Chapter 6
Collective Rights

This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it—Abraham Lincoln.¹

Despite the neglect by political liberals in the distant and recent past to take collective rights seriously, the problem of collective rights is beginning to capture the attention of an increasing number of philosophers.² This new

concern for collective rights seems to be “the result of a recent interest in the value of communities.” Having in the previous chapter discussed some political dimensions of rights in general, I shall now clarify and assess some of the chief categories of collective moral rights talk and proffer some criteria of adequacy for a philosophical analysis of collective moral rights. Is it reasonable to ascribe to collectives moral rights, rights at least some of which ought to be protected by law? If so, then precisely which collectives ought to be attributed such rights, and under what conditions?

At the outset it is important to clarify, however tentatively, a working definition of “collective.” On my view, a collective is a collection of individuals who are members of the same collective type. A collective type is a category


4 This definition of “collective” is not inconsistent with David Copp’s definition of “collective.” David Copp, “What Collectives Are: Agency, Individualism and Legal Theory,” Dialogue, 23 (1984), p. 249. In contrast, Peter A. French construes collectives as being of two general sorts: aggregates and conglomerates. Borrowing his use of these terms from geology, French defines an “aggregate” (or an “aggregate collectivity”) as a collection of people whose membership is fixed, not subject to change over time. Peter A. French, Collective and Corporate Responsibility (New York: Columbia University Press, 1984), p. 5. A conglomerate (or a “conglomerate collectivity”), on the other hand, is “an organization of individuals such that its identity is not exhausted by the conjunction of the identities of the persons in the organization. The existence of a conglomerate is compatible with a varying membership” (French, Collective and Corporate Responsibility, p. 13). What is predictable of an aggregate according to French is predictable of each member of the aggregate, while what is predictable of a conglomerate is not necessarily predictable of all or any of its members. What separates aggregates from conglomerates are three features: (a) conglomerates have internal decision and/or organizational procedures by which courses of action can be chosen, whereas aggregates do not; (b) generally, the enforced standards of conduct for individuals of a conglomerate are more stringent than
to which collections of individuals belong. For instance, the category “corporation” is a collective type of which the Exxon Corporation is a token or member. Similarly, the category “organization” is a collective type, a token of which include corporations such as Exxon, associations such as the American Philosophical Association, etc. Membership in a collective is different contingent on the sort of collective it is. I shall define an “aggregate” as a collection of persons loosely associated with each other. Implied in “loosely associated” is the idea that there are no recognized or formal membership conditions required of aggregates. A conglomerate, on the other hand, is a collection of persons into a diversified whole. On this construal, what separates aggregates from conglomerates is that the latter have wholeness or shared common interest among members (typically related to a specific goal or set of goals), which the former lack. A shared common interest is an interest held in common by each individual member of a collective. For example, institutions such as the University of Arizona are not referred to as “aggregates” because they have a complex structure of rules, offices, and a collective function that generates a collective interest connected to or directed at a common goal: education. Nor are corporations such as Exxon or The Journal of Philosophy, Inc. plausibly understood as aggregates.

Prior to proceeding to an analysis of the nature of collective moral rights, it is important to understand the nature of moral rights in general. What is a moral right? As noted in the previous chapter, I concur with Joel Feinberg that a moral right is a valid moral claim, which is conferred on someone or something by the principles of an enlightened conscience.

If it is an absolute and nonconflicting moral right, then there is never a time when it can be legitimately infringed or violated. If it is a prima facie moral right, then its

---

5 This is not to say, though, that every corporation is or has an organizational structure. If I, as an author, am incorporated for legal purposes, this hardly necessitates that all corporations have such a structure. For the most part, however, multipersonal corporations possess such organizational structures. It is the numerically large conglomerate, which is the primary concern of this project.

6 I assume that such principles exist and that, in principle, moral agents are able to know them. I also assume a moral rights realist stance for purposes of this book. For my primary aim is not to address the concerns of the moral rights skeptic. I do not, for instance, concern myself with refuting the Benthamite claim that moral or natural rights are “nonsense upon stilts.”
strength is determined by the strength of the moral principles, which confer it on the right holder.\textsuperscript{7}

Furthermore, a moral right is a moral guarantee against the setting back of the right holder’s interest and/or claim.\textsuperscript{8} Like any other right, a moral right has both a subject (the right holder) and an object (an agent against whom the right holds). A collective moral right always has as its subject some collective, though its object may or may not be a collective. For example, a corporate-collective may have a right to sue either a competing corporation or an individual. A collective moral right is distinct from a collective


\textsuperscript{8} These are Feinbergian senses of legal and moral rights applied to collectives. By this I mean that there is textual evidence in Feinberg that supports each view of the grounding of rights. However, I combine the respective “interest” and “claim” views of rights, seeing no logical problem in my holding that a right may be possessed to the extent that, other factors obtaining, the subject of the right has a valid interest and/or a valid claim, either or both of which justify protection from infringement or violation. A similar sort of hybrid view of rights is recognized in Hartney, “Some Confusions Concerning Collective Rights,” p. 303. But there are those, like Hartney and L. W. Sumner, respectively, who suppose that collective rights are possessed only by collective and choosing agents. Hartney, “Some Confusions Concerning Collective Rights,” p. 309: L. W. Sumner, \textit{The Moral Foundation of Rights} (Oxford: Clarendon Press, 1987), p. 209. The difficulty with Sumner’s position is the difficulty with the claim position on rights in general. That is, the claim position seems to deny rights status to individuals such as infants, in that they are not choosing or project-pursuing beings. However, most find it counter-intuitive that infants not be afforded rights, especially moral rights. The same kind of argument might be made in favor of collective moral rights. There is perhaps less of a problem in ascribing certain moral rights to highly organized conglomerates than there would be in the cases of, say, groups lacking such organizational and decision-making structures. But this would not preclude out of hand the ascription of certain moral rights to groups lacking a highly organized decision-making structure. For such rights might be grounded in the groups’ having valid moral \textit{interests}, which are sufficient to impose a moral duty on others to not interfere with the collective’s exercise or enjoyment of the right.

