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**Accommodating Indigenous Peoples within the Human Rights Regime:
The Case of Awas Tingni v. Nicaragua**

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ACCOMMODATING INDIGENOUS PEOPLES WITHIN THE HUMAN RIGHTS REGIME: THE CASE OF AWAS TINGNI V. NICARAGUA¹

Some critics allege that the human rights regime is based upon the values of liberal individualism and therefore inappropriate for communities that do not share a commitment to these values (Pollis and Schwab 1979).² Such critics characterize human rights as being either irrelevant because of the lack of fit between liberal individualism and more community-based cultures or, even worse, as an imperialist tool in the hands of the West. However, the individual rights that are secured by the international human rights regime can be used for a variety of different purposes, including both liberal and non-liberal ends. A person, or a group of persons, may use the individual freedoms secured by international human rights treaties to express opinions that are entirely inconsistent with, or even in certain respects contrary to, liberal political ideals. To restrict the rights of this individual to the expression of liberal ideals would be, ultimately, inconsistent with the idea of freedom underlying these rights. Because liberalism values the autonomy of the individual (and, arguably, the autonomy of the community)³ above that individual's willingness to embrace any particular ideas, a liberal approach to human rights enables individuals and communities to utilize their rights and freedoms in a broad manner of ways. Recent progress in the area of indigenous rights

¹ An earlier version of this paper was presented at the International Studies Association's 2007 annual convention in Chicago. I am grateful to Kevin Dunn for his helpful comments.

² It is worth noting that the understandings of culture underlying this debate have also evolved, softening the dispute between universalism and cultural relativism Donnelly, Jack. 2003. *Universal Human Rights in Theory and Practice*. Second ed. Ithaca, NY: Cornell University Press..

³ This emphasis on autonomy underlies John Rawls's case for toleration of decent hierarchical societies Rawls, John. 1999. *The Law of Peoples; with "The Idea of Public Reason Revisited"*. Cambridge, Mass.: Harvard University Press..

underscores the extent to which the rights secured by the international human rights regime, though expressed in liberal individualistic terms, can nevertheless be used to secure non-liberal communitarian goals.

In a precedent setting case, the Awas Tingni Community (Awas Tingni), an indigenous community marginalized by the state of Nicaragua, successfully sought to obtain title to the property it occupies through Organization of American States (OAS) institutions. Drawing on a number of internationally recognized human rights, including in particular the right to property, the Awas Tingni successfully asserted their claim to the territory that they had occupied. The right to property, enshrined in Article 21 of the American Convention on Human Rights (American Convention) secures the right to property, but it does not explicitly address the right of groups to own property. On the contrary, the interpretation of the right to property has previously been interpreted primarily as a right held by individuals and the American Convention states the existence of this right in unambiguously individual terms, providing in part that “Everyone has the right to the use and enjoyment of *his* property.” This right to property initially seems unpromising for the protection of a collective right to property, yet this is the interpretation that the Inter-American Court of Human Rights gave to this right. This decision illustrates the extent to indigenous groups might make use of the international human rights regime despite the clash of cultures between indigenous peoples (and other groups governed by communitarian norms and values) and the international human rights regime.

I begin my paper with an overview of the dispute between the Awas Tingni community and Nicaragua. After Nicaragua had granted logging concessions that

allowed corporations to log on their territory, the Awas Tingni sought collective title to the land that they had used and occupied. They supported their community's claim by making reference to a number of internationally recognized human rights, including the right to property, which were formulated in unambiguously liberal individualist terms. This dispute ultimately made its way through the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court, where it was ultimately resolved. I then proceed to discuss the right to property and the extent to which the Inter-American Court's reading is evolutionary, to use the Court's own characterization of its ruling. Finally, I consider the implications of this ruling not only for groups that may seek to imitate the Awas Tingni community's success, but also for our broader conception of human rights. In particular, I argue that this decision undermines the liberal-communitarian distinctions that fuel the cultural relativism debate. The Awas Tingni community's success in using human rights generally conceived of in liberal individualist terms for purposes of attaining their collective community-oriented property rights underscores the substantial areas of overlap between these two positions. It also supports the idea that even those embracing non-liberal ideas might nevertheless support the international human rights regime.

