

Can Groups Hold Rights? Rethinking Collective Rights Without Attributing Groups a Moral Status¹

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Abstract

This paper defends the thesis that groups can be entitled to hold rights. Although it defends that groups can be vested rights, the position that it advocates does not ascribe moral status to groups independently of that of their members. In trying to establish the normative foundations of collective rights based on group members' cumulative or shared interests, this paper employs the interest theory of rights and adopts a reductionism-based approach to the given issue. In connection with this, the main aim of this approach is to form a normative basis for collective rights that are held jointly by group members. Therefore, by adopting a reductionist approach and not separating the group from the individuals who make up it, this paper concludes that the group right conception that it advocates is more adept in terms of its capability of avoiding intra-group oppression and some of its moral and practical implications.

Introduction

To establish the theoretical foundations of collective rights is a controversial issue, for some reasons, in political philosophy. It is generally thought that groups cannot be accorded rights since the moral subjects of rights and right-bearing agents can only be individuals. However, recent developments in political philosophy question this individualism-based approach both conceptually and practically. At the conceptual level, it is seen that certain rights such as rights of national self-determination or rights to other forms of collective rights associated with collective autonomy, cannot be reduced to individual rights (Jones, 1999). As for the practical considerations with regard to the normative justification of the collective rights, recent interest in the value of the community in shaping individuals' character can be taken into consideration in the context of protecting the minority communities. In this respect, *'many of the defenders of collective rights, particularly communitarians, place their argument on the moral importance of communities, and charging*

¹ I dedicate this article to Joseph Raz, who passed away in the past months, and to my dear grandmother, Zekiye Cantürk. Many thanks to Mustafa Erdoğan, Can Kakışım, Örsan Akbulut, Aliberk Akbulut, Emre Bilgiç and Fatih Köktemir for their insightful comments on earlier drafts.

opponents of collective rights with denying any value to communities, or subscribing to an incorrect ontology' (Hartney, 1991, 205). It should be noted, however, that this is based on an erroneous assumption that the dissents of collective rights have no interest in the well-being of the communities. Many of the dissents of the idea that groups can be right-and-duty bearing moral agents accept the importance of communities in people's lives but question the existence of moral collective rights. These doubts can be voiced in a number of ways:

- 1) *Conceptual doubts:* (1) One conceptual doubt raised against collective rights is, for instance, that it does not make any sense to regard entities other than human beings as right-and-duty bearing moral agents. Despite the fact that the rights that the members of minority communities seek are generally collective rights, those rights are at odds with the general understanding that regards moral rights as rights possessed only by human individuals. (2) Then, creating a right category titled "collective rights" is meaningless since fictitious entities cannot bear moral rights as an end in themselves. Collective rights are therefore viewed with some ambivalence because they are seen as incoherent conceptually.

- 2) *Political doubts:* (1) The most known example of the political doubts concerning collective rights is the potential tensions between group rights and individual rights. Therefore, it is feared that when group interests and individual interests conflict with each other, the rights that individual holds separately is violated. (2) Communities have a heterogeneous and divided nature in the context of having different interests. This fear is actually associated with the fear that it implies that the group interest outweighs the individual interest and ultimately pacifies the conflicting interests of its members in the name of "well-being of the group". That harmful potentiality of group rights can be seen in the context of internal divisions observed, for instance, in the experiences of certain groups such as the Yoruba of Nigeria, the Lozi of Zambia, the Bokongo of Zaire, etc (Kukathas, 1997). The group leaders in these cases aim to destroy all competing interests and hybridity through the political power they have obtained (Kukathas, 1997). Therefore, one can obviously see that (3) intra-group oppression and the conflict between group elites and others prevails here. Besides, there are also (4) vulnerable sub-groups within minority communities such as sexual minorities, women, and children (Song, 2020). Therefore, theorists, who predominantly voice criticisms based on gender equality, claim that collective rights will put pressure on

vulnerable individuals in cultures that are already patriarchal, which instigates divisions.²