Lesley Jacobs argues for a notion of collective moral rights in which collective rights are derived from more basic individual rights, and where individual rights serve to protect individual \textit{integrity}, rather than their protecting interests and/or claims (Jacobs, “Bridging the Gap Between Individual Rights With the Idea of Integrity,” pp. 377–381). On Jacobs’ view, individual rights are “abstract” and more basic than collective rights, which are “derivative” of individual rights. I take this to be a version of Moral Rights Individualism, as I note below.
A collective *legal* right is one conferred by legal rules on some collective as a legal guarantee against the infringement of that collective’s interest/claim, as the case may be. Like a collective moral right, a collective legal right has a subject and an object.⁹ A right is typically a right to *X*, or a right to *do X*.

Prior to turning my attention to an analysis of collective moral rights, it is essential to clarify what it means to say one is *justified* in making certain moral rights ascriptions to collectives. Briefly, to be *morally justified* in doing something means that the weight of moral reasons in favor of *what one does* (or believes) at a given time and in a given circumstance outweighs the moral reasons against what one does (or what one believes). This is an objectivist and noniterative notion of moral justification.

I am concerned with the question of whether or not it is justified to ascribe to certain collective moral rights, making such collectives the subjects of rights.¹⁰ As Michael McDonald puts it, “With collective rights, a group is a rights-holder: hence, the group has standing in some larger moral contexts in which the group acts as a right-holder in relation to various duty bearers or obligants.”¹¹ This does not necessitate that such collectives are the exercisers of their rights, as McDonald goes on to mistakenly aver: “In a liberal state, right-holders must be more than merely passive beneficiaries of rights; rights-holders must be active exercisers of their rights.”¹² However, a right holder is not the same as a right claimer. Whether or not I am in a utopian rights-respecting regime, I may possess some rights, which are never *de facto* disrespected. Hence I have no *need* to exercise or claim them. Yet I surely do not cease to *possess* such rights. One must take care not to conflate rights possession with rights claiming. My concern is not so much with how collective moral rights are exercised, but my argument pertains

---

⁹ It is worth noting that a collective right may be conferred by both moral and legal rules, such as when a corporation has a right to have its contractees honor that to which they agree.

¹⁰ Leslie Green distinguishes two senses of collectivism about rights. There are “the rights of collective agents and rights to collective goods.” My argument concerns the plausibility of collective rights where certain collectives are right holders. This corresponds roughly to Green’s category that only collective *agents* are plausible candidates for rights ascriptions. Green states, “only the second can fulfill the political function generally assigned to collective rights and that even it can do so only partially” (Green, “Two Views of Collective Rights,” p. 315).


Collective Rights

(for the most part) to the issue of whether or not some collective possesses a moral right (a conceptual problem). The aim of collective moral rights is to protect collective moral interests and/or claims, even though it might be true that in the process of respecting such interests and/or claims, individual ones are protected. Are collective moral rights attributions justified?

Competing Models of Collective Moral Rights

Imagine the United States of America and the Congress of American Indian Nations (CAIN: a federation of ethnic groups/nations that includes the Diné, Zuni, Hopi, Apache, Seneca, and other American Indian ethnic groups/nations) noncoercively entering (i.e., as secondary agents: those who act on behalf of others) into a nonfraudulent agreement and signing a treaty whereby for one century a certain corporation is to be allowed to mine gold from the mountains of an already designated (by the U.S. government) tribal reservation. So for the century that the corporation mines the gold, having from the outset of the agreement “secured permission” from the CAIN to build a small town to house its employees, making it easier to attract and retain qualified personnel a few generations of miners have come and gone, and everyone—except for the CAIN—has forgotten about the treaty. The century in question is nearing its end, and the CAIN (the legal “landlords” of the said territory) reminds the corporation, its employees, and the U.S. that they will have to relinquish the land.

The current employees and the corporation, including the government of the U.S., are taken by surprise. They, as individuals, never made such an agreement with the CAIN! They do not even remember any such agreement being made. The Anglos in the territory have developed the land “in their own image,” unaware of the treaty. How could “their” property and jobs be stripped from them by these nations, the CAIN? Nevertheless, when the treaty is produced, it is clear that the U.S. and the CAIN signed it both knowingly and without coercion. In fact, each year the government of the U.S. sent the nations a “treaty cloth” in order to demonstrate the validity of the agreement, which was one stipulation of CAIN. The American Indians, it seems, are now collectively laying claim to their legal and moral right to the property in question. The corporation, by way of the U.S. signing the treaty, shared with the CAIN a certain set of temporary legal and moral property rights to the land. These rights were possessed by the American Indians (as established by the U.S.’s relocation of the American Indians) to among other places, the piece of land in question. Moreover, the U.S. possessed the right to protect the corporation’s temporary property right to use the land.
Thus it seems on the face of things justified to speak of collectives such as corporations, nations, and ethnic groups having rights such as property rights—rights conferred, moreover, by legal and moral rules.

**Moral Rights Individualism**

One might argue, however, that collective moral rights attributions are unjustified. Just as there are competing models of more general matters attributing moral properties to collectives, there are more specific instances of these views concerning the justifiability of collective “Moral Rights Individualism.” Moral Rights Individualism is a species of a more general Moral Individualism. It is the view that it is not justified to attribute moral rights to collectives as individuals are the sole basis for such moral attributions because individuals are the sole basis of moral personhood. It seeks to reject collective moral rights ascriptions because there is insufficient moral reason to ground them. That is, there are no valid moral rules which would confer moral rights on collectives, though such moral rules do exist and confer rights on individuals. John Ladd holds a variant of the individualist position when he writes of formal organizations that “They have no moral rights. In particular, they have no moral right to freedom or autonomy. There can be nothing morally wrong in exercising coercion against a formal organization as there would be in exercising it against an individual . . . it would be irrational for us, as moral persons, to feel any moral scruples about what we do to organizations.”

Similarly, Moral Rights Individualism is captured in what Hartney refers to as “value-individualism:” “only the lives of individual human beings have ultimate value, and collective entities derive their value from their contribution to the lives of individual human beings.”

---


14 Hartney, “Some Confusions Concerning Collective Rights,” p. 297. Hartney states: Value-individualism is not a thesis about the ontology of groups, but about the ground of value. Value-individualism does not imply ontological individualism, i.e., the view that groups are reducible to their members. Even if ontological individualism is false, it does not follow that the value of the group has any foundation other than the well-being of individuals, just as the fact that most entities in the universe are not identical with individual human beings does not entail that their value (if any) has some other ground than their contribution to the lives of individual human beings (Hartney, “Some Confusions Concerning Collective Rights,” p. 299).
The challenge of Moral Rights Individualism may be put in the following way. Moral rights accrue to those who have certain capacities. Those who have such capacities will be members of certain collectives. Moreover, of any collective whose constituents have moral rights, it should not be said that that collective has moral rights. For the reason why such collectives are not believed to have moral rights is either that collectives fail to satisfy the necessary and sufficient conditions of justified collective moral rights ascriptions (an eliminativist position), or that collective moral rights talk is analyzable into, or reducible to, individualist terms without loss of meaning (a reductionist view). The value-individualism found in Hartney seems quite similar to the reductionist one when he argues that “There does not appear to be any category of right, which cannot, in principle, be held by individuals. And so, the conclusion is that, conceptually, there are no moral rights which inhere in collective entities.” Of course, there are other variants of this view.