The Awas Tingni Community

The Awas Tingni community, an indigenous group living inside Nicaragua, is a "daughter community" of the larger Mayagna group.⁴ There is some dispute about the size of the group, which lives along Nicaragua's Atlantic coast. Ethnographic research

⁴ The Mayagna community is also referred to as the Sumo, but they consider this name to be one that was imposed on them by outsiders. Consequently, they prefer the name Mayagna.

indicates that the indigenous community of the Awas Tingni includes approximately 630 (Grossman 2001, 2) to 650 individuals (Vuotto 2004 226), though the size of the group was a matter of some dispute in their case against Nicaragua. During the course of proceedings before the Inter-American Court, members of the Awas Tingni community alleged that the group had increased in size and was, at the time of the hearing, approximately twice this size (Transcript of the Public Hearing on the Merits 2002, 144). By contrast, the Nicaraguan government alleged that the group was much smaller than it asserted and, further, that the Awas Tingni community itself was merely a part of a smaller indigenous community rather than a distinct indigenous group (Reply of the Republic of Nicaragua to the Complaint Presented before the Inter-American Court of Human Rights in the Case of the Mayagna Community of Awas Tingni 2002, 367). In its findings of fact, the Inter-American Court determined that the Awas Tingni community consisted of “more than” 600 individuals (Judgment: Inter-American Court of Human Rights in the Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua 2002, 411). In addition to this disagreement about the size of the group, the parties to the case differed over how long the Awas Tingni had occupied the territory that they claimed. Both sides agreed that the Awas Tingni had relocated their village. The Nicaraguan government argued that because of this move, the Awas Tingni had no ancestral claim to the land that they sought (Reply of the Republic of Nicaragua to the Complaint Presented before the Inter-American Court of Human Rights in the Case of the Mayagna Community of Awas Tingni 2002, 109). The Inter-American Commission responded to these assertions by underscoring the fact that both the old and new locations of the village were both within the territory claimed by the Awas Tingni and that the movement within

this territory was part of the group's normal migration patterns (Final Written Arguments of the Inter-American Commission on Human Rights before the Inter-American Court of Human Rights 2002, 333).

The land that the Awás Tingni community occupies holds a wealth of timber and natural resources (Grossman 2001, 2). Like many indigenous peoples, the Awás Tingni hold their land communally rather than individually (Vuotto 2004 226). The Awás Tingni community exerts collective ownership over the entire territory. Individuals and families have subordinate rights to the use and occupation of parts of that territory. The community views its territory as nurturing them both physically and spiritually. The land provides the Awás Tingni with their means of subsistence. The Awás Tingni farm using a slash and burn method, an environmentally friendly technique that requires them to alternate among a number of plantations as the soil regenerates between periods of planting. The land requires a period of approximately fifteen years to regenerate. Because of this extensive period of regeneration between plantings, the Awás Tingni are using much more of the land than they are actively farming at any given time. In addition to their agriculture, the Awás Tingni also hunt local wildlife including the pecari, a wild boar that inhabits the forest within their territory. These hunts, which can last for weeks at a time, constitute a central community activity. In addition to drawing their sustenance from the land, the Awás Tingni maintain a strong attachment to their territory because it allows them to connect with their ancestors and with the spirits who wield control over the land and its wildlife (Vuotto 2004 227-228). They see themselves as guardians of the forest (Transcript of the Public Hearing on the Merits 2002, 147). Community members make frequent visits to the graves of their ancestors that are located within their territory.

In addition, the Awas Tingni community believes that the spirits of the land can heal the sick and exert control over animals on the territory. To displease these spirits is, in the view of the Awas Tingni, to court disaster. The territory sustains the Awas Tingni materially and culturally, but they have yet to be granted a formal title to their territory by the Nicaraguan government.