Due to these fears and historical experiences, some theorists' fundamental solution to these problems is to reject the notion of collective rights. Kukathas, for instance, is one of those writers that have a contention that concerning about the cultural health of minorities gives no sufficient reason to envisage collective rights and question individualism (Kukathas, 1997). The author regards cultural groups as no more than private associations in which people have a right to form communities by exercising their right to freedom of association. If people have a right to establish a community in which people live by the terms of the community, the wider society has no right to interfere. In connection with that theoretical approach that questions the notion of collective rights, another important normative standpoint of Kukathas against collective rights is his argument for "exit" (the right to disassociate or having a right to be free from the local community).³ That right, according to him, both ensures the rights of individuals living in a cultural community and community's rights to live according to its particular way of life. Though it seems rather simple, all other rights are either derivatives of these rights or rights granted by the community (Kukathas, 1997).⁴

Getting back to the subject, it is not hard to comprehend why the notion of collective rights, owing to both conceptual and political reasons, is viewed with some doubts and fear. However, the analytical standing or any other alternative conceptualization that one embraces with regard to the collective rights will have different and distinct (to some extent) moral implications to be scrutinized. The collective right conception, in this regard, that I will be particularly concerned with is different from the conception that ascribes a standing to the group independently of that of its members and that considers it as a right-inhering moral entity. Subscribing interest theory, I aim to show that moral

² The set of critiques associated with this argument can be found in the works of liberal feminist and critique of group-right-based multiculturalism Susan Moller Okin. For a helpful discussion of the issues, see Okin, *Justice, Gender, and the Family* (New York: Basic Books 1989). See also Green, *Internal Minorities and Their Rights*, in *Group Rights*, ed. J. Baker (Toronto: University of Toronto Press, 1994), pp. 101-17

³ For a discussion on exit and ultimately rejecting the role of exit in multiculturalism policies and theories, see Oonagh, *On Exit*, in *Minorities within Minorities: Equality, Rights and Diversity*, ed A. Eisenberg and J. Halev (Cambridge: Cambridge University Press, 2004), pp. 189-209.

⁴ For more on the discussion between classical liberalism and Rawlsian liberalism as to group rights and group-specific rights, see Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press 1995) and Kukathas, *Are There any Cultural Rights?*, *Political Theory* 20 (1), 105-139. See also Kymlicka, *The Rights of Minority Cultures: Reply to Kukathas*, *Political Theory* 20 (1), 140-146 and Kukathas, *Cultural Rights Again: A Rejoinder to Kymlicka*, *Political Theory* 20 (04), 674-680.

collective rights can be justified normatively on the basis of aggregative interests of the members of a given cultural community, which reduces the moral importance of a group to its members. Pointing out the fact that jointly held rights are derived from the mere aggregation of individual interests is my particular concern to form a normative basis for collective rights not independently of the members of the given community. This argument is made most directly in consideration of the work of Peter Jones, who is one of the most prominent contributors to the collective rights debate. In this respect, I will call my approach “reductionism-based conception”, whereas calling the other position that ascribes moral status to the groups distinct from its members “moral-status based conception”.⁵ Then, I will refer to the moral justification of the case for national self-determination of Margalit and Raz to defend my position more clearly. Last of all, it can be clearly said that a part of my intention is to show that the risks and threats raised by moral-status based conception can be allayed by a reductionist position and to review some doubts listed above in the light of it.

Interest Theory and Collective Rights

In sketching a normative basis for collective rights, my argument’s general standpoint will be based on the interest theory of Joseph Raz. Before getting into the subject, it is rather necessary to point a few important distinctions about the theory. The interest theory, with its conceptual and justificatory dimension, is a theory about the normative foundations of rights. The conceptual dimension of the theory is rather simple: only beings who have the capability of having interest can be right-holders. Speaking of its justificatory dimension, the fact that rights are justified by the interest of the right-holder points out their function. As Kramer puts it, the interest theory contends that rights are means of protection for interests that are treated as worthy of such protection, which indicates the general nature or structure of rights (Kramer, 2000). From the analytical point of view of the theory, it basically says nothing about which interests have moral significance. In this regard, the question of what sort of rights will be protected or worthy of protection falls within the realm of political and moral philosophy (or within the other considerations that one adopts about politics).