**Moral Rights Collectivism**

*Moral Rights Collectivism*, on the other hand, holds that it is justified to attribute some moral rights to certain collectives. It is a view about what makes an ascription of moral rights to a collective justifiable. It is clear to adherents of both Moral Rights Collectivism and Moral Rights Individualism that *individual* moral rights ascriptions are sometimes justified. But are collective (nondistributive) moral rights attributions justifiable? To be sure, there are other sorts of rights a collective might be said to have (such as political, legal, and human rights), but I will limit my discussion to whether or not it is justified to believe that certain collectives such as nations, corporations, and ethnic groups are the legitimate subjects of *moral* rights.

**Toward an Analysis of Collective Moral Rights**

In the remainder of this chapter, I will set forth an analysis of collective moral rights. While neither Moral Rights Collectivism nor Moral Rights Individualism disputes whether it is ever justified to ascribe moral rights to

---

individuals, a plausible defense of Moral Rights Collectivism is essential because it asserts what Moral Rights Individualism denies. It is necessary to provide a rationale for the claim that it is justified to attribute some moral rights to certain collectives. Solving the problem of collective moral rights is one of the preliminary and vital concerns of a more general and full-blown theory of moral rights.

Is one justified in arguing that the CAIN\textsuperscript{17} has a moral right to some lands? What one needs to answer this query is an analysis of justified collective moral rights ascriptions. Consider the following Principle of Collective Moral Rights: A collective, C, possesses a moral right, r, to do or have something (respecting an interest or claim, as the case may be) at a given time, $t_n$, to the extent that:

(a) The balance of human reason confers on C a valid moral interest or claim at $t_n$;
(b) that interest or claim justifies holding some (other) party subject to a moral duty at $t_n$; and,
(c) C is a conglomerate, where its members see themselves as normatively bound to each other such that each does not act simply for herself, and that there is a shared understanding among members of the collective regarding its membership and secession-making.\textsuperscript{18}

Now it is more reasonable for me to believe that the CAIN has a legitimate moral interest or choice than the negation of that claim. Why? Because this helps to explain why we think it is morally unjust for the U.S. to violate its treaty with the CAIN. If such a violation is morally wrong, it is because (among other things) the CAIN has a legitimate moral interest that it not be cheated concerning the terms of a valid treaty it has with the U.S. That is, the belief that genuine and legitimate (uncoerced) treaties between peoples should be honored in full neutralizes the belief that the CAIN has no legitimate moral interest or claim in regaining land taken from it by the government of the U.S. during the Jacksonian era (and perhaps beyond that period of U.S. history).

The moral rights individualist might argue, however, that this reasoning shows that there is a legitimate moral interest by some party in regards to the above U.S.-CAIN example. But it does not show that the subject of the moral interest is a collective, namely, the CAIN. For all we know, the subject

\textsuperscript{17} The CAIN is a federation of nations, as well as a federation of ethnic groups.

\textsuperscript{18} This point is borrowed from McDonald, “Should Communities Have Rights? Reflections on Liberal Individualism,” pp. 218–219.
of such an interest may be each and every member of the CAIN (but not the collective itself, nondistributively). Thus the above example fails to illustrate a collective moral right in the requisite sense. It is concluded, argues the moral rights individualist, that all the legitimate collective rights that exist are derivable from individual rights, making collective rights talk superfluous or otiose.\textsuperscript{19} Is this reasoning sound? Are collective rights just a manner of speaking that is shorthand for more complicated language concerning a set of individual rights?

The following, I argue, is an example of a collective (nondistributive) moral right. It is not necessarily a right that is exercised jointly with the other members of the collective. Nor is it a collective moral right because it serves the interests of the individual members of the collective. Consider the moral right of the CAIN to secede from the U.S. (say, because of constant and severe injustices perpetrated against the CAIN by the latter). This is a moral right because the balance of human reason confers on the CAIN (collectively) a valid moral interest that it be treated fairly, for usurpation (based on the Doctrine of Discovery and Manifest Destiny) and other significant injustices are morally odious.\textsuperscript{20} Now what makes this a collective moral right is that it is difficult, if not impossible, to make sense of the moral right to secede on distributivist grounds in that the right to secede, where it does accrue, entails having a morally valid claim to or interest in a certain territory.\textsuperscript{21} If there is a moral right to secede, then it is a collectively held right (though, as I explain below, a collectively held right need not be exercised collectively). But then it is not an individual right, which each American Indian claims for herself or himself, but a collective moral right, which certain individuals claim in order to protect the interests of the collective to which they belong.\textsuperscript{22} Thus it appears that Moral Rights Collectivism is sound; if secession

\textsuperscript{19} Narveson, “Collective Rights,” p. 329. Jacobs affirms certain collective moral rights, though the status of such rights is always derivative from more fundamental individual moral rights. “[M]oral rights are valuable because they are capable of protecting the integrity of individuals” (Jacobs, “Bridging the Gap Between Individual and Collective Rights With the Idea of Integrity,” p. 376). This makes collective rights contingent on or reducible to the rights of the individual, for collective rights then function solely to protect individual integrity, according to Jacobs.

\textsuperscript{20} Furthermore, it seems plausible to hold that the Diné Nation (collectively) has the moral right to secede from the U.S., say, for purposes of self-preservation and where its self-preservation is truly threatened.

\textsuperscript{21} This is commonly referred to as the “Territoriality Thesis” [Allen Buchanan, \textit{Secession} (Boulder: Westview Press, 1990)].

is a moral right at all, then it is a collective (not distributive) right. Similar reasoning may be adduced for collective rights to, say, reform a democratic constitution, or to impeach a corrupted official, or to political revolution of the kind described in the U.S. Declaration of Independence. So there seems to be good reason to think that there are not only collective legal rights, but collective moral rights also. For it seems to stretch the bounds of credulity to think that the natural and legal rights to secession, revolution, impeachment, etc. are adequately captured by the language of Moral Rights Individualism.

