



Lecture 3
Group Rights



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RIGHTS

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GENERAL PART

26. 4. Nature of Rights

3. 5. Justification and Conflicts of Rights

SPECIAL PART

10. 5. Group Rights

17. 5. Property Rights

Overview

- (1) Introduction
- (2) Basic Distinctions
- (3) A Liberal Account of Group Rights
- (4) Problems

Introduction

The image features a solid red background. In the top right corner, there is a decorative graphic consisting of three parallel diagonal lines that slope downwards from left to right. The lines are white, with a thin red line in the middle and two wider white lines on either side, creating a striped effect.

Examples

- The Scots' right to national self-determination
- The Quebecers' right to protection of their cultural heritage and their language
- Amish' right to give their children less school education than required of others
- The right of certain religious groups to circumcise young boys and girls
- Journalists' right not to reveal their sources

Why Groups became an Issue

- The Communitarian Critique of “Liberal Individualism”
 - Sandel, “**Liberalism and the Limits of Justice**” (1982)
 - liberalism rests on an impoverished image of human beings as independent, abstract, non-socialised atoms
 - but instead, humans should primarily be seen as concrete, dependent, socialised, community-embedded beings
 - communitarians usually dislike rights language

The Liberal Response

- Especially Kymlicka, “**Liberalism, Community, and Culture**” (1989) and subsequent works
- Walk the tightrope:
 - hold on to liberalism, the idea that rights and individuals are primary
 - but incorporate the communitarian insights, that community is also of central importance

(This is not the only reason why group rights became an issue.)

Basic Distinctions



Two Group-Related Kinds of Rights

- **Individual** rights that we have **qua group-membership** (“group-differentiated rights”)
 - people have rights qua being judges, children, journalists, union members etc.
 - some group-differentiated rights just express that people with certain properties have certain special rights
- Group rights in the strict sense that **belong to a group**
 - “the right of the Palestinians to sovereignty”
 - “the right of Quebecers to preservation of their culture”

Group Rights: Corporate vs Collective

- Corporate Rights
 - a group has moral standing, which leads us to say that it has a right
 - group interests or group agency are the ground of the right
- Collective Rights
 - the members of a group have moral standing, and collectively they have a right
 - the group has no particular standing
 - aggregated individual interests or agency are the ground of the right

Group Rights: External vs Internal

- First, a group might have “external protection” rights: claims against the state and other groups to be protected, supported and respected in certain ways
- Second, a group might have “internal restriction” rights: claims against its own members to restrict and regulate their behaviour

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A Liberal Account of Group Rights

Instrumental Argument

- (1) People are fundamentally equal, which implies that we should give them equal chances to achieve well-being
- (2) For some people – esp. members of minorities – group membership is of fundamental importance to their well-being and identity
- (3) If these groups would not be protected by special group rights, the well-being of their members (or, their chances to achieve equal well-being) would be severely diminished
- (4) Thus, we ought to assign group rights to these groups

Features of the Instrumental Argument

- This argument grounds a collective, not a corporate group right
 - we need not say anything about the moral standing of the group as such
- It can be easily stated inside an interest theory of rights
- It is based on an instrumental argument for rights
- The basic premise is the liberal value of equality
- It is compatible with thinking that individuals are the ultimate sources of value
- It will be hard to justify strong “internal restriction” rights via this argument

Criticism of the Instrumental Argument

- Mistake of Composition (Waldron)

It is true that individuals' well-being is culture-dependent, but that merely shows that individuals need some culture, not that existing ones ought to be protected.

- Misunderstanding Culture (Waldron)

Cultures should be seen as dynamic and open systems. Protective group rights tend to enshrine the status quo. They misunderstand what culture is about.

- Individual Rights do the job just fine (Kukathas)

Minorities and culture are certainly valuable. But traditional individual liberties, such as freedom of association, are sufficient instruments to protect those values.



Skepticism about Group Rights

Three Kinds of Skepticism

- Skepticism about Corporate Rights
- Liberal Worries
- Communitarian Worries

Metaphysical Worries about Corporate Rights

- To assign a true corporate group right, a group must have some of the properties that individual agents have
 - on a will theory, this means a group must have agency
 - on an interest theory, this means a group must have interests
- Worries about non-reductive group interests
 - what are the interest of a group over and beyond those of its members?
- Worries about non-reductive group agency
 - it is not clear that most groups achieve the proper coherence that is necessary for agency
 - cultural and ethnic groups usually don't achieve the required coherence

Liberal Worries about Group Rights

- Minorities within Minorities
 - group rights tend to perceive of groups as homogenised entities
 - subgroup diversity: elites vs masses, dissenters, orthodox vs modern, etc.
 - reply: this only speaks against internal group rights
- The repressive and anti-liberal potential of groups
- Rights versus political aims
- The artificial character and historical contingency of many groups and identities

Communitarian Worries about Collective Rights

- The language of rights has become meaningless in modernity (MacIntyre)
- Rights are the wrong way to phrase the problems that phase minorities and groups; or at least, they are not particularly important
- For communities, what matters is: **recognition** (not tolerance) by others, the **virtue** of its members, the **integrity of its tradition**, and the **health of its community**

Concluding Remarks

Summary

- Historical Background: the Communitarian Critique of Liberalism
- Important Distinctions
 - Group-differentiated Rights vs Group Rights
 - Collective vs Corporate Rights
 - Internal vs External Rights
- The Instrumental Argument
 - (mostly) compatible with liberalism
- Doubts about Group Rights
 - metaphysical ones about corporate rights
 - liberal ones
 - communitarian ones about the relevance of rights

Literature

- Kymlicka, Will (ed.). *The Rights of Minority Cultures*. Oxford: Oxford University Press, 1995.
 - Margalit & Raz, “National Self-Determination”
 - Waldron, “Minority Cultures and the Cosmopolitan Alternative”
 - Kukathas, “Are there any cultural rights?”
- Kymlicka, Will. *Multicultural Citizenship: a Liberal Theory of Minority Rights*. Oxford: Oxford University Press, 1995.
- Taylor, Charles. *Philosophical Papers: Volume 2, Philosophy and the Human Sciences*. Cambridge, Cambridge University Press, 1985. Chapter 7, “Atomism”.