⁵ Subscribing Raz’s interest theory of rights, Jones calls his conception as “collective conception”, whereas what I describe as “moral-status based conception” is named as “corporate conception” by him. For a detailed analysis of Jones’ conception, see Jones, *Group Rights and Group Oppression*, *Journal of Political Philosophy* 7 (4), 1999, pp. 353–377. For a similar line of argumentations and distinctions, see Green, *Two Views of Collective Rights*, *Canadian Journal of Law and Jurisprudence*, 4, 1991, pp 315-27.

According to Raz, “*X has a right’ if and only if X can have rights, and, other things being equal, an aspect of X’s well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty (Raz, 1986)*”.

- In that sense, one can obviously sense, firstly, that Raz points a condition for a right to be exercised. Secondly and normatively, rights ground duties (Raz, 1986).

For Raz, the capacity for possessing rights is not limited to humans. As several theorists concede, Raz accepts the idea that groups may hold legal rights under the title of “corporation”:

“Corporations also have interests determined by their purposes, powers, and duties. It is true that protecting these interests is not intrinsically valuable. Nevertheless, corporations and officials have rights in the same sense as other individuals. They have rights if and only if their interests are sufficient to justify holding others to be subject to duties (Raz, 1995)”

Touching upon the part that is relevant to our discussion in the sense of Raz’s considerations, Raz accedes also that groups may have moral claims and hold moral rights:

“First, it exists because an aspect of the interest of human beings justifies holding some person(s) to be subject to a duty. Second, the interests in question are the interests of individuals as members of a group in a public good and the right is a right to that public good because it serves their interest as members of the group. Thirdly, the interest of no single member of that group in that public good is sufficient by itself to justify holding another person to be subject to a duty (Raz, 1986, p. 208).

- One can obviously sense from the above definition that Raz implies that having an interest by itself is necessary but not a sufficient condition for generating a right. That is, if Z’s interest to something is insufficient to place any duties or obligations on others, it is meaningless to speak of the concept of right.

In the light of Raz’s above considerations, there are also two notable normative restrictions for having a collective right to a public good or a group good:

R1: Cumulative or aggregative interest of a given group in a public good is sufficient to place an obligation on others.

R2: An individual’s interest by itself in a public good is a necessary reason, not a sufficient reason generating right correlative to any duty.

In this regard, suppose that the identity and well-being of the members of a given cultural minority living in a society are tied to the group and its cultural maintenance. According to Will Kymlicka, for instance, having an encompassing culture provides

people with a “context of choice” which allows them to choose right or wrong and make meaningful choices about their lives. Being the member of a cultural community in the mind of Kymlicka, therefore, fosters the individuality and the autonomous capacity of individuals (Kymlicka, 1989, 165), which is a clear implication that the importance of the prosperity and maintenance of the group, then, is bound with the interest of their members. As Kymlicka says:

"This is important because the range of options is determined by our cultural heritage. Different ways of life are not simply different patterns of physical movements. The physical movements only have meaning to us because they are identified as having significance by our culture, because they fit into some pattern of activities which is culturally recognised as a way of leading one's life." (Kymlicka 1989,165)

In this sense, members of any minority cultural group may have a strong interest in preserving their culture in which they are provided with a context of choice fostering their identity to live a satisfying life. Consider the case of the Kurds, a national group living in Turkey. Given the strong link between language and cultural life, the group may have a strong interest in creating opportunities to enhance the functionality of Kurdish and actively using the Kurdish language as a collective right in the public sphere. In this regard, Kurds as a national group may have an interest in participating in public life as active and equal citizens with their culture and associated language and may demand that Kurdish is offered alongside Turkish as an urgent need for access to public services.

However, as Raz indicates, in order to demand their right to cultural preservation and to have a jointly held right, members of the group's cumulative interests must pass some numerical threshold. Therefore, even if a single individual in the group has a moral importance, it does not mean that a group should be entitled to holding collective rights. One individual taken alone is not a *sufficient* condition, but a *necessary condition* of vesting rights to the group.