One, but certainly not the only, version of Moral Rights Collectivism is implied in Karl Marx’s critique of capitalism. In the previous chapter, we saw that it is a grave error to misread Marx’s critique of certain rights as a general critique of rights. Moreover, if we examine Marx’s general critique of capitalism, we find that Marx seems to imply that there are some collective moral rights ascriptions that are justified when made in reference to a communist society. One such right is the citizens’ (collective) moral right to self-determination.23 This right is implied in Marx’s own characterization of communist society: “Collectively they would freely choose to produce the bounty of communist society and individually they would freely choose which particular productive activity to engage in.”24 That such a right is a moral right follows insofar as this principle is grounded in the balance of human reason or the principles of an enlightened conscience (as Feinberg would put it in general rights terms), granting the communist citizens a valid claim to such free choice. Moreover, Marx’s famous condemnation of the private ownership of the means of production seems to imply both that no individual is morally justified in owning the means of production, and that such ownership is prohibited in communism. In turn, however, this seems to imply that in communism there is a collective right to the “ownership” of the means of production. It is not ownership per se that Marx condemns, it is private ownership of the means of production, which, he argues, lies at the root of exploitation and alienation in capitalist society. Thus Marx stands as an example of one who seems to hold a version of Moral Rights Collectivism.25

Note that it is not a tenet of Moral Rights Collectivism that every right is a collective one, or perhaps with equal absurdity, that every collective right trumps individual rights (nor that every individual right trumps collective

23 For an argument in favor of this specific collective right, see Margalit and Raz, “National Self-Determination.” The authors do not, however, discuss this as a Marxist right.


ones, for that matter). Nothing about Moral Rights Collectivism states anything about the qualitative value of such rights in contradistinction to one another. Moral Rights Collectivism is a position that argues that Collective Moral Rights exist, and that some decision-making groups tend to possess them. Nor does Moral Rights Collectivism affirm the position that collective rights are always exercised with due care and diligence, morally speaking. It holds that there are individual rights and there are collective rights. But it says nothing about which rights trump others. The reason for this is that Moral Rights Collectivism recognizes that a rights context and all that it relevantly entails must determine which rights, if any, trump others and why.

However, not everything commonly referred to as a “collective moral right” is that which (like the right to secede) is collective (nondistributive). Some such rights, one might argue, are collective and distributive, such as the moral rights to both civil disobedience and to privacy. For just as both individual persons have a moral right to civil disobedience and to privacy, so do (one might argue) religious and political groups. For instance, Martin Luther King, Jr., claims the moral right to civil disobedience for blacks, Latino/a-Americans, etc., and it seems justified to ascribe such a right both to those groups and to their respective constituent members. That the right to civil disobedience is both a collective and individual right is echoed in the words of Rawls: “By engaging in civil disobedience a minority forces the majority to consider whether it wishes to have its actions construed in this way, or whether, in view of the common sense of justice, it wishes to acknowledge the legitimate claims of the minority.”

Surely it stretches credulity to hold that the use of “minority” by Rawls cannot refer to a group, but to individuals only. For what often makes civil disobedience a powerful weapon against oppression and injustice is that it is a moral right possessed by a collective (as well as by individuals). The possibility of collective and distributive rights is of some philosophical importance, but I shall not undertake an investigation of it here. I mention it as another possible category of moral rights. Still other moral rights are

26 John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 366. Just as, on Rawls’ view, there is a collective right to civilly disobey the law, there are also collective duties, such as that of humanitarian assistance [John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), 106f.].

On the other hand, it is quite possible to think of collectives such as corporations that have certain privacy rights that are not shared by their constituent members. Indeed, one of the complaints today in U.S. constitutional studies is how corporations have appropriated the Fourteenth Amendment’s protection of the right to equal protection under the law, an amendment the original intent of which was clearly to protect ethnic minorities, not corporate power.
distributive only: the moral right to bear offspring, if it does exist, seems to be just such an example insofar as it might be said that an ethnic group possesses this right. Nevertheless, I argue that Moral Rights Collectivism is sound to the extent that the moral right to secede, if it is a moral right at all, is a purely collective right. Thus some collectives can and do qualify as moral right holders, though their rights may be exercised distributively or by a recognized representative of the collective. The plausibility of this claim is sufficient to defeat the extremism of Moral Rights Individualism in denying the very existence of collective moral rights.

Often what the critic of collective rights confuses is the possession of a right with its exercise. Simply because corporate rights are often exercised by a duly acknowledged party within the corporation (or by proxy), this does nothing to discount the fact that collectives can and do possess certain rights that in some cases are exercised by individuals. Moral Rights Collectivism supports the claim that it makes sense to attribute moral and legal rights to certain collectives, regardless of who or what claims those rights. Furthermore, I am not arguing that a substantiated harm is a sufficient ground for a collective’s claim to a right to something. For the interest that is set back (in the harming) might not be the sort of interest to which a collective has a legitimate claim! If an illegitimate interest is set back or denied (in one way or another), this does not mean a putative right to something is violated. For I have no legitimate right to act on my interest given that such an action would be unjustified.

Again, a collective moral right may be exercised by some subset of the collective, or by an official representative of the collective. In fact, one difference between a right the subject of which is an individual and one the subject of which is a collective is that a collective moral right, unlike an individual one, gives some member of the collective the power to claim that right for the collective. The chief manner in which a corporation exercises its moral right is by way of representation determined by a set of rules, organizational or institutional. For example, the rules of the corporation might state that its Chief Executive Officer or another high-ranking officer of the corporation share the “role responsibility”\footnote{H.L.A. Hart defines “role responsibility” as that duty or set of duties one has by virtue of the role one occupies. [Hart, \textit{Punishment and Responsibility} (Oxford: Oxford University Press, 1968), pp. 212–214].} of claiming or exercising: the corporation’s moral right, if it has such a right, to due process when it is sued; its moral right that others keep promises made to it when it enters legal transactions such as renting a building (where the obligation to pay rent is incumbent upon the corporation, not its members), when it makes binding declarations...
with the community, etc. Such rights, if they accrue to corporations, are created by the individual agents or representatives of the corporation.