Because of the material and spiritual significance of their territory, the Awas Tingni community seeks to maintain the integrity of the land. The Nicaraguan government's decision to open this territory up to logging activity therefore posed a considerable threat to the land and, by extension, to the Awas Tingni community and its members. The Nicaraguan government granted a logging concession to a Dominican corporation, Maderas y Derivados de Nicaragua, SA (MADENSA), for 43,000 hectares lying mostly within the boundaries of Awas Tingni territory (Anaya and Grossman 2002, 3). The Awas Tingni entered into an alliance with the World Wildlife Fund, an environmental organization, to oppose this step by the Nicaraguan government. Drawing on provisions of Nicaraguan law that provided for indigenous property rights. Under pressure, the Nicaraguan government entered into an agreement, signed in May 1994, with the Awas Tingni and MADENSA for some more sustainable logging activity (Anaya and Grossman 2002, 3). According to the terms of this agreement among the Awas Tingni, MADENSA, and the Nicaraguan government, the Awas Tingni would derive some benefit from and assert control over the logging activities on their land. The agreement also obligated the Nicaraguan government to identify and title the Awas Tingni community's land and to take no further actions that would undermine the community's claim to its land. The government fulfilled neither obligation. It took no

steps toward titling the Awas Tingni land and, at the same time that the government was agreeing not to undermine the Awas Tingni's claim to its communal territory, it was negotiating a second logging concession that would further infringe on Awas Tingni territory.

In July 1995, Awas Tingni leaders learned that the Nicaraguan government had granted an even larger logging concession for 63,000 hectares to a Korean company, Sol de Caribe, SA (SOLCARSA) (Anaya and Grossman 2002, 4). By the time the Awas Tingni community learned that the government was even contemplating this move, which would allow SOLCARSA to log on nearly two thirds of the territory claimed by the Awas Tingni, the government had already granted an exploratory license to SOLCARSA and given the concession its preliminary approval. Despite its previous agreement in connection with the MADENSA concession, the Nicaraguan government did not consult with the Awas Tingni on this matter and the Awas Tingni only learned of the concession through the presence of exploratory teams of SOLCARSA personnel on their territory. The government treated the land included within the concession, land that the Awas Tingni claimed, as state owned land that the government could dispose of at its own discretion. As such, Nicaragua felt free to grant SOLCARSA a thirty year license, with an option to renew for sixty years, in March 1996.

After they learned about this SOLCARSA concession, the Awas Tingni sought relief in the Nicaraguan court system by filing a writ of amparo, similar to a claim for injunctive relief in the U.S. system, which would have secured some emergency relief for them by requiring the Nicaraguan government to rescind the SOLCARSA concession (Anaya and Grossman 2002, 4). This request was turned down on the basis that it had

not been filed within thirty days of the group's learning about the concession. Because this time had passed, the Awas Tingni community was deemed to have given its tacit consent to the concession. Their inability to obtain relief within the domestic legal system would prompt the Awas Tingni to seek relief through the Inter-American human rights system. The Nicaraguan Supreme Court would eventually strike down the SOLCARSA concession because the government had failed to receive the consent of the Regional Council of the North Atlantic Autonomous Region as required by the constitution (Anaya and Grossman 2002, 6). While this decision, implemented through a subsequent order of the Nicaraguan Supreme Court, granted the Awas Tingni some relief in this particular case, it did not address more fundamental questions about the ownership of this territory. Because the questions of land tenure and the rights of indigenous communities remained open, the Inter-American Commission referred the matter to the Inter-American Court of Human Rights. The Awas Tingni case was the first occasion that the Inter-American human rights system had to consider the questions surrounding indigenous property rights.

Complaint to the Inter-American Commission on Human Rights

After unsuccessfully seeking relief in the Nicaraguan court system, the Awas Tingni turned to the OAS system for redress of their claims against the Nicaraguan government. The Charter of the Organization of American States (OAS Charter) created the Inter-American Commission on Human Rights (IACHR) to promote the observance of human rights in the Americas (Charter of the Organization of American States Art. 106). With the help of their legal team, the Awas Tingni filed a petition with the IACHR

arguing that the Nicaraguan government's actions violated international human rights norms. In particular, the Awas Tingni claims centered around articles 1, 2, 21, and 25 of the American Convention on Human Rights (Grossman 2001, 3). Article 1 of the American Convention contains a broadly worded non-discrimination provision that imposes obligations on States Parties to guarantee human rights to all without respect to any social conditions. Article 2 requires signatories to take any necessary steps within their domestic legal and political systems to give effect to the rights and freedoms within the American Convention. Because of the lack of domestic remedy, the Awas Tingni alleged that Nicaragua had violated provisions of Article 25 on the right to judicial protection.

