an important sphere for popular participation for members of minority groups. Community leaders are elected and serve as mediators between the community and the municipal government, the regional government, the national government, companies, and NGOs.

The municipals are geographically organised administrative units. Since 1990[47] municipal elections have been held in Nicaragua every four years. Municipal councils and mayors are elected. In the municipal law it is stated that this local level is important in order to foster popular participation and control of the local policies: "To create the necessary administrative instances in the municipal territorial ambit in order

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[47] In the two autonomous regions the municipal election in 1990 did not take place due to the interpretation of the Autonomy Statute by the Electoral Council. Thus the autonomous regions held their first municipal elections in 1996.

to strengthen the popular participation and improve the achievements of the services to the population" (Perez 1997:407, MH translation). I have not been able to find statistics concerning the participation on the municipal level. The impression I got through my fieldwork, however, was that members of the dominant ethnic groups living in that municipality sat in the municipal councils. There might, however, be some groups that are in more powerful position than others. It can therefore be argued that all six ethnic groups should be legally represented in the municipal council as they are on the regional level, in order to fight ethnic domination.

The regional governments consist of a regional council, which is the legislative organ, and a regional coordinator. The regional coordinator is elected by and from the regional council and is to carry out the day-to-day tasks (Hooker 2001:276). The Autonomy Statute states that all the six ethnic groups on the Atlantic Coast have to be represented on the Regional Council and only the inhabitants of the Atlantic Coast and their descendants can run as candidates for the regional elections (ibid.:273). Nicaraguans from other regions have to fulfil certain residency requirements in order to vote and to be elected in the regional elections. The ethnic groups are to be consulted on matters that are of special importance to them. In spite of this arrangement, however, there is a growing concern that the Mestizos who are migrating in great numbers to the Atlantic Coast soon will vastly outnumber the other ethnic groups. Consequently, ethnic organisations on the coast call out for other mechanisms to ensure that the Mestizos will not dominate them. Similarly, in RAAS in the Mine area, the Miskitus have been accused of repressing the other groups and controlling the autonomy process and regional politics (Perez 1997:410). Hence, demands for protection of the minorities are put forward.

If we take one step up the ladder and examine participation on the national level, we see that the members of the different ethnic groups are almost invisible. In the Nicaraguan Congress, 92 of the 93 members are Mestizos[48]. There is only one Miskitu from RAAN. The two delegates from RAAS and their deputies are all

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[48] The information regarding the delegates from the Atlantic Coast in the Nicaraguan Congress, the composition of the Government and the Supreme Court was provided by one of my informants in 2004. I verified it with other informants.

Mestizos. One of the delegates and his deputy area are both originally from the Pacific. The other delegate is a Mestizo costeño and his deputy is from the Pacific. In the Government there are no ministers from the Atlantic Coast and everyone is Mestizo. On the Supreme Court the situation is identical. This signifies that in the Nicaraguan state, the costeños hardly participate. Half of the country geographically speaking is thus excluded from the institutions that hold decision-making power.

Unfortunately, I could not obtain any statistics about the number of members of minority groups in the public administration. However, according to several of my informants, the Mestizos are not only overrepresented, but other groups are virtually unrepresented. Even in the public institutions located in RAAN and RAAS, most officeholders, particularly those in high offices, are Mestizos sent from Managua by the central administration. Hooker quotes Johnny Hodgson who expressed his concern this way: "The Mestizos are winning the battle for domination and control. The Creoles might be the people in (power in the regional) government but there is no real power there because they can't even fire the delegates from the national ministries if they are doing a bad job" (Hooker 2001:311).

In short, if one regards equality in participation as essential for political equality, we see that the situations on the different levels of government vary. On the community level we find broad participation. On the regional level the presence of the different groups is guaranteed, while on the national level, members of the minority groups do not participate. Can this work as an argument for granting special representation rights to the ethnic groups on the national level as well? Below I will discuss some of the mechanisms proposed by our two philosophers.

5.2   Increasing Popular Control and Political Equality

5.2.1. Mechanisms to increase Popular Control and Political Equality

There are obvious obstacles to popular control on the Atlantic Coast, measured through electoral accountability on the Atlantic Coast. Both the liberal egalitarian model and the multiculturalist model support regular elections for representatives through universal suffrage. Consequently, both models demand the institutionalisation

of elections and an end to administrative problems and corruption. This would remove some of the main hindrances to the electoral turnout on the Atlantic Coast.

However, how can one further increase electoral turnout by restoring trust in the political system and an interest in politics? Oversimplifying this complex question, one can argue that trust can be rooted in the perception that the political system does something for its citizens. The politicians actually talk about pertinent issues, and furthermore, politicians will keep their promises. Interest in the political system can be linked to the feeling of equal value and capacity to participate in the political process and that voter participation matters. These concerns bring us to the second principle: political equality. Kymlicka defends several mechanisms to increase participation of minority groups, such as self-government rights, special representation rights, the redrawing of borders, veto rights, and the greater inclusiveness of political party structures.

5.2.1.1. Special Representation Rights for National Minorities

Kymlicka defends special representation rights for national minorities. These include guaranteed representation in political bodies and veto rights over policies that directly affect a group (1995:32). As Nicaragua reports a low level of political participation at the national level among the ethnic groups of the Atlantic Coast, we could ask, as does Anne Phillips: "Should we not call for more formal representation of group identities or group interests in order to counteract the current balance of power?" (Phillips 2003:311)

Phillips is sceptical. She points out the difficulties in deciding which groups should be represented. "Where exactly are we supposed to draw the line, and what is the basis for any distinction?" (ibid.: 318) Furthermore, those groups characterised as excluded might be divided into subgroups, in which there are new minorities. So where do we draw the borders? There lies an inherent fallacy in thinking that the representatives should "mirror" society. If only people who share certain experiences are to represent each other, this means that no person can speak for any group. It also implies that a person from another group can never speak for another group. Hence, as a Mestizo cannot speak for a Garífuna, he doesn't even have to make an attempt to

speak for or to understand them. Kymlicka acknowledges as much when he quotes Phillips: "If 'no amount of thought or sympathy, no matter how careful or honest, can jump the barriers of experience', then how can anyone represent anyone else?" (Kymlicka 1995:140) Kymlicka argues that group representation should not be understood to mean that it has to mirror society. The point is to equip historically oppressed and disadvantaged groups with a tool that enables them to participate in the political process (ibid.:141).