Not only may corporations have their respective moral rights exercised in various ways, so too can nations. The U.S., it might be argued, exercises its moral right (and its perfect duty, according to Immanuel Kant\textsuperscript{28}) to punish criminals whenever its representatives incarcerate a criminal.\textsuperscript{29} As Hans Kelsen states, “[t]hough, in reality, it is always a definite individual who executes the punishment against a criminal, we say that the criminal is punished “by the state” because the punishment is stipulated in the legal order.”\textsuperscript{30} The imputation of a state official’s action (of say, punishment) to the state is made on the basis of a complete or partial legal offender that is presupposed to be valid.\textsuperscript{31} Similarly, the state is said to exercise a certain moral right when one who has the legitimate role responsibility (defined by the rules of the system)\textsuperscript{32} to act on behalf of the state in fact acts for the state. Thus with nations and corporations, it is a rule-defined representative of that nation or corporation who, for example, claims the moral right for the nation or corporation. This is partly because nations and corporations are artificial collectives, created and sustained (when they are sustained) by humans for their own particular purposes and aims.


\textsuperscript{29} This claim is supported by Hans Kelsen, who writes:

A right of the state exists when the execution of a sanction is dependent upon a law-suit brought by an individual in his capacity as organ of the state in the narrower sense of the term, as “official.” Especially within the field of civil law, the state can possess rights in this sense to the same extent as private persons. The right of the state here has as its counterpart a duty of a private person. The relationship between the state and the subjects of the obligations created by criminal law allows for the same interpretation, insofar as the criminal sanction is applied only upon a suit by the public prosecutor. The act by which the judicial procedure leading to the sanction is put into motion is then to be considered an act of the state: and it is possible to speak of a legal right of the state to punish criminals, and to say that the criminal has violated a right of the state [Hans Kelsen, \textit{General Theory of Law and State} (Cambridge: Harvard University Press, 1949), p. 200].


\textsuperscript{31} Kelsen, \textit{General Theory of Law and State}, p. 194.

\textsuperscript{32} Kelsen calls such an individual an “organ” of the state (Kelsen, \textit{General Theory of Law and State}, p. 195).
In the case of an ethnic group (considered in terms of each one of its members, collectively), however, collective moral rights possession is different. While artificial collectives such as corporations and nations might possess certain moral rights based on their having specific legitimate moral claims, “natural” collectives such as ethnic groups might possess certain moral rights based on their having legitimate moral interests. Just as natural persons are said by many (save Benthamites) to possess certain natural or moral rights, so do ethnic groups possess certain moral rights. The difference, of course, is that individual rights are often (but not always) exercised by the subjects of the rights, whereas collective rights are exercised by representatives of the subjects of the rights. Thus there is reason to believe that moral rights may be justifiably ascribed to certain artificial and natural collectives.

But moral rights may be possessed, it seems, by subjects of an ethnic group based on the fact that such groups (as a collective) have legitimate moral claims. Take the example of an Orthodox Jewish Synagogue. Here there is an organized and decision-making group of Jewish persons that makes collective claims. To the extent that such claims are legitimate, such a collective possesses a moral right to do or to have something. Moreover, Jewish people as an ethnic group, it might be argued, have a putative moral right to become or form an artificial conglomerate, such as an Orthodox Jewish Synagogue. It would seem that Jews’ putative moral right to form such a collective needs to be both respected and protected.

Thus in the example of the CAIN, it has a legitimate moral interest in self-preservation in the context of the CAIN’s being significantly harmed by the U.S. Moreover, its legitimate moral interest holds the U.S. to a moral duty not to interfere with the exercise of CAIN’s right to secede from the U.S. Thus we have an example of a collectively held moral right.33

But what does it mean to say that individuals in a collective share a common interest? Basically, it means that they share a common lot, and that the harming of one member of the collective constitutes (to some significant extent) a harm to each and every other member of that collective. Moreover, there are different ways in which members of a collective can share an interest together. First, they may do so by being born into an ethnic group,34

---

33 It might plausibly be argued that the moral right to secede might be extended to corporations that, for political reasons, wish to secede (taking property with them) from the country or nation to which they belong. Perhaps in such cases corporations seek to preserve themselves as autonomous agents from government that (they believe) seriously threatens their autonomy and legitimate moral interest in self-preservation.

34 This is not to deny, however, that one may choose to become a member of a certain ethnic group if indeed such a group permits membership status by such means. My normative point is that, for purposes of public policy administration, one’s being a member
a religious group, a nation, etc. In such cases, the members in question have little or no choice in the matter of being a member of the collective to which they belong. In some cases, such as being born into a nation, a member can use his or her freedom to defect to another country. But in the case of ones being born into an ethnic group, one lacks the right of defection from that group. One is, say, Latino (or partially so), and no amount of choosing to become otherwise makes a difference. Thus, members of a collective may share a common interest by being born into that group, and in some cases, members would have no freedom to leave that group.

In other sorts of cases, however, members of collectives, such as corporations (or the CAIN), voluntarily agree to become parts of a collective. They may do so by agreeing to assume certain responsibilities of collective members having a common interest. For instance, one may accept a position at the Exxon Corporation, assuming certain responsibilities, which promote the interests Exxon’s constituents have in common. Or, one may voluntarily become a member of a religious sect, agreeing to carry out the religious plans and ideals of that group based on the shared interests of group members. In such cases, it seems reasonable to attribute to such a collective certain moral rights against its membership: namely, the rights against embezzlement, fraud, etc.

Must the members of a collective who share a common and legitimate interest do so knowingly? I think not, for the following reason. Although within some collectives, such as corporations, membership or sharing a common and legitimate interest is done knowingly, the case of ethnic groups is different. For instance, a visually impaired hermit may go through life never knowing that she is black (if her parents and family never informed her of her color while she was young). Yet, we would say she is still a member of the ethnic group: blacks. Thus, her inability to know the color of her skin and whatever else goes into making her a member of that ethnic group does not affect her membership status in that group.

Finally, the Principle of Collective Moral Rights mentions that a collective’s moral interest must be “legitimate.” But what makes a moral interest legitimate? A moral interest is legitimate to the extent that it is supported by an objectively valid moral principle, which states that that interest is permissible, morally speaking. For instance, the moral principle, “innocent parties should not be unduly harmed” implies the moral interest parties have

---

of an ethnic group is a matter of genealogical heritage, not choice. For a philosophical analysis of ethnic identity, see J. Angelo Corlett, *Race, Racism, and Reparations* (Ithaca: Cornell University Press, 2003), Chapters 2–3.