If, for instance, an interest in cultural preservation or cultural health is sufficient to generate a claim-right against the larger society that it not interfere with the internal structure of a given cultural community, it is also sufficient to impose on the state a duty to punish the potential breaching of that claim-right. Therefore, the greater the moral significance of interests, the greater the capability of generating more complex and robust moral duties (Edmunson, 2012). Speaking Hohfeld's terminology (Hohfeld,1917), a claim-right with its correlative duty may help to comprehend the generative power of the interest theory.

Faring on interest theory is, indeed, a rather practical way to establish a normative basis for any collective right since we can, by following the same scheme, justify the various collective rights that can be granted to cultural minorities. The only condition for a set of individuals making up a group to hold rights in that reductionism-based conception based on interest theory is sufficiently weighty interests shared by them. That is, a group as a collective entity derives its value from its contribution to the lives of individuals and the requisite moral standing that we ascribe to groups is fulfilled on the basis of members' interests. However, we emphasize these points only to understand the gist and general approach. When transferring rights to groups, (1) the moral importance of the group's interest, which is determined by the normative standards that one set, and (2) possible conflicts that are brought by the transferring of the right should be taken fully into account.

A Moral Case For National Self-Determination

Having established the normative aspects of this alternative conception of collective rights, a moral case asserted by Margalit and Raz for national self-determination can be put forth to comprehend the tie between the individual and the collectivity in terms of interests that individuals composing the group hold. The authors list certain sociological and cultural normative standards and characteristics in relation to the issue of what sorts of groups are suitable for right-holding purposes.⁶ The first standard brought forward by the authors is that a group should have an encompassing culture that marks people growing up among members of the group (Margalit and Raz, 1990). By *encompassing culture*, they mean a culture that determines the personal preferences, habits, and standards that individuals set in life. An encompassing culture that is marked by a common language and shared history serves as a map for decision-making processes in almost every aspect of life.

"Their tastes and their options will be affected by that culture to a significant degree. The types of careers open to one, the leisure activities one learned to appreciate and is therefore able to

⁶ As a matter of fact, the normative framework put forward by Raz regarding collective rights does not see cultural and sociological unity as an a priori necessity. Raz's approach is quite flexible and generous. To illustrate this, Jones gives the example of three imaginary separate groups who share nothing in common sociologically but have an urgent and sufficient interest in sustaining environmental cleaning that a factory may harm. However, it is important to point out that this example is cited by Jones only to caricature Raz's criteria. For a detailed discussion on this issue, see Jones, *Group Rights and Group Oppression*, *The Journal of Political Philosophy* 7 (4), 1999, pp. 353-377.

choose from, the customs and habits that define and color relations with strangers and with friends, patterns of expectations and attitudes between spouses and among other members of the family, features of lifestyles with which one is capable of empathizing and for which one may therefore develop a taste—all these will be marked by the group culture.” (Margalit and Raz, 1990, 444).

The second standard put forward by the authors for a given group to be the recipient of the right to self-determination is *membership*. For Margalit and Raz, there is a strong link between our membership in groups with an encompassing culture and our individual well-being, which also establishes a relationship between well-being of the group and that of individuals. According to the authors, *“It may be no more than a brute fact that people’s sense of their own identity is bound up with their sense of belonging to encompassing groups and that their self-respect is affected by the esteem in which these groups are held” (Margalit and Raz, 1990, 451).*

In this respect, one can clearly see that the moral importance of the group is morally valid to the extent that it contributes to the well-being of individuals. Therefore, the community has no value other than its contribution to the lives of its members. In addressing the issue, the authors maintain that self-government is intrinsically valuable for the members of groups with an encompassing culture. Paraphrasing Margalit and Raz, the main argument is as follow:

P1: Membership in an encompassing culture is a crucial dynamic of developing self-identity and important to one’s well-being.