Secondly, Phillips argues that we cannot say for sure what a group or its members really want. "It is hard to see what counts as "representing" a group, for there are few mechanisms for establishing what each group wants" (Phillips 2003:316). Phillips cites the example of women's representation. "Politicians are not elected by women's constituencies, and apart from canvassing opinion within their own parties, and perhaps consulting their own coterie of friends, they do not have a basis for claiming to speak "for women" (ibid.:316). The question of what a group wants is linked to accountability. "Accountability is always the other side of representation, and, in the absence of procedures for establishing what any group wants or thinks, we cannot usefully talk of their political representation" (ibid.:317). In other words, the special group representation rights defended by Kymlicka can actually work against political control, or political accountability. A lack of accountability can erode trust in the political system. As politicians' promises might not be in accordance with what is apprehended by the electorate, the result might be disappointment and frustration.

The scope of veto rights is equally problematic. Which groups should hold veto rights? On which issues and at which times are minority groups entitled to veto rights? Kymlicka argues that a group should only have veto power on issues that affect the group directly (1995:141). However, which issues do not affect the members of the minority groups?

Barry argues against veto rights by defending what he calls 'a politics of solidarity' where the citizens share their fate. "We may expect them (the citizens) to disagree on the policies that will most effectively further the common good and most fairly distribute the benefits and burdens arising from the working of their common

institutions" (2001:300). "In matters of common concern, it is hard to see why each person should not have an equal say in the outcome" (ibid.:300). If a minority is defined by those who disagree with the majority, Barry argues that there are no reasons why a minority should be protected through veto rights. Furthermore, according to Barry, the veto right does nothing except block changes (ibid.:302). Hence, veto rights are problematic.

Anne Phillips is highly critical of group representation. However, she is sometimes inclined to support a system of political quotas that ensures the presence of relevant groupings in society, but not group representations as such.

> The problems with accountability combined with the risk of freezing what are multiple and shifting identities to set severe limits to the notion of group representation, favouring a weaker version of group consultation over the stronger versions that might include veto power. The same problems do not, however, apply to the case for political quotas, which can be and should be distinguished (2003:316).

Firstly, Phillips argues that a system of quotas would have an important symbolic effect. "Part of the purpose, that is, is simply to achieve the necessary inclusion: to reverse previous histories of exclusion and the way these constituted certain kinds of people as less suited to govern than the rest" (1995:40). The public recognition of equal value through quotas would thus enhance the self-esteem of members of minority groups. As the minority groups in Nicaragua have historically been excluded from the national politics, and looked upon as inferior by the centre elites in Managua, presence might in fact change this situation. If we look at the regional level, where the six ethnic groups have been represented in all institutions since 1990, we could expect to find a growing self-esteem among the members of the distinct groups. This is a complex issue as other factors are of importance in relation to self-esteem. I do not have data on self-esteem among the members of the minority groups. However, Juliet Amalie Hooker argues that one of the signal achievements of the autonomy regime is the redefinition of who is believed to be able to participate in the public sphere (2001:278).

Secondly, Phillips argues that, "we could have to say that representatives only 'really' represent their constituents on the issues that were explicitly debated in the course of the election campaign. On everything else, the representatives have to fall back on their own judgement or their own prejudice" (1995:43). If the elected

representatives share some important characteristics with the electorate, such as ethnic identity, then it is more likely that they will share political opinions too.

Thirdly, according to Phillips, excluded or disadvantaged groups need an advocate in the political arena. As many issues come up only after the elections, the decision-making power of the legislative assemblies, the government and the judiciary are important. "[I]n the subsequent weighing of interpretations and priorities it can matter immensely who the representatives are" (ibid.:44). In other words, who the representatives are matters to the outcome.

Fourthly, in order to bring new issues to the political debate, one has to be present. To channel preferences through elections is thus insufficient. "It is only when people are more consistently present in the process of working out alternatives that they have much chance of challenging dominant conventions" (ibid.:45). The presence of members of minority groups might, according to this argument, change the policies as the minority representatives bring with them new values. In Nicaragua, some of my informants applied this argument to particular minority issues, but which are absent from the national political party programmes. One of the most controversial issues in this context has been the claim for collective land rights.

Consequently, presence, as defined by Phillips could actually lead to an increased level of trust, and political engagement in the sense that the people feel that their voices are present and the politicians focus on pertinent issues. Hence, presence could bring about an increased level of popular control, as the result could be that the electorate take more interest in using their vote actively.

Nevertheless, Phillips is guilty of many of the faults that she finds in Kymlicka. As ethnic groups are constantly changing, it is problematic to determine which groups should be entitled to quotas. A system of quotas could never reflect the actual existence of ethnic groups in a society. As with group representation, we face the complexities of "mirror". Who is entitled to speak for whom, and on the basis of which shared experiences?

We find the same problem of accountability in relation to quotas as we do with group representation. In order to increase accountability, the group would have to be

rganised in a way that it is likely that the members will agree on what the group interests are. Phillips herself admits that political presence through quotas cannot be defended by the standards of popular control and political equality.

> the case for political presence cannot be viewed as a transparent deduction from either popular control or political equality. These two principles certainly set the framework for any politics of presence, but the core argument lies in a more historically specific analysis of existing structures of exclusion and existing arrangements for representation (ibid.:31).

Nevertheless, in spite of historic arguments that may exist, Phillips concludes that ethnic quotas are far more problematic than, for instance, gender quotas. Although gender differences obviously change as time passes, there is no doubt that there are only two categories: women and men. In relation to ethnic groups, however, the situation is different, since ethnicity is constantly changing. Ethnic quotas will thus

> always fail to capture the diversity of ethnic identities. When these elements are combined with the disturbing historical associations that attach to racial or ethnic quotas, it is difficult to justify quotas as the best way of dealing with racial or ethnic exclusions (ibid.:168).

The danger, however, is that "this can undermine the urgency attached to changing the ethnic composition of elected assemblies, and can push this project into the realm of the distantly desirable rather than the immediately required" (ibid.:170).

Barry argues that equality in a democracy should be understood as the equal right of every citizen to participate in the political arena. This means that no one can be granted rights, which are denied to others. Every individual should thus count equally through majority rule. The legitimacy of the majority rule is not founded in the idea that the majority 'naturally' is entitled to act on behalf of everyone else. It is, rather, that a system of election answers the question why some particular people are qualified to run the country (Barry 2003:346). "if voting for representatives settles the question of who should rule in a way that claims to superior competence or claims to inherent personal superiority do not, it permits freedom of speech and organisation as no other regime does" (ibid.:348).

According to Barry, political equality should be ensured through anti-discriminatory laws and liberal institutions that will stop discrimination in all its forms. Political equality and popular control are best ensured through a system of multi-member electoral districts, and voting systems based on proportional

representation without any special representation or veto rights. In such a system, diverging interests are taken into equal consideration. In a system of single-member constituencies in culturally heterogeneous societies, in contrast, cleavages would be cemented between the groups. "Where there are cross-cutting cleavages, but one is more salient than the other, the logic of a single-member system is to suppress the less salient line of cleavage and create monolithic communal blocks" (Barry 1991:142).