35 What makes an interest moral is that its content is moral.
in not being unduly harmed. Since this principle is plausible, the interest it implies is legitimate. And, since it is justified to say that collectives such as corporations and nations should not be unduly harmed, this implies an interest of that group not to be unduly harmed."

If the Principle of Collective Moral Rights is plausible, then it is justified to ascribe some moral rights to certain collectives, given the plausibility of the claim that such collectives do at times have legitimate moral interests or claims. Moreover, it seems justified to say that some collectives, such as nations and corporations, have interests or make choices. And if it is justified to make some collective moral rights ascriptions, then there may be a prima facie case in favor of the claim that a liberal society ought to recognize such rights in its system of government.

Having set forth an analysis of collective moral rights attributions, it is important (for the sake of providing a plausible theory about their ascription) to provide a view of collective moral rights conflicts, to state which collectives can justifiably be ascribed moral rights, to delineate the varieties of collective moral rights, to say why collective moral rights ascriptions are valuable when they are, and briefly to explain the place of collective moral rights ascriptions in political philosophy.

A plausible theory of collective moral rights attributions ought to, it seems, explain how conflicts between collective moral rights claims are to be resolved. Consider the case of ascribing to a corporation the moral property right to strip mine a mountain versus a nation’s putative moral right to preserve natural resources, such as mountains, from destruction. Clearly this is a conflict of collective moral rights ascriptions. How should it be resolved? In general, it is important to recognize that, given any two conflicting claims to a collective moral right, one of the collective claims to that right is weaker than the other. This follows from the Principle of Rights Conflict: where claims to a right are in conflict, at least one of the claims must be invalid or less valid than other competing claims. Thus, either the corporation’s claim to strip mine the property is invalid (at the time in question), or the nation’s claim to use it for recreation or preservation is invalid (at the time in

---

36 This notion of collective moral interest is a distributive one. But there seems to be no obvious reason why a distributive conception of collective moral interests cannot support a nondistributivist notion of collective moral rights possession without embracing Moral Rights Individualism. After all, if there is a moral right to secede, it is a purely collectively held one. But even here it is not obvious that there is a purely collectively shared and recognized moral interest that grounds the moral right to secede.

37 In this case, the right to use the mountain in a certain way, by preserving it, strip mining it or using it for recreation.
Both claims cannot both be equally valid at the same time and in the same respect.

How is this dispute to be settled? Conflicting collective moral claims to rights are to be settled by an appeal to deeper moral principles concerning the respective parties’ claims. In this case, one might consider the plausibility of public goods over those of private gain and argue that a moral principle based on this notion would favor the nation’s right to the mountain over the corporation’s right to it. Such a utilitarian view would give greater weight to the nation’s right to the property over the corporation’s right to the same, assuming, of course, that the result of respecting the nation’s right would maximize either average or overall satisfaction. On the other hand, it might be argued that a moral principle the content of which reveres personal integrity over utility considerations would trump the nation’s right to the property in question. The point is that debates about collective moral rights claims conflicts will result in disagreements about deeper conflicts about moral theory. Thus, such conflicts must be resolved, ultimately, at the level of moral theory. No simple moral principle is able to inform one how to resolve conflicts of collective moral rights. A collective moral right claim is as valid as the overall moral theory supporting it, contextual factors being taken into account.

Another important criterion of a plausible theory of collective moral rights is that these explain which collectives can possess moral rights and why. What is it that makes certain collectives plausible subjects of moral rights? Which collectives are plausible candidates for moral rights ascriptions? The answer to this query is that only conglomerates, not aggregates, are the plausible candidates for moral rights ascriptions. The reason for this is a unity present in conglomerates, which is crucially lacking in aggregates, and it is this unity, which justifies one’s referring to a collective as the subject of a moral right. It is this unity which indicates the legitimate moral interest that the members of the collective share, which in turn indicates the collective’s moral right. This is why only conglomerates such as organizations, associations, corporate-collectives, ethnic groups, federations, and coalitions are plausible candidates for collective moral rights ascriptions.

If collective moral rights do exist, then what are some of the moral rights that might be properly ascribed to collectives of the conglomerate type? First, there are moral rights that protect a collective’s interest in existing or preserving itself from extinction or being extinguished. Such rights might be called “collective moral rights to life” and include a political or religious group’s right to exist, a political group’s right to self-preservation and development,

---

38 For an argument supporting the attribution of moral rights to associations, see L. W. Sumner, The Moral Foundation of Rights (Oxford: Oxford University Press, 1987), Chapter 3.
Toward an Analysis of Collective Moral Rights

etc. Second, there are those moral rights which protect a collective’s interest in freedom of expression, decision-making, etc., including, more specifically, a corporation’s right to make its own decisions, a political group’s right to express its own views without persecution, etc. Third, collectives have moral rights that promises made to them by other parties be kept, that their debtors repay debts, etc. A more complete theory of collective moral rights should also enumerate the varieties of collective moral rights, as well as showing how and why some moral rights are possessed by certain collectives, but not by others. It would also involve explaining how and why some moral rights are possessed by certain collectives, but not by individuals, and vice versa.

To this point, it might be objected that U.S. corporate law is replete with cases of corporations claiming corporate legal personhood status in order to have their interests in profiteering protected by the Fourteenth Amendment to the U.S. Constitution, an amendment devised specifically to protect the equal rights of blacks and other legally unprotected groups in the U.S. And many have succeeded in protecting their own interests over the protections of various public goods such as clean air, water, and the protection of various other elements of the environment, and over the claims and interests of the very groups that the amendment was designed to protect. While this is morally problematic and a misinterpretation or misapplication of the Fourteenth Amendment, there is no principled reason prohibiting the content of the Constitution from applying to natural, rather than artificial, persons only. Nothing in my argument is intended to support the corporate appropriation of the Fourteenth Amendment or any other part of the Constitution. But even if corporations do rightly qualify as moral and legal persons, as Peter A. French argues, there is no good reason to think that corporate rights claims or interests ought to win out over claims to genuine public goods, or that they ought to override certain basic individual rights when a conflict of such claims arises.