P2: To be able to express membership freely effects the well-being of people in the context of self-identity

P3: Then, the manifestation of membership in the public life of the community is a part of the expression of membership

P4: Given that the political arena is one of the parts of the community life that is bound with individual well-being, this requires expressing one’s membership in political activities within the community.

C1: Therefore, self-determination in the context of self-government must be provided to the group.

In this regard, the relationship between group identity and individual identity is clearly seen. The implication of this argument is that fostering the group and its identity is morally irrelevant unless it is also good for the members of the group. In the argumentation above, one can understand that the requisite moral identity or the status of a group is implicitly reducible to those of its members, indicating that the right to self-

determination is indeed held by individual persons jointly, which makes it a moral collective right in the sense of not being held separately by individual persons. In connection with this, attribution of moral standing only to individuals does not falsify the idea that individuals have shared interests in collective goods and that the interests they share jointly are no less significant than those they exercise on their own (Jones, 1998). In short, a group has the right to self-determination, as long as the right serves the interests of the individuals who compose the group.

Moral-Status Based Conception

However, one can adopt a fundamentally different conceptualization of collective rights indicating that the moral status of a group is irreducible to those of its members. According to what I describe as “moral-status based conception”, the group has a discrete and immutable identity that is separate from individuals, which points out the fact that groupness and its interests are over and above of those of its members. Thus, such characteristics as stability and endurance of the group identity over time are main points to be taken into account in this conception. Frances Svensson, for example, arrives at this conclusion with what she calls as the *Dimensional Complexity* of groups. As she puts it: “*Multidimensional groups, in contrast, have a continuity and stability across specific individual interests and purposes ; they have a systemic unity based on inter-dependence which lends itself to political recognition.*” (Svensson, 1992, 434).

Indeed, Svensson describes a normative framework in qualifying groups for special status via dimensional complexity of the groups. However, the argumentation of Svensson implicitly ascribes discrete moral status to groups:

“It is dimensional complexity which produces such characteristics as endurance over time, stability of identity, systemic interdependence, and relative autonomy, and these in tum play a crucial role in qualifying groups for special status while avoiding the problem of open-endedness.” (Svensson, 1992, 435).

In a fashion similar to Svensson's arguments, Fiss uses the term “group” to refer to what he defines as a social group. According to his argumentation, a social group should have two main characteristics:

“(1) It is an entity (though not one that has a physical body). This means that the group has a distinct existence apart from its members, and also that it has an identity. It makes sense to talk about the group (at various points of time) and know that you are talking about the same group. You can talk about the group without reference to the particular individuals who happen to be its

members at any one moment. (2) There is also a condition of inter-dependence. The identity and well-being of the members of the group and the identity and well-being of the group are linked. Members of the group identify themselves-explain who they are-by reference to their membership in the group; and their well-being or status is in part determined by the well-being or status of the group.” (Fiss, 1976, 43).

Some Problems Concerning Moral-Status Based Conception

Conceptually speaking, the main fallacy in these above arguments is that it does not differentiate between necessary reason and sufficient reason. Given that those who reject the idea that groups have discrete moral status concede that groups have unity and inter-dependency to some extent, claiming that groups have a unified identity that is survived by the continuous alteration of their members' identity is not a sufficient reason, but a necessary reason to ascribing discrete moral status to them. As it is clearly seen in the case of the above discussion, we also emphasize the bond between group well-being and individual well-being, namely interdependence. Besides, given that there are internal divisions in groups and that groups are not fixed and unchanging entities, how can we be sure about a group being unified?