The state can be federal or unitary state. If a federal state is the preferable solution, the federation must have a symmetrical character. Barry argues against an asymmetrical arrangement, as one or more local federal units are given more decision-making powers than other local federal units. The citizens of the province with the special rights would be able to vote on issues that do not affect their constituents. They would thus be left with more decision-making power than citizens of the other constituencies (Barry 2001:313).

We see that Barry avoids the problems of deciding which groups merit special rights. Nor does Barry face the problem of "mirror" as the electorate does not vote for group representatives. Equally important, Barry avoids minimising accountability. The politicians do not claim to speak for a whole group by virtue of being group members. The politicians represent a party that has procedures for establishing party policy. The electorate is then free to vote for the candidates, who they believe best represent their interests. Theoretically, the electorate can then hold the representatives accountable to the programmes on which they were elected to office.

5.2.1.2. The Redrawing of Borders

Another mechanism for increasing the political power of minorities that Kymlicka discusses is the redrawing of borders. "Since national minorities are often territorially concentrated, boundaries can be drawn in such a way as to empower them – i.e. to create political subunits within which the national minority forms a local majority, and which can therefore be used as a vehicle for autonomy and self-government" (2001:75). I will however, reiterate that it is difficult to draw ethnic borders. Nor is it obvious that Kymlicka's answer will lead to more political equality or popular control. No matter where we draw the borders, new minorities are created.

Granting self-government or other special rights to one group might actually oppress members of another group. In Nicaragua an obvious example would be the redrawing of RAAN in order to ensure that the Miskitus have an overwhelming majority. As Sumu Mayangnas, Creoles and an increasing number of Mestizos live in the area where it would be natural to draw the borders, it is doubtful that such gerrymandering would do away with Mestizo domination. The different groups live intermingled and there are no clear-cut borders on the map today. Hence put to the extreme, the members of minority groups would either have to be moved to another area or be left with fewer rights and possibilities to participate than before.

5.2.1.3. Open up the Internal Structure of the Political Parties

According to Kymlicka, one way to increase minority participation in the legislature and government is to open up the parties to the democratic processes (1995:32). If political parties become more inclusive it will become easier for members of minority groups to become party candidates and leaders. The norm today, according to one of my informants, is that the party leadership appoints candidates. Hence, one could argue that an opening up of the political parties would increase minority political participation.

In short, the mechanisms supported by Kymlicka raise as many problems as they solve. On normative grounds, I would rather support Barry's solution of multi-member electoral districts with voting systems based on proportional representation.

5.3   Increasing Popular Control and Political Equality in Nicaragua

Let us now ask whether the egalitarian liberal model would secure democracy in Nicaragua.

The answer depends on the definition of political equality. If we ask people on the Atlantic Coast, my guess is that the answer would be no. This is because the members of the minority groups have a history of discrimination and exclusion. Furthermore, there is a widespread fear among the members on the Atlantic Coast ethnic groups that this trend will continue due to the massive migration of Mestizos

from the Pacific and Central parts of Nicaragua. Hence, the costeños demand specific mechanisms to stop majority domination.

In the regional councils in RAAN and RAAS, a system of quotas for six ethnic groups has been established to rectify a tradition of exclusion. This system of ethnic quotas should be distinguished from a system of group-representation. This is because the politicians that fill the quotas are members of different ethnic groups, but they do not run as ethnic candidates in a constituency that is only made up by voters in their own ethnic group. Instead, the politicians are candidates for political parties, not ethnic parties, and they are elected from geographically defined constituencies. Hence, they cannot represent or be accountable for the special interests of one ethnic group. Nevertheless, some confusion due to the system of quotas in the Regional Councils in Nicaragua is notable. The electorate seems to apprehend the regional politicians as group representatives. Several of my informants complained that the politicians do not represent their community, their ethnic group, or the Atlantic Coast. They only listen to their party leaders in Managua. Hence, even though the politicians are elected from constituencies that are of mixed ethnic composition and from a political party list, the electorate seems to identify them as group representatives. One of the difficulties with the quotas in the Regional Council is therefore that there are no mechanisms to determine what the group interests are. Furthermore, the lack of clear links between what the representatives promise to do, what they do and the information released to the electorate about their performance could lead to a further lack of confidence in the political system.

Secondly, who is actually entitled to speak for whom, and on the basis of which shared experiences? Is membership in the same ethnic group the only criterion for quotas, or are there other shared experiences that are equally if not more important? Should women be given quotas? Women are strongly underrepresented in the political institutions on the Atlantic Coast. One of my informants told me that women's organisations are pressing for quotas. If ethnic groups are given quotas, it might be difficult to argue against women's claims.

Furthermore, as the ethnic groups in Nicaragua are changing, it is difficult to decide which groups should be entitled to quotas. A system of quotas could never reflect the actual existence of ethnic groups in society as they are ever-changing. I argued that one could not even find common denominators between the groups. How is it then possible to connect a certain right to something that is fluid?

In short, due to the tradition of exclusion in Nicaragua, today's system of quotas could be defended. However, the disadvantages outweigh the advantages.

5.4   Conclusion

My second concern in this thesis was which of the two models would have the better prospects for securing democracy in Nicaragua. I approached this question by evaluating the models in relation to popular control and political equality.

We saw that supporting either egalitarian liberalism or multiculturalism depends on our understanding of political equality. If political equality is defined as equal possibilities to participate in the political process, then Barry's position is the preferable one. Everybody in society has the same right to participate. However, if the actual participation and differences between groups were comprehended as the essential, then Kymlicka's model would seem better.

I will however, argue that no matter whether one values equality in terms of the process or in terms of the outcome, there are good reasons to be sceptical of the mechanisms to counter majority rule suggested by Kymlicka, except for the opening up of party structures. The redrawing of borders is extremely difficult, as members of ethnic groups live intermingled. Moreover, it is not obvious how redrawing of borders will lead to a more democratic society, as new minorities might be disenfranchised. A system of group representation rights and veto rights would be difficult as it links special rights to a fluid subject. Furthermore, I underlined the complexity of mirror representation. Group representation would affect popular control and could weaken accountability.

Presence, as explained by Phillips, might be important. Nevertheless, special representation rights for national minority groups and veto rights defended by

Kymlicka, as well as a system of ethnic quotas presented by Phillips, are far from satisfactory.