Of some moral rights, it is not clear whether collectives—even conglomerates—actually possess them. Take the right to civilly disobey the law. Rawls construes civil disobedience as a “right,” and defines it as “a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government.” This definition of the right to civilly disobey the law states that the

---

39 French, Collective and Corporate Responsibility, Chapter 3.
40 For an argument supporting the attribution of moral rights to associations, see Sumner, The Moral Foundation of Rights, Chapter 3.
41 Rawls, A Theory of Justice, p. 364. When Rawls defines civil disobedience as a “conscientious act” he means that civil disobedience is a sincere appeal to the sense of justice of those in political power, of those whose views and practices need to be altered. Also
subject of this right is a “conscientious” agent. But it is far from clear whether or not conglomerates are conscientious agents (or agents in the true sense). This does not mean that conglomerates cannot become conscientious moral agents. Rather, it suggests that they do not typically act conscientiously. To the extent that collectives do not act conscientiously, and assuming that the Rawlsian (traditionalist) definition of “civil disobedience” is sound, then such collectives are typically not the legitimate subjects of the moral right to civilly disobey the law. Thus it is not justified to attribute to a collective the moral right to civilly disobey the law (unless it is in turn justified to believe that that collective acts conscientiously).

A plausible theory of collective moral rights should clarify why collective moral rights are valuable when they are. Of course, collective moral rights may be seen as valuable in at least some of the ways in which Feinberg argues that individual rights are valuable. However, there might be ways in which collective moral rights carry with them a special or unique value for their possessors. This possibility needs exploration. Why are collective moral rights valuable? Individuals and collective can adversely affect the legitimate moral interest/claims of collectives. And since collectives (at least some of them) are important to human societies, their legitimate moral interests/claims must be protected by a system of moral rights. Thus collective moral rights are valuable in that they protect from infringement a conglomerate’s legitimate moral interests/claims, which, in turn, protect those conglomerates themselves. Collective moral rights are indicative of the moral importance of certain collectives. In turn, they demand that the moral considerations of such collective be taken seriously.


43 This line of reasoning does not contradict my earlier claim about the possibility of some collectives qualifying as subjects of the moral right to civilly disobey the law. If a collective is structured such that it is justified to believe that it is a conscientious moral agent, then it seems to be a plausible candidate for its having a moral right to civil disobedience (other conditions obtaining). For a discussion of political, religious groups’, and nations’ rights to civil disobedience and to secede (respectively), see Corlett, *Terrorism: A Philosophical Analysis*, Chapters 2–4.

The Principle of Collective Moral Rights provides part of the basis for an explanation of the value of collective moral rights attributions. The formation and development of social, corporate, and other sorts of collectives is important to a society. In order to protect such collectives from wrongful harms and possible extinction, it might be argued, moral rights are ascribed to them so that they may protect themselves (or have a means of being protected). This, of course, is an argument from collective self-preservation.

Moreover, like any rights theory, a plausible theory of collective moral rights should explain the place of collective moral rights in a moral/political philosophy, while avoiding the problems of political individualism, i.e., treating rights as solely fundamental to such a philosophy. Joseph Raz makes a similar point about theories of individual rights. Surely collective moral rights, though they have a central place in more general theories of rights, do not occupy the exclusively central role in a more general moral/political philosophy. Neither collective nor individual moral rights are the be-all or end-all of a promising moral or political philosophy. Collective moral rights, though they are critical for moral rights and general rights theories insofar as such theories strive for completeness, are not the basic core of a moral and political philosophy. Nevertheless, the concept of collective moral rights plays a significant role in such a theory. But the concepts of moral duty, moral obligation, moral responsibility, etc. also play central roles. In a wider-reaching project than this one, it would be necessary to link the moral notions of rights, duties, responsibilities, etc. into an overall coherent philosophical framework.

Furthermore, a plausible theory of collective moral rights ought to explain the basic relations between collective moral rights and the moral duties with which they are generally correlated. Correlated with collective moral rights ascriptions to the subjects of rights are ascriptions of moral duties to the objects of rights. If a certain collective has a moral right to do or have X at a given time, then it has this right against either a collective or an individual (or both) at that time. This means that the right of one collective correlates with a duty of another collective or individual not to interfere with the exercise or enjoyment of that right. Moreover, such a right may at times correlate with more than one duty of one or more parties. For instance, if the CAIN has the moral property right to the land mentioned in the above story, then it is a right which correlates with (i) the moral duties of individual citizens,

---

the corporation, and the U.S. not to interfere with the exercise of its right, and (ii) the moral duty of others to honor all terms of the treaty. Thus, for every justified collective moral rights ascription there is some justified collective and/or individual moral duty ascription. To the extent that collective moral rights ascriptions are justified, so are attributions of moral duties to collectives and individuals.47

47 What are some additional criteria for a plausible theory of collective moral rights? By “criteria” I mean a list of independent desiderata for such a theory and a list of independent questions for the theorist to answer concerning collective moral rights ascriptions. One such criterion is that it does not minimize the separateness of persons. For an explanation of the separateness of persons objection to utilitarianism’s treatment of individual rights, see Rawls, A Theory of Justice, Chapter 3; Robert Nozick, Anarchy, State, and Utopia (New York: Basic Books, 1974), Chapter 7; and J.L. Mackie, “Rights, Utility, and Universalization” in R.G. Frey, Editor, Utility and Rights (Minneapolis: University of Minnesota Press, 1985), 86f. That is, a theory of collective moral rights should recognize the significance of persons as autonomous individuals in that the life each lives is the only one each has. Moreover, it ought not to emphasize the importance of collective moral rights at the expense of individual welfare. For individual autonomy, concern for one’s own welfare, and the like are essential to self-respect, the protection and promotion of which should be among the primary aims of any theory of moral rights.

However, just as a theory of collective moral rights ought not to minimize the separateness of persons, it ought not to inflate its importance either. While preserving individual autonomy and individual welfare, such a theory must also place such concerns along side the crucial significance of collective goods and their realization. For collectives, it might be argued, ought to be construed as having their own separateness, which requires protections and respect.

Another criterion for a plausible theory of collective moral rights is that it does not view persons or collectives as mere means to the end of, say, social utility. Rawls and Nozick each make this point against utilitarianism’s not respecting individual rights (Rawls, A Theory of Justice, Chapter 3; Nozick, Anarchy, State, and Utopia, Chapter 7). This Kantian point stresses the importance of human dignity, individual and collective, in any theory of moral rights. It cautions against an act-utilitarian theory that would place such an emphasis on the value of collective goods or rights that individuals may be used as mere means, say, to the end of social stability by permitting a country’s right to peace and security to always trump an individual’s right to free speech.