In many respects the key to the Awas Tingni claims, Article 21 secures the right to property. This article provides, in part, that

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

Other international and regional human rights documents also recognize the right to property.

Based on its reading of these provisions and the evidence presented, the IACHR found that Nicaragua had violated the rights of the Awas Tingni community (Grossman 2001, 3). Claudio Grossman, who was President of the IACHR at the time, writes that:

the Commission concluded that Nicaragua had violated the American Convention on Human rights ... that Nicaragua ratified in 1979. Nicaragua was then granted a period of time to comply with the recommendations of the Commission and remedy the consequences of that violation, particularly halting the removal of trees from Awas Tingni land, and demarcating the lands belonging to indigenous populations to prevent future property rights violations. The recommendation also required Nicaragua to delineate the borders of land held by indigenous populations, to register these lands, and to provide compensation to the Awas Tingni tribe for their lost resources (2001, 3).

When Nicaragua failed to comply with these recommendations, the IACHR referred the case to the Inter-American Court and appeared before the Court as the representative of the Awas Tingni community.⁵

The Inter-American Court of Human Rights

Before the Inter-American Court, the IACHR, along with other Awas Tingni lawyers appointed as assistants in the case, reiterated the arguments that the Nicaraguan government's conduct violated the above-mentioned provisions of the American Convention, particularly the right to property. The Nicaraguan government asserted three defenses to the claims of the Awas Tingni. First, as noted above, Nicaragua argued that the Awas Tingni community was significantly smaller than it claimed to be and that the community had claimed an excessive amount of territory relative to its population (Reply of the Republic of Nicaragua to the Complaint Presented before the Inter-American Court of Human Rights in the Case of the Mayagna Community of Awas Tingni 2002, 117).

⁵ Prior to a 2001 rule change, the IACHR represented the complainant in cases before the Inter-American Court. Under the current rules, victims may now participate directly in proceedings before the Inter-American Court.

Second, Nicaragua argued that the Awas Tingni could not claim the particular territory that they sought because they had only been there since the 1990s and they did not have any historical claim to the land (Reply of the Republic of Nicaragua to the Complaint Presented before the Inter-American Court of Human Rights in the Case of the Mayagna Community of Awas Tingni 2002, 109). Finally, the government asserted that the Awas Tingni claim, if granted, would infringe on claims asserted by other indigenous groups (Reply of the Republic of Nicaragua to the Complaint Presented before the Inter-American Court of Human Rights in the Case of the Mayagna Community of Awas Tingni 2002, 115).

Based on the evidence presented by the Awas Tingni Community's advocates, which in many cases went unanswered by the Government of Nicaragua, the Inter-American Court found in favor of the Awas Tingni. Particularly significant to the Court's decision was Article 21, securing the right to property. As noted above, Article 21 speaks of this right in individual terms, using singular, masculine pronouns: "everyone has the right to use and enjoyment of *his* property" (emphasis added). Despite this, the Inter-American Court held:

Through an evolutionary interpretation of international instruments for the protection of human rights, taking into account applicable norms of interpretation and pursuant to article 29(b) of the Convention – which precludes a restrictive interpretation of rights – it is the opinion of this Court that article 21 of the [American] Convention [on Human Rights] protects the right to property in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property, which is also recognized by the Constitution of Nicaragua (Judgment: Inter-American Court of Human Rights in the Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua 2002, 430).

In so deciding, the court recognized both the tradition of communal land ownership among indigenous groups and the connection between indigenous groups and the land that they occupy. In his separate concurring opinion, Judge Sergio Garcia Ramirez expanded on this, arguing that

[t]here is no single model for the use and enjoyment of property. Every people, according to its culture, interests, aspirations, customs, characteristics and beliefs, can institute its own distinctive formula for the use and enjoyment of property (Concurring Opinion of Judge Sergio Garcia Ramirez in the Judgment on the Merits and Reparations in the "Mayagna (Sumo) Awas Tingni Community Case" 2002, 450).