Is however, the egalitarian liberal model sufficient to remedy not only discrimination, but also the feelings of disempowerment and political marginalisation? We should not forget that discrimination on the basis of ethnicity is not the only problem with the democratic system in Nicaragua. The country has a long history of political leaders that look upon the state as an instrument for acquiring wealth. It has been ridden by corruption, nepotism and inefficiency. Democracy as "government by the people" has never been the rule in Nicaragua. There is little trust in the political system. As Juliet Amalie Hooker states: "Some of the basic problems facing Nicaraguan democracy today are the fragility of political institutions and a political culture characterised by paternalism, caudillism, clientilism, and the exclusion of the poor, indigenous people, and Afro-Caribbean populations" (Hooker 2001:69).

As both models demand liberal institutions and a stop to discrimination, both models have prospects of creating a more democratic society.

6. Unity

As argued in Chapter Three, a sense of national unity between the citizens of a state is seen as essential to make a democracy function. I define unity as a form of solidarity among the citizens of a country and a mutual feeling of belonging to the same polity. Hence, unity should not be understood as either ethnic or national identity, but as political unity.

According to Barry it is impossible to create unity in a state in which different ethnic groups run parallel public institutions. Kymlicka, on the other hand, maintains that unity is impossible without accommodation of differences. Which of the models is more likely to lay the ground for unity in Nicaragua? In order to answer this complicated question, I will look to Anne Julie Semb's analysis, "How to reconcile the political one with the cultural many?" (2000).

Semb argues that it is worthwhile to distinguish states that are multicultural or multiethnic from states that are multinational. This distinction is important, because the two types of states face different challenges. In order to decide whether Nicaragua would within Semb's analytical framework be termed multicultural/multiethnic or multinational, I will examine ethnic political parties and claims for self-government. Depending on the answer, I will discuss whether Kymlicka's model or Barry's model is more likely to secure unity in Nicaragua.

6.1 How to Reconcile the Political One with the Cultural Many?

Semb argues that if national identities exist, then they should be accommodated because they are enduring. Semb defines nations as does Tedd Robert Gurr (1993) as "regionally concentrated groups that have lost their autonomy to expansionist states but still preserve some of their cultural and linguistic distinctiveness and want to protect or re-establish some degree of politically separate existence" (Semb 2000:2). They seek: "separation or autonomy from the states that rule them" (ibid.:3). Minority peoples have a "defined socio-economic or political status within a larger society – based on some combination of their ethnicity, immigrant origin, economic roles, and religion – and are concerned about protecting or improving that status" (ibid.:3). Semb

uses 'ethnic group' as synonymous with Gurr's term 'minority people'. Both nations and ethnic groups are "groups that are bound together by common cultural characteristics like language, religion or myth of common descent, as well as mutual recognition" (ibid.:3). What distinguishes them is whether the groups aim for political autonomy or, whether the groups have developed a national consciousness. Hence, the role the group played in the state-making process, emphasised by Kymlicka, is irrelevant. It is an empirical question of whether a group has "developed a separate national consciousness and thus aspire to establish a separate sovereign state or some other form of 'politically separate existence'" (ibid.:4).

6.1.1. Ethnic Identities, which are Compatible with a National Identity

If the ethnic identities are compatible with the national identity, the problem at hand is how to modify the national cultures that have been shaped by dominant ethnic groups. The question is thus how to build or sustain a common national identity in an ethno-cultural state[49] where the national identity has been formed on the basis of a real or fabricated ethnic core. Semb suggests two opposing models to create political unity.

The first is Kymlicka's model of accommodation rights, as presented in Chapter One. The second model is David Miller's proposal of a public debate strategy. In contrast to Kymlicka, who places emphasis on the democratic outcomes, Miller focuses on the democratic procedures. According to Miller, accommodation rights are not desirable. Miller argues for an open discussion about how the national identity is to be understood and how the national institutions can best meet the ethno-cultural differences in order to continually modify the national institutions. Semb shows that both models are normatively legitimate, however flawed. In relation to Kymlicka's model, the main obstacle is how to set legitimate limits. The limits are important in order to hinder a slippery slope. Semb also criticises Miller for assuming that the outcome of the public debate will be consistent with the principle of equal treatment without offering guidelines of how this will come about. "Thus, there seems to be a

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[49] An ethno-cultural state is a state where its territorial borders encompass two or more different ethnic or cultural groups.

tension between the initial emphasis on the procedure whereby the meaning of national membership is to be modified and the proposition that the outcome, in order to be legitimate, must satisfy a substantive requirement" (ibid.:18).

Nor is it clear when Miller says that the opportunities of the minorities cannot be restricted "in ways that merely reflect the conventions or convenience of the majority group" (ibid.:18). Miller argues that the national legislation should accommodate some cultural differences. However, he does not specify what types of cultural differences should not be subject to the principle of equal treatment. Semb prefers Kymlicka's strategy as it allows the integration and preservation of the distinctiveness of national culture. Hence, Semb argues that to create political unity in a multi ethno-cultural state, the best way, given that legitimate limits are defined, might be to grant accommodation rights.

6.1.2. Incompatible National Identities

If however, numerous national identities exist within a state[50] this has to be rectified in order to create political unity. Semb bases her argument on Anthony D. Smith: "[W]henever and however a national identity is forged, once established, it becomes immensely difficult, if not impossible (short of total genocide) to eradicate" (ibid.:22). In order to propose a normative acceptable solution, Semb suggests two relevant factors: settlement patterns and the meaning of national membership. When a group lives in a separate and concentrated territory, Semb favours territorial responses to multi-national citizenry: federalisation or decentralisation. The borders between the federal units as well as the subunits within the unitary state are to be drawn according to settlement patterns of members of the different nationalities[51]. In a federation, each group will thus have a majority within the federal unit, which is a concentrated territory. As the federal units hold decision-making power, issues of special concern to

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[50] Semb terms such a state a multi-national state (ibi.:3)

[51] The formal differences between a federal state and a unitary state were spelled out in Chapter Three.

the minority can be held outside the normal majoritarian central decision-making procedures. This way it can function as a safeguard against the majority.

When the group members live intermingled, Semb proposes two non-territorial solutions. The Renner/Bauer[52] model, suggests dividing the jurisdiction into two parts: a territorial and a cultural. The national rights are connected to the individual and not to territorial groupings. Every citizen would be able to vote in territorial elections and to vote in elections for a separate body that would oversee the cultural jurisdiction of a group. However, there are several problems with this model. Firstly, it would be problematic when one's ethnicity is ambiguous due to parents/grandparent of mixed ethnicity. It would probably not be easy to pick only one cultural body to represent you. Secondly, it would be difficult to define which affairs are cultural and which are not. And lastly, it would be hard to guarantee transparency as the dual decision-making system would be extremely complex (ibid.:32).