Moreover, since this approach also structuralizes the group as a right-holding discrete moral entity, the right held by the group can conceptually be internally directed towards the members of the group, which is why some objectors fear collective rights. Following Kymlicka, we think that multiculturalism motivated by liberal norms should exclude claims of a group against its own members while promoting the minority claims against the larger society (Kymlicka, 1995). Restricting the freedom of members composing the group, in this conception, for the sake of maintaining in-group homogeneity and integrity is morally problematic since it raises intra-group oppression. This situation, for instance, is evident in the conflict between the cultural community as a whole and individual Aborigines over legislation prohibiting the sale of Aboriginal property for the sake of cultural integrity (Kukathas, 1997). Therefore, it is evident that the interest at stake is an irreducible group interest that conflicts with individual interests. That communitarian understanding of “groupness” paves the way for restricting the rights of individuals, imprisoning them in the community to which they belong, and eliminating heterogeneity and opposition. Thus, such a static understanding that radically prioritizes the group would require moral education employing indoctrination, moral dogmatism, and irrationalism to ensure the cultural preservation of the group (Hirsch, 1986). Thereby,

considering its political consequences and implications, moral-status based approach poses threats regardless of the metaphysical problems. As it is seen in the case of in-group oppression, it is not hard to comprehend why skepticism in ascribing rights to non-individual entities, for some, is more often political than it is metaphysical (Green, 1991).

From a metaphysical point of view, it is difficult, however, to say that a group has moral rights that are not derived per se from the interests of its members, and conceptually, the burden of proof is necessary. In this respect, those who aim to justify the moral status-based approach on the basis of the integrity and durability of the group must demonstrate that the group at stake has an integral identity. The best way to hit this approach to the heart is to demonstrate that the group is not as integral as it is mentioned. As is mentioned, given the conflicting interests within groups, it must be difficult to speak of a radical unity. In this regard, it seems necessary to present alternative justifications. Maybe a justification can be propounded with reference to the group's decision-making capacity by developing an argument through choice theory. While valid, choice theory and its justificatory aspect as to group rights are outside the scope of this paper. Besides, as is seen above, this conceptualization also entails minority oppression by controlling individuals, which is far from minimal democratic conventions. In this respect, rethinking group rights, based on the assumption that liberal political theory does not pay attention to groups, but approaches these groups in a color-blind manner and sees society as masses of atomized individuals, does not require overlooking individuals.

As we have seen from Raz's normative framework, a group right to be asserted as a form of right derived from the interests of the members making up the group does not have the problems faced by the other conceptualization. Most of the concerns, both metaphysical and political, that we discussed above are invalid for Raz's conceptualization of collective rights. For example, given the objection that a group cannot have a moral status independently of its members, such a metaphysical critique is invalid for a reductionist approach. As for political ambivalences, since the most important point for our reducibility-centered conception is the cumulative interests of the group that are enjoyed jointly, it is hard to claim that the right at stake has a radical probability to be internally directed.

Despite all, some critics of collective rights that do not unaware of this alternative conception reject it on the assumption that they undermine clear thinking. For instance, Michael Hartney claims that there is no sensible reason in calling rights that are exercised jointly with other people a collective right by indicating that even the right to get married

would be a collective right with regard to this definition (Hartney, 1991). However, this argument is conceptually problematic for some reasons: (1) just because a right requires people to act in a shared activity, it does not mean that it is collectively and jointly held. The right to marriage is an individual human right that is held separately by people. In this respect, (2) the fact that a right has a communal aspect does not mean that it is to be taken as a collective right advocated here. However, a collective right is a right that is held by group members jointly not separately. Therefore, the fact that a right deriving from the shared interests of group members can not be held separately should be described as a collective right for it is not enjoyed separately but collectively.

Conclusion

To sum up, if we think of the notion of groupness in this fashion, the interpretation and moral implications of the right held by a group fundamentally change. Therefore, it is not hard to understand why some have certain ambivalences as to vesting rights in collectivities. However, collective rights with which we are particularly concerned are less threatening and morally problematic since there is no displacement of individuals. As Raz clearly indicates, the cumulative or aggregative interest of individuals in a public good is a sufficient reason to vest rights in collectivities in this conception. Therefore, the requisite moral capacity or the status is derived from the aggregation of individual interests, and the right at stake is exercised jointly by the members of a group, indicating that accommodation of group claims and their recognition can be met without falling into strict communitarianism that restricts individuality in the name of cultural preservation or cultural health of the community. Ultimately, groups are not moral agents that hold moral claims and rights independently of their members in this conception.

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