While there are a number of different forms of property ownership, it does not necessarily follow that these forms are equivalent to the right to property secured in the American Convention and other human rights documents. In fact, the terms of the relevant article would suggest otherwise. However, the Inter-American Court's willingness to read beyond the words on the page extend the meaning of the right to property. This reading of the right to property goes beyond the narrow confines of a strict reading of the article, opening the door for other forms of property ownership more relevant to indigenous peoples.

Based on this reading of the right to property and other relevant provisions of the American Convention, the Inter-American Court ordered the Government of Nicaragua to delimit, demarcate, and title the lands belonging to the Awas Tingni community, to invest US \$50,000 "in works or services of collective interest for the benefit" of the Awas Tingni as compensation for the intangible damages sustained by the Awas Tingni, and to pay the Awas Tingni community \$30,000 in costs and expenses for both the domestic and

international proceedings in connection with the dispute ((Judgment: Inter-American Court of Human Rights in the Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua 2002, 442). In addition, the Inter-American Court decided that it would oversee Nicaragua's compliance with this ruling and require Nicaragua to submit a report regarding its completion of the measures ordered by the Court.

The Right to Property: An Evolutionary Reading

The Awas Tingni decision represents a real advance in indigenous property rights. Maivan Clech Lam places the Awas Tingni case in the context of other decisions on indigenous rights, including the 1975 *Western Sahara* Advisory Opinion from the International Court of Justice (ICJ) and the Australian High Court's 1992 decision in *Mabo v. Queensland* (2004, 137). Lam argues that, when taken together, these cases can reorient thinking about indigenous rights. The ICJ's *Western Sahara* opinion held that, based on their coherence as a "people," the inhabitants of that area were entitled to exercise the right to self-determination. The *Mabo* decision's contribution was to void the legal doctrine of *terra nullius*, which allowed European powers to characterize indigenous lands as uninhabited and proceed to settle them. Lam notes, though, that these two decisions are unlikely to have any real impact on indigenous peoples' access to land. The *Western Sahara* opinion is advisory, and the *Mabo* decision, though binding within Australia "gave the federal and state governments so much leeway to adjust their property laws in response to its ruling that the Aboriginal peoples of the continent have yet to reap real benefit from the decision" (Lam 2004, 138). The Awas Tingni decision means that the indigenous order can survive the statist order that has been imposed over

it, and it is the only decision of these three that shows any promise of implementation. The decision can also be influential outside of the specific realm of indigenous rights. The decision, which utilizes rights granted to individuals to secure a collective good, can also speak to the debate between liberal individualism and communitarianism.

The Inter-American Court's decision turned on an unorthodox interpretation of the right to property. This right, like nearly all other rights recognized as part of the international human rights regime, is typically interpreted as an individual right.⁶ The individualistic nature of the right to property is apparent from the use of singular pronouns in Article 21 of the American Convention: "*Everyone* has the right to the use and enjoyment of *his* property." The view of human rights as individual rights pervades the international human rights regime, and it is this view of human rights that make the Inter-American Court's reading "evolutionary" (or perhaps even revolutionary). The pervasiveness of the individual orientation toward human rights has given rise to widespread criticism of the concept of human rights. With the aim of allowing other ideologies to embrace human rights, some political philosophers have proposed other views of human rights that rely less on this individualism. For example, John Rawls seeks to extend human rights beyond liberal individualism in *The Law of Peoples* (1999). While liberal democracies, which also embrace the conception of the individual as inherently free and equal, have no problems with the conception of human rights embodied by the international human rights regime, Rawls argues that other types of communities may be able to embrace a conception of rights in which individuals hold

⁶ One of the few exceptions to this individualist orientation is the right to self-determination of peoples, by which peoples determine their own political status. This right is undeniably a collective right, but even this right is widely considered to be a collective manifestation of a number of individual rights.

rights by virtue of their membership in groups.⁷ Rawls develops the hypothetical example of Kazanistan, based on the Ottoman Empire. In the historical case of the Ottoman Empire, individuals enjoyed rights by virtue of their membership in religious communities, embraced this model of human rights (Walzer 1997, 17-18). Indigenous rights likewise provide a challenge to the purported Western notions of human rights (Van Genugten 2004, 380). The success of indigenous groups like the Awas Tingni suggest ways to resolve the divide between individual- and community- based notions of human rights.