A better-known model is Arend Lijphart's power-sharing model of consociational democracy. Lijphart claims that in deeply divided societies the conditions for majoritarian political systems do not exist. The function of majority rule depends on crosscutting cleavages and rotating memberships that will lead to shifting power constellations. In a deeply divided society this is not the case. Lijphart defines a plural society as "a society that is sharply divided along religious, ideological, linguistic, cultural, ethnic, or racial lines into virtually separate subsocieties with their own political parties, interest groups, and media of communication" (2000:276). Lijphart calls these subsocieties 'segments'. As voting patterns are closely related to group membership, it is possible that political minorities will be permanent. The minorities would under majority rule then be left without power to influence public decisions. Lijphart suggests various mechanisms that restrain majority rule. His consociational democracy is based on: "two primary principles (grand coalition and segmental autonomy) and two supplementary or secondary principles (proportionality

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[52] Otto Bauer and Carl Renner composed a model that was to regulate the different nationalities in Austro-Hungarian Habsburg Monarchy before World War I.

and minority veto)" (ibid.:277). This way broad political participation by groups is guaranteed.

Brian Barry has criticised Lijphart's model as elitist and neglecting individual participation (Semb 2000:36). Representation by interest is favoured at the expense of individual participation. Lijphart answers that although there are problems related to his consociational model, it is the best alternative for a plural society. Semb states that it is of interest to investigate under which conditions such a power-sharing system could work, especially when the "relevant groups are not only incompatible, but deeply antagonistic" (ibid.:36).

In short, Semb argues that in multi-nation states, multiple national identities must be accommodated. National identities are so resistant, that institutional arrangements that take this into account must be arranged in order to be accepted by the people. According to Semb, it is important to take care in the design of the constitutional set up as identity is not simply to be created through the writing and ratification of a constitution (ibid.:28). What the institutional arrangement will look like, is likely to be contested. "The settlement pattern of such groups, as well as their self-understanding, will affect the degree to which a proposed institutional arrangement will seem a normatively acceptable way of responding to a citizenry consisting of individuals with incompatible national identities" (ibid.:37).

As we have seen, Semb suggests two approaches to securing political unity in a state, depending on the existence or non-existence of incompatible national identities. I will in the following use her theoretical framework to discuss the prospects for political unity in Nicaragua. My conclusions will depend on the answer to the central question: Do the different ethnic groups on the Atlantic Coast of Nicaragua posses their own incompatible national identities with a political expression? If the answer is yes, than the best solution in Nicaragua might be some form of self-government for the different ethnic groups. If the answer is negative, it might be fruitful to look at Semb's discussion of Kymlicka's model of accommodation rights.

6.2   Unity in Nicaragua

6.2.1. Political Parties

Kymlicka's theory implies that individuals principally vote and participate in society as members of an ethnic community: as national minorities, as immigrants or as colonisers. Hence Kymlicka presupposes that theses groups can be identified and that they make up the main bases for political support. However, Kymlicka's criteria for distinguishing between his categories of ethnic communities are ridden with too many problems to be useful.

Semb argues in line with the conclusions in Chapter Four, that self-identification is the preferable criterion in relation to ethnicity. In the 2001 study conducted by Hegg and Ortega, self-identification is used as a marker of ethnicity (Hegg and Ortega 2001). The respondents were asked about different identities. It is evident that ethnic identity is important to the majority of the respondents. However, how can we determine whether these identities have a political expression, whether they can be characterised as incompatible national identities? Lijphart suggests that a possible way to investigate whether a country is ethnically divided and to decide which groups should be granted special rights is to look at existing political parties. As we have seen, Lijphart defines a plural society as a society that is deeply divided into segments with their own "political parties, interests groups and media of communication" (2000:276). Lijphart claims that, given free association and competition, and preferably a system of proportional representation, political parties can freely be organised by individuals that seek political recognition of their ethnicity. "In plural societies with free elections, the salient social cleavages tend to be translated into party system cleavages; the political parties are likely to be the organised political manifestations of the segments" (Lijphart 1977:61). Lijphart bases his argument on the criterion of self-identification, or self-determination which: "allows these groups to manifest themselves instead of deciding in advance on the identity of the groups" (Lijphart 2000:275). A system of self-determination offers identical opportunities for all kinds of groups and associations to elect their representatives: "Self-determination gives equal chances not only to all ethnic or other segments, large or small, in a plural

society but also to groups and individuals who explicitly reject the idea that society should be organised on a segmental basis" (ibid.:285). Hence, according to Lijphart, the test of whether a society is plural depends on the presence of ethnic political parties.

At the national level, there exists no party with an ethnic profile in Nicaragua today. On the regional level we find only one significant indigenous party, YATAMA. YATAMA is primarily a Miskitu party, although its rhetoric generally refers to indigenous peoples. YATAMA has been instrumental in the regional politics since the first regional elections in 1990, where it received 22% of the votes in RAAN and 5% in RAAS. In 1994 YATAMA gained 7% in RAAN and 5% in RAAS, in 1998 it received 8% and 4% respectively (CIDCA/UCA 1998 Number 23:25). In 2002 YATAMA received 21.6% in RAAN and 6.2% in RAAS (Observatorio Electoral Latinoamericano 2002).

In addition to YATAMA there have been other regional parties with an ethnic profile, however, none of them has ever managed to become a political force and the majority of the parties have not had a particular ethnic profile but rather been alliances of several Atlantic Coast ethnic groups. One of these was Partido Movimiento de Unidad Costeña (PAMUC), which campaigned in the regional elections in RAAN in 2002 (ibid.). Others that can be mentioned are Partido Indígena Multiétnico (PIM) and Alianza Costena (AC) which both participated in the regional elections in 1998. Hence, there are some political parties on the Atlantic Coast that have ethnic elements. Nevertheless, if we adopt Lijphart's definition, Nicaragua would not qualify as a truly plural society. The Nicaraguan electoral system is proportional and the constitution guarantees free association. In spite of this, no ethnic political party has gained much popular support, except for YATAMA in RAAN. We see almost the same polarisation on the coast as in the country as a whole, between Frente Sandinista Liberación Nacional (FSLN) and Partido Liberal Constitucionalista (PLC).

