



Lecture 3  
**Group Rights**

---



Marinella Capriati  
Matthias Brinkmann

# RIGHTS

Marinella Capriati  
Matthias Brinkmann

---

## 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



# 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

# 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



# 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”.