Individual and Group Rights

With very few exceptions, such as the right of peoples to self-determination, the human rights regime sees the holders of rights (such as the right to property, which is described in explicitly individual terms in the American Convention) as these free and equal individuals rather than communities or other groups. The individualistic orientation of the right to private property underscores the cultural divide between the concept of human rights and indigenous culture (Barsh 1995, 40). Russel Barsh notes the connection in traditional indigenous cultures between rights and the state:

In the legal system of states, a “right” is an argument against state power. In indigenous thinking, there is no state, only a web of reciprocal relationships among individuals. This renders “rights” in the classic legal sense meaningless, because there is no state to argue against, only relatives (1995, 41).

⁷ It is worth noting that this move has subjected Rawls’s international theory to significant criticisms. His critics allege that by tolerating communities that embrace this conception of human rights, Rawls is justifying a double and lower standard of justice for individuals in these communitarian societies.

Barsh elaborates on the source of this indigenous conception of rights and freedoms as the social structure of the indigenous group, in which young children are surrounded by relatives (1995, 45). These are relationships among individuals and families, rather than a relationship between individual citizens and their state. These traditional forms of social organization are increasingly giving way to other forms of government, compelling indigenous peoples to seek to protect their rights against an oppressive state. Nevertheless, these rights wielded against the state are expressed in terms that are at odds with the more communitarian cultures of many indigenous peoples.

Property ownership is indicative of this community-oriented culture. Many indigenous cultures, including the Awas Tingni, hold property not individually but collectively. Under the Awas Tingni's system of land tenure, individuals enjoy the exclusive use of some portion of the community's land, but ownership of the territory rests with the community as a whole. While making generalizations about a group as diverse as the family of indigenous peoples is a risky proposition, this type of social structure is not uncommon among indigenous populations. In this context, individual human rights make little cultural sense. The wording of Article 21 of the American Convention, along with the other documents that embody the right to property, does not obviously contemplate this form of collective ownership. On the contrary, the wording of Article 21, with its use of individual pronouns, suggests that property is an individual right. Moreover, while this right secures for individuals (and also, per the Inter-American Court's evolutionary reading, groups) the right to property, it does not secure the right to particular property.

The values of communitarian cultures, like those of many indigenous communities, has inspired criticisms of the human rights regime and the liberal individualism that underlies it. Communitarian conceptions of justice stand in contrast to liberal universalism and argue that ideas such as rights must be situated within a particular culture. Michael Walzer, for example, rejects the idea that a concept like justice can have a universal meaning. Instead, these meanings depend on shared cultural norms. Instead of a universal principle of justice, Walzer advocates

that the principles of justice are themselves pluralistic in form; that different social goods ought to be distributed for different reasons, in accordance with different procedures, by different agents; and that all these differences derive from different understandings of the social goods themselves – the inevitable product of historical and cultural particularism (1983, 6).

A communitarian account of human rights, then, would argue that a liberal universality set of rights will necessarily be thin, hollow, and incapable of securing the good sought by a group like the Awas Tingni. Instead, rights can only be truly defined by the cultural group to which they pertain.

The more pragmatic approach applied by the Inter-American court undermines this view of the international human rights regime. This pragmatic approach is supported in theory as well as practice. While communitarians have portrayed their approach as sharply contrary to the liberal account of justice and individual rights, in reality the differences are not so distinct. As Will Kymlicka has persuasively argued, the communitarian account does not assert that ends or values are prior to the individual. Ultimately, both liberalism and communitarianism acknowledge the ability of the individual to deliberate about and possibly revise her life plans and her values (1989, 57-

58). Though communitarianism may take the group as the starting point and liberalism may begin instead with the individual, neither view asserts that the community completely overwhelms the individual. While there are undeniable differences between these liberal and communitarian accounts of the individual's relationship to the community, these differences are more a matter of emphasis than anything else. Both views acknowledge a core of autonomy for the individual that allows the individual to make certain choices for herself. In order to offer a distinctive view of the relationship between the individual and the community, the communitarian position would have to assert, against liberalism, that the community is in a real sense prior to the individual and defines her values and goals. No communitarian thinker makes this strong of a claim. While the group remains, and even enjoys some moral personality of its own, the communitarian position concedes the ability of the individual to define her own values, to determine her life plan, and to make changes to both. The differences between liberalism and communitarian cultures, then, are not as radical as they might seem. Ultimately, they are differences of degree.