However, this should not categorically be taken as evidence that ethnic affiliation is insignificant in politics. Firstly, in Nicaragua, not all ethnic groups are likely to possess the resources to establish a political party. Take the Sumu

Mayangnas, for instance. Not only would the lack of resources be an obstacle, but also the fact that they are few in number and live scattered around the Atlantic Coast. Hence, the Sumu Mayangnas would have problems electing national representatives, and perhaps even regionally. Furthermore, the right to self-determination might not be sufficient to escape a permanent oppression due to a history of marginalisation and discrimination both by the Mestizos of the Pacific and by the Miskitus. Other groups on the coast face similar problems.

Secondly, when discussing political parties in Nicaragua, one cannot avoid mentioning the electoral laws. In 1999 the leaders of PLC and FSLN agreed upon a pact. Hooker claims the objective of the pact was to "cement the hold of these two major parties over the political scene and the state, to the detriment of democracy" (2001:293). Several constitutional changes were enacted, one of which was the amending the electoral laws. In order to be registered as a legal political party, all parties had now to gain at least 4% of the nationwide vote in future elections. The percentage would be multiplied by the numbers of partners in an alliance. To be legally recognised as a new party, signatures from 3% of the registered voters in Nicaragua had to be collected. In the case of alliances, 3% was to be multiplied by the numbers of partners. The financing system for the electoral campaigns was also changed. Now the payments were made after the elections only if the party obtained 4% of the vote. Earlier it was possible for candidates to run for office without belonging to a registered party. This right was abolished. Due to the new electoral laws, no regional parties or organisations could participate in the municipal elections in 2000 even though YATAMA had received more than 4% of the votes in the previous elections. YATAMA was excluded on the grounds that it was not a political party. Hooker attacks the reforms:

> All of these reforms, while detrimental to democratic competition in the country as a whole, particularly affected the ability of ethnic organisations and regional parties to compete for regional and local offices on the Atlantic Coast, thus violating the commitment to self-government that the Autonomy Law represents (2001:294).

Consequently, analysing the mere existence of ethnic political parties is insufficient to teach us about the relation among ethnic identities on the Atlantic Coast.

6.2.2. Claims for Self-government

Another way to analyse the political expression of ethnicity, or rather the existence of a national identity, is to follow Semb and see whether there exists a demand for self-government. Let us first turn to the beginning of the process leading towards autonomy.

In the mid 1980's the indigenous leadership of MISURASATA claimed ethnic self-government for the indigenous people, excluding the Creoles, the Garífunas and the Mestizos. In May 1985 they demanded that the Sandinista government "recognise the Miskitu, Sumu and Rama populations as sovereign indigenous peoples of the Atlantic region of the country, with their own ethnic identity and the natural right to freely determine their own political, economic, social, and cultural development, according to their values and traditions" (Hooker 2001:304). However, the Sumu Mayangnas did not feel that MISURASATA represented the interest of their people and thus did not support indigenous autonomy led by the Miskitus. Especially due to a history of domination by the Miskitu, the Sumu Mayangnas did not support "asserted the monolithic unity of the three (indigenous) ethnicities of the Atlantic Coast" (ibid.:305). MISURASATA used 'indianism' as central element in the autonomy debate and stated "the philosophical-ideological base of our communitarian society and our Indian revolution, based on the collective nature of our values, interests, beliefs and relation to nature" (ibid.:305).

In the same period however, MISURASATA also occasionally assigned "these rights to all Coast people, excluding only the Mestizos from the Pacific" (ibid.:306). Hence, the claim for strictly indigenous autonomy on the Atlantic Coast did not seem to be founded in a resistant feeling of national identity, as defined by Semb. Nor did the ethnic groups aim for political autonomy exclusively for their ethnic group. During the 1980's, the rhetoric changed from "a demand for self-government under Miskitu hegemony to support for multiethnic autonomy" (ibid.:302). It is hard to assess the depth of feeling of being a costeño in this period. I doubt that it was expressed as identifying as a costeño. After all, the ethnic groups shared a history of antagonism and struggle for power. However, what seems to be the case is that the people of the

Atlantic Coast felt different from the Spaniards of the Pacific and Central part of Nicaragua. There existed a profound perception of the "others" from the Pacific and of some kind of 'us coast people'. The coastal people lost their autonomy in 1894 when the Miskitu Reserve was incorporated into the expansionist Nicaraguan state. Hence, except for some factions of the Miskitus who fought for indigenous independence, the compromise of the autonomy arrangement of ethnically heterogeneous regions was agreed upon with support from the ethnic groups (ibid.). In other words, an already existing regional costeño identity was an essential foundation of this compromise.

If we look at the situation today, we find that there is an insistence upon self-government, based on a costeño identity, and not on an ethnic identity. Although there are no more popular costeño political parties than ethnic political parties, several of my informants claimed that the costeño identity is politically significant. The population on the Atlantic Coast wishes to be represented on the regional level. With the exception of some groups within YATAMA that support total independence and some Mestizos who prefer to be administered by the central government, most costeños seem to regard the autonomy regime as the best solution (ibid.:319). Even the majority of the Mestizo factions of the costeño population support self-government. "Urban[53] Mestizos who have lived in the region for a long time or were born there tend to identify more with being an Atlantic Coast person (or costeño) and support autonomy" (ibid.:271).

This finds support in the survey conducted by Hegg and Ortega (2001). The questionnaire shows that the people on the Atlantic Coast identify as costeños and the autonomy regime is preferred as the best solution. In spite of a strong mistrust in all political institutions, there is confidence in the system of autonomous regions. One of my informants explained that autonomy for the coastal people is not a new arrangement, but a natural development from the past. This feeling of nationality is generated by a shared costeño culture and a shared historical experience. It is the right

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[53] "The Mestizos who were involved in the autonomy process and who have participated in the autonomous governments in the 1990s tend to be from urban areas" (Hooker 2001: 271).

of the costeños to govern themselves as their ancestors did during the colonial period. They do feel like a Creole, Garífuna, Mestizo, Miskitu, Rama or Sumu Mayangna, but, politically speaking, the most important factor in their attitude towards the central state is that they are costeños. It is thus generally believed that the groups on the Atlantic Coast should work together politically.

As expressed by an alliance[54] of regional parties and organisations formed in 1999 in favour of regional autonomy: "the ideal system for decentralisation, governability, and transparency in the public administration, within the framework of respect for the multiethnic democracy of the Nicaraguan nation" (Hooker 2001:292). Hence, on the Atlantic Coast of Nicaragua we find a demand for self-government based on a costeño identity. If we recall Semb's theoretical contributions, we see that it can be argued that there exist two incompatible national identities in Nicaragua: the Nicaraguan and the Costeño. Hence, in order to ensure political unity within Nicaragua, the national identities should be accommodated because they are so enduring. According to Semb this would call for federalisation or decentralisation if the group in question inhabited a separate and concentrated territory, which is the case for Nicaragua.

6.3 Conclusion

There is a sense that Nicaragua is split into two parts, with two incompatible national identities. Hence, according to Semb, political unity in Nicaragua would benefit from an arrangement that considers these incompatible national identities. The political arrangement could take different forms. As the costeño identity includes several ethnic identities and is geographically defined, the best solution would be a territorially-based autonomy, more or less corresponding to the borders of RAAN and RAAS. The costeño identity is so strong and persistent that to do away with the autonomy regime would not only be counterproductive to political unity in Nicaragua, but could actually generate claims for total independence of the Atlantic Coast.

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[54] Foundation for the Advancement and Development of the Atlantic Coast (FADCANIC).

My conclusion can find support in Juliet Amalie Hooker's analysis of the autonomy regime's effect on democracy. She argues that the autonomy arrangement has heightened the feeling of unity in Nicaragua.

> In Nicaragua the recognition of cultural diversity has not led to spiralling fragmentations as critics of identity politics might expect. In fact, one could argue that it has led to some measure of reconciliation. While efforts at unity are incipient and fragile they suggest that in contexts where there has been exclusion and discrimination reconciliation requires the recognition of that history, not its suppression (ibid.:318).

Hooker claims that not even elites in Managua have been threatened by regional autonomy.

> The support of some centre elites for regional autonomy and the recognition of differences speak to the (at least) partial success of the process of persuasion that recognition entailed. With respect to the Atlantic Coast's ethnic groups there seems to have been a re-orientation towards Nicaragua as a democratic space, not separatism (ibid.:279).

Furthermore, as one of my informants pointed out, the fact that the decree of the Autonomy Statue was passed by the Nicaraguan Congress in 2003 is evidence that the elites in Managua support autonomy or at least do not see it as a danger to national unity.

Instead of generating conflict and fragmentation, regional autonomy has opened up "the possibility of a new way of thinking about the political community and conceiving of citizenship" (Hooker 2001:280), which according to Hooker is "not based on allegiance to a homogenously conceived nation" (ibid.:301). The study conducted by Hegg and Ortega (2001) provides evidence that the autonomy regime has not caused further fragmentation in Nicaragua. The study shows that there is no contradiction in identifying as a Nicaraguan, as a costeño, and as a Creole, Garífuna, Mestizo, Miskitu, Sumu Mayangna or Rama. Hence, an arrangement like the autonomy regime, one that takes the incompatible national identities into account, seems to generate political unity in Nicaragua.

However, would a model of regional autonomy suffice to create political unity in the entire state? In order for the model to function as postulated, we should remember that it is mandatory to maintain the two national identities. Consequently, it becomes important to ask how we can ensure the survival of a costeño national identity. If we apply Semb's concepts, we can argue that along the Atlantic Coast there

are many ethnic identities that are compatible with the costeño national identity. However, dominant ethnic groups have shaped the costeño national identity.

I have already discussed the domination of different ethnic groups throughout Nicaraguan history. In the south the Creoles have had a stronghold and in the north the Miskitus have been in control. In recent decades, however, the Mestizo migrants have become the dominant ethnic group. In accordance to Semb, the preferred solution to securing political unity where the different ethnic identities are compatible with a national identity, given that the legitimate limits are defined, would be to offer accommodation rights, as defended by Kymlicka. Accommodation rights might make it possible to integrate and preserve the distinctiveness of the national culture. The accommodation rights would then naturally be granted within the autonomous regions. The accommodation rights would rectify the earlier domination of certain ethnic groups. This conclusion can find its support in Phillips' (1995:40) argument for the symbolic importance of politics presented in Section 5.2.1.1. According to Phillips, the public recognition of cultural diversity and the equal value of the cultures of the minority groups can promote an atmosphere of mutual respect and tolerance. Hence, accommodating differences through granting accommodation rights could sustain the costeño identity, and ensure political unity in Nicaragua.

To summarise, both the liberal egalitarian model and the multiculturalist model would require ending discrimination and cultural monopoly. This would without any doubt be a significant step in the direction of increasing political unity in Nicaragua. However, as shown in the analysis above, the recognition of differences defended by Kymlicka, both through autonomy and accommodation rights, offers the best prospects for creating political unity in Nicaragua.

7. Conclusion

In this thesis I have attempted to answer the complex question of whether multiculturalism presented by Kymlicka or egalitarian liberalism supported by Barry would be the better suited to meet three concerns: to deliver justice, to secure democracy, and to prepare for unity in the Nicaraguan state.

7.1   A Federal State Offering Individual Accommodation Rights

If we examine the preliminary conclusions of each chapter, Barry's egalitarian model reaps more support. An egalitarian liberal model would protect individual human rights without clashing with the dominant anthropological understanding of ethnicity. However, can the model really handle the ethnic question? Taken to the extreme, egalitarian liberalism would probably not justify any support by the state for any cultural projects. Can we be sure that the egalitarian model would function as intended, to create justice for all, and bring democracy and unity to Nicaragua?

Given the plurality of ethnic identities as well as the existence of a costeño national identity, I have my doubts. Consequently, I will recall the arguments presented in Chapter Six. Like Anne Julie Semb, I will argue that in order to meet cultural and ethnic problems it is essential to ask how groups define themselves. Have they developed a desire for secession or a high degree of autonomy? Can they, within the national identity, find room for their ethnic identity? I have argued that there is a national identity among the ethnic groups of the Atlantic Coast. This identity is so strong that it carries a potential for rising to the claim for independence if it is not accommodated within the Nicaraguan state. In other words, this calls for some kind of autonomy.

As the costeño identity contains several compatible ethnic identities, I prefer a regional federalist arrangement. By regional federalism I mean that Nicaragua should be reorganised into a federal state with two or more states that hold symmetrical powers. Two obvious states would be the Pacific region and the Atlantic region. Alternatively, four states could be established. It might be reasonable to argue that the northwest region should become a state. This is also a marginalised region where

many of the same claims for social justice are as urgent as they are on the Atlantic Coast. A second state could be in the southwest. The third and the fourth states could correspond to RAAN and RAAS.

In order to ensure that all the states would have equal powers, each state would have its own government with equal decision-making powers. The southeast region around Managua would thus lose its privileged status. At the central level I would suggest a bicameral Congress. One of the chambers would be based on proportional representation in a system of multi-member electoral districts. The second chamber would be comprised of an equal number of representatives from the states. The identical representation would ensure that the more scarcely populated regions of the country would not be marginalised. As the representation would be regionally based, we avoid the dangers of ethnic representation.

According to Anne Julie Semb, federalism can sometimes meet the claim for self-government.