The Inter-American Court's decision in the *Awas Tingni* case suggests that the liberal-communitarian divide, already narrow in theory as Kymlicka has argued, is also somewhat narrow in practice. The interpretation of the right to property – a right granted in openly individual terms – to secure the *Awas Tingni* community's collective right to property implies that the divide between individual and group rights is smaller than is often supposed. The rights and freedoms, even if granted in individualist terms, can be used for a number of different purposes, even anti-liberal and non-individualist ends if the individual right-holders so wish. In this manner, the Inter-American Court was able

to take the right of *everyone* to “the use and enjoyment of *his* property” and apply it as the right of the community to the use and enjoyment of their collectively-held, customarily occupied property. While advocates of collective rights may prefer that the rights be granted explicitly to groups rather than individuals but the use of individual rights for collective purposes serves, at least, to narrow the gap. The gap between liberalism and communitarianism can be narrowed not only in theory but in practice as well.

Conclusions

The Inter-American Court’s decision in this case has the potential to influence both the theory and practice of human rights in two key respects. First, the decision constitutes an advance for the rights of indigenous peoples globally. The success of the *Awas Tingni* case has both immediate consequences for this and other indigenous groups as well as more broad-reaching claims for debates about human rights. Ironically, the precedential value of the *Awas Tingni* case may be impeding the ultimate resolution of this issue for the *Awas Tingni* community itself. After the verdict in the Inter-American Court, the *Awas Tingni* community has sought to enforce their rights to their territory against the Nicaraguan government. Their awareness of the verdict and its enforcement as an important precedent for other communities elsewhere has made them particularly conscientious about the demarcation of their territory and the manner in which their territory is titled (Cornelio 2006, 27). Also frustrating the ultimate titling of the *Awas Tingni* community’s land is the inadequacy of governmental mechanisms within the

Nicaraguan state. This ruling by the Inter-American Court has already been used by other indigenous groups to secure relief like that given to the Awas Tingni community.

Second, this decision by the Inter-American Court also has broader implications for the field of human rights, which has been divided along liberal individualist and communitarian lines. As I have argued, this indigenous community's use of individualist human rights norms to secure their community's collectivist goals brings together liberal and communitarian positions on human rights. The Inter-American Court's reading of the right to property, though evolutionary, is not revolutionary. The divide between individual- and group-oriented approaches to the question of rights has always been smaller than is generally assumed, as Kymlicka persuasively argued. The application of individualist rights to yield a collective result demonstrates that rights typically understood in individual terms can also be applied to yield a communitarian result. The proximity of these positions also means that groups that do not share a commitment to liberalism or the liberal ideal of the individual can nevertheless support a full conception of human rights. To the extent that these rights can be used, as in the Awas Tingni case, to support non-liberal purposes, these groups holding non-liberal values have a strong interest in securing these rights for their individual members.

Transcending of this divide between the liberal individualism that underlies the international human rights regime in its contemporary formulation means that even groups with very different values can nevertheless support the human rights regime. These groups can benefit from their individual members' possessing these rights because these rights allow for their collective exercise. The one instance where groups may be unable or unwilling to support the international human rights regime is where they cannot

secure the willing support of their individual members for the exercise of these rights in a collective manner. These instances define the outer limit of support for the collective exercise of human rights. Aside from these cases in which coercive means would be necessary to secure the consent of individuals to the group's exercise of collective rights, though, the individual-group divide is sufficiently narrow that it can be bridged. The success of the Awas Tingni in using the right to property for their community purposes would suggest that the rights as embedded in the international human rights regime and as envisioned by communitarian critics have, at their core, a deeper and more fundamental compatibility.

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