> When the condition of geographic clustering has been fulfilled, federalism allows national minorities some degree of constitutionally guaranteed self-government in matters often considered vital to the preservation of the national culture, such as language and education. Since the decision-making powers of the federated units are constitutionally guaranteed and irrevocable, the majority nation cannot outvote the minority on such issues, and federation then serves as an instrument of autonomy (2000:26).

In short, the federal solution might obviate the problems of majority decisions. The constitution will control a relationship that has been tainted with mistrust. The state government(s) would be a safeguard for the people on the Atlantic Coast. The political autonomy of the RAAN and RAAS regions are recognised in the Nicaraguan Constitution. This way it might be argued that Nicaragua is a federation. However, the Constitution does not specify the decision-making powers of the autonomous units. Because important issues concerning the relationship between the central and the regional level are absent or omitted from the Constitution, the decision-making power is left in the hands of the central government. Hence, the Nicaraguan Constitution would have to be amended in order to function as an instrument for autonomy. In this process one should be attentive to the fiscal capabilities in relation to distributive justice. As Semb emphasises,

> In cases where the local units have extensive fiscal capabilities and there are gross economic inequalities between the different local units, federalism may become not just an instrument of autonomy for national minorities, but also an institutional barrier to what is often much-needed economic redistribution between different regions (2000:26).

In Nicaragua this would be essential, as the Atlantic Coast is one of the most economically marginalised regions in the country. On the other hand, one could argue that the Atlantic Coast is poor as a result of expropriation of its natural resources by the central state. The Constitution would thus, have to address economic issues.

In relation to my suggestion of creating a federal Nicaraguan state, I reiterate that this will not be an easy task. It would require an enormous effort to reorganise the entire country in such a comprehensive manner. Most likely, there would be loud protests, particularly from the Central and Pacific region where the decision-making power today is concentrated.

In order to secure social justice on the Atlantic Coast, it would be essential for the federal state to be a liberal democratic welfare state with a just system of redistribution of resources, based on economic needs, not cultural or ethnic affiliation. This is of course more easily said than done in a poor, debt-ridden country with a huge deficit. Nevertheless, its scarce resources should be equitably redistributed.

As far as the internal running of the state(s) on the Atlantic Coast is concerned, cultural justice should be secured through accommodation rights to the individual. A set of such rights is essential, not because individual freedom depends on membership in a societal culture, but rather to create fairer terms of integration. These rights could mitigate the exclusion of the members of the minority groups. Individual accommodation rights mean that each citizen should be offered a broad spectrum of services by the state, reflecting all cultural practices without privileging any culture. In other words, individual rights should be activated within an institutional framework that allows for cultural differences. This could mean that individuals have the right to receive public services in their mother tongue and to have their religious practices respected in public life. As argued in Section 4.4.1.5, relational self-identification should be the only relevant criterion for the entitlement to such rights.

By addressing cultural differences through the use of individual accommodation rights, we avert the potential injustice committed by groups against

their members if they were granted the group-differentiated rights that Kymlicka defends. Consequently, these individual rights consider diversity within the group. At the same time we avoid the problematic question of exit possibilities posed, although in distinct manners, both by Kukathas and Barry. Thus, by neither granting group rights nor letting groups alone, we need not rely on the assumption that exit possibilities guarantee non-discrimination. Secondly, individual accommodation rights ensure that members of minority groups on the Atlantic Coast could enjoy services that are consistent with their culture. This would enable them to "integrate into the nation, while at the same time preserving the distinctness of the national culture[55]" (Semb 2000:22). Additionally, the members would be free to choose services originating from another culture. This would naturally expand individual freedom of choice.

Nevertheless, an arrangement of individual accommodation rights could also be the target of criticism. It is no easy task to define the legitimate scope of accommodation rights. Anne Julie Semb suggests three non-negotiable limits (ibid.:20). Firstly, within a liberal-democratic framework, these limits would be respect for democratic principles, the rule of law and the human rights. The requirement to learn (one of) the national language(s) would be a second limit. Thirdly, Semb supports equality between the sexes.

A set of non-negotiable limits would have the benefits of stipulating the terms of integration into the nation. Even though they probably will be contested, the limits "can serve as barriers against the kind of gradual extension of poly-ethnic rights – up to the point where the tension between such rights and other values can hardly be overlooked" (ibid.:20). Hence, explicit limits could also meet the slippery slope argument, as granting some special rights would not automatically lead to the institutionalisation of a wider range of special rights that would violate the legitimate limits (ibid.:21).

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[55] The national culture in this context would be the costeño culture.

Given that the limits to cultural pluralism are made explicit and public, Semb does not "see why a limited set of special rights would undermine efforts at building a common national identity among citizens with diverse ethnic identities" (ibid.:21). Furthermore, Semb claims that, "[s]uch limits could also help us distinguish between justified and unjustified claims for more flexible, i.e. less culturally specific, legislation, modifications in national institutions etc. This could allow us to interpret the principle of equal treatment in a way sensitive to some, albeit far from all, cultural differences" (ibid.:21). In short, the establishment of legitimate non-negotiable limits would be contested, but would all the same be quite essential if individual accommodation rights were to be granted in Nicaragua.

Individual accommodation rights entail a wide range of resource-demanding public services. Objections could be raised that the costs of such a range of services would diminish the quality of all public services, as resources have to be more liberally dispersed. Likewise, there could be practical problems with the lack of qualified personnel to all the paralleling jobs. In a poor and resource-strapped country like Nicaragua this would be a legitimate objection.

Nevertheless, I believe that through this federal model with individual accommodation rights, a unified Nicaraguan democracy could guarantee its citizens equal rights and the right to be different.

7.2   Final Remarks

The basic argument underlying this thesis is that the formal structure of the state matters. I have based my discussion on the assumption that the institutional set-up of the Nicaraguan state has an impact on justice, democracy and national unity. However, the limits of institutional designs must be viewed with caution, as they are only the structural parameters within which politics are to be conducted. Which democratic decisions that are taken within this formal framework, the outcomes of party politics, economic conditions, the involvement of civil society as well as the policy of the international aid agencies are decisive for the functioning of the Nicaraguan society. In other words, there are other factors beyond the scope of this thesis that pertain to

questions of justice, democracy and unity in Nicaragua. Consequently, this thesis cannot address all of the problems of Nicaragua. Moreover, there are likely to be people that would disagree with my understanding of the Nicaraguan reality, as well as my interpretation of egalitarian liberalism and multiculturalism.

This said, setting up a liberal democratic state, no matter after the recipe of either Kymlicka or Barry, would signify a profound change in Nicaragua as it would require ending caudillism, corruption, discrimination, and exclusion of minority groups, poor people and women.

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