Next, a plausible theory of collective moral rights ought to safeguard against not differentiating between the distinct sorts of rights which might be possessed by a collective, and recognizing that justified attributions of collective legal rights and collective moral rights require separate analyses. Much confusion results in failing to see that if a collective can have a right, it can have a moral right without having a legal one, and vice versa. This does not mean that a collective cannot possess a right that is both a legal and a moral right. For there is some overlap in the contents, subjects and objects of both moral and legal rights. The content of a right is what it is a right to. The subject of a right is the one (or collective) who (which) possesses the right. The object of a right is the one against whom the right holds to a duty. For more on the distinction between collective legal and moral rights, see Hartney, supra note 1 at 304.
In order to clarify further my defense of Moral Rights Collectivism, it is useful to compare it to the most developed philosophical treatments of collective rights: those of Raz and Larry May, respectively.

It is helpful to understand how the Principle of Collective Moral Rights is similar to Raz’s analysis. “A collective right exists,” argues Raz, “when the following three conditions are met:”

First, it exists because the interests of human beings justify holding some person(s) to be subject to a duty. Secondly, 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.48

Raz’s account concerns the existence conditions of collective rights, and the Principle of Collective Moral Rights concerns the conditions under which one is justified in attributing a moral right to a collective (a conglomerate). But the existence conditions, if valid and satisfied, just do inform one when it is justified to make a collective moral right ascription.

However, while Raz’s analysis is a purely interest-based model of collective rights, the Principle of Collective Moral Rights is not. There is no logical inconsistency in holding both an interest and a choice model of rights in general, if by this one means simply that a collective’s having a legitimate moral interest is not a necessary condition of its possessing a moral right.

A plausible theory of collective moral rights also evades the problem of political atomism. Atomism is the social contract theory that arose in the 17th century with Thomas Hobbes and John Locke. It holds that society consists of individuals for the fulfillment of individualistic ends. It asserts the priority of the individual agent and her rights over societal goods. It affirms an instrumentalist view of society, i.e., the society is valuable only to the extent that it serves individual welfare. Furthermore, it holds the “Primacy of Rights Thesis”: it is fundamental to ascribe certain rights to individuals instead of their obligation to belong to society [Charles Taylor, “Atomism” in Philosophy and the Human Sciences: Philosophical Papers, Volume 2 (Cambridge: Cambridge University Press, 1985), pp. 187–210]. But this is a difficulty that is relatively easy for the collective moral rights theorist to evade since she is in part arguing that if rights are valuable, then collective (as well as individual) rights are valuable.

Moreover, a plausible theory of collective moral rights should provide jointly necessary and sufficient conditions of plausible collective moral rights ascriptions. At least, a full-blown theory of collective moral rights must succeed in doing this.

Although adequate answers to each of these problems is required of any plausible and full-blown theory of collective moral rights, I do not attempt to provide complete replies to each of these quandaries. Instead, I seek to give a foundation of a justified theory of collective moral rights, one which makes plausible the claim that collective moral rights ascriptions are sometimes justified.

48 Joseph Raz, “Right-Based Moralities,” p. 53.
Although the idea of collectives as claiming agents is a dubious one, this does not preclude a collective’s being restructured to satisfy the conditions of collective agency and claiming. Nor does my argument here preclude the idea of subcollectives (albeit small ones) being claiming agents. Surely it does not stretch the imagination to say that university Boards of Directors and Regents claim and act both as individuals and as collectives. The question here, however, is whether numerically large collectives (nations, multinational conglomerate corporations, etc.) act as claiming agents. More specifically, there is no logical contradiction between the interest model’s point that rights are protected interests and the claim model’s idea that rights are protected claims.49

Nevertheless, while Raz sets forth jointly sufficient conditions for the existence of collective rights, the Principle of Collective Moral Rights uses “to the extent that” to connect its analysandum and its analysand. Although a collective either has a moral right or a valid moral claim or it does not, the conditions under which it may be justified to ascribe a moral right to it may vary and admit of degrees. “To the extent that” captures this idea. The Principle of Collective Moral Rights, while not a complete analysis of justified collective moral rights attributions, is a plausible propaedeutic for a full-blown analysis. There is, then, a considerably greater degree of completeness present in the Principle of Collective Moral Rights than in Raz’s analysis. Nevertheless, it would be wrong to think that Raz’s analysis, along with Feinberg’s notion of individual rights, does not inspire the Principle of Collective Moral Rights. Finally, while on Raz’s analysis of collective rights, a “right” is a right to a “public good” (i.e., safe roadways, clean air and water, etc.), the Principle of Collective Moral Rights realizes that not all rights (not even all moral rights) the subjects of which are collectives have as their contents public goods in Raz’s sense of “public goods.” Surely a corporation’s moral right to be paid in full for goods provided and services rendered under legitimate contract or agreement is not a public good in Raz’s sense. Neither is the content of the collective moral right to secede a public good in his sense. Thus my analysis of collective moral rights is somewhat broader in scope than Raz’s. The content of a moral right is not restricted to a public good.

May’s argument concerning collective rights may be plausibly reconstructed as follows:

49 These notions of the interest and choice models are taken from Jeremy Waldron, “Introduction,” Jeremy Waldron, Editor, Theories of Rights (Oxford: Oxford University Press, 1984).
(1) To have a moral interest is generally to be in a position justifiably to assert a claim to X.  

(2) Such claims are justified when the object of the claim is something which is a good for that person, and something which that person wants.

(3) Interests are in common when the wants of all group members include or would include X.

(4) If it is legitimate for group members to want X, then they, as a group or a group representative, may stand justified in claiming the group’s right to X, over and above each individual’s (of the group) claiming X.

(5) A harm is the setting back of an interest.

(6) “When harm can be substantiated, then the entity which is harmed is thought to have a basis for making claims upon society or individual human beings for the redress or suspension of the harmful practices.”

(7) Some groups (corporations, certain ethnic and “minority” groups) can be harmed (vicariously).

(8) Therefore, some groups (corporations, certain ethnic and “minority” groups) at times have grounds for making claims against others. These claims constitute rights possessed vicariously by such groups.

May goes on to argue that group solidarity and common external identification by others creates group members’ interests, which serve as the basis of rights claims. These claims are made because of “group-based” harms, namely, harms to people because of their membership in a certain group. Moreover, a harm is group-based or collective when the actual or perceived structure of a group makes all group members directly or indirectly (vicariously) harmed whenever one group member is harmed (or, I might add, when it is correctly understood by the group that one of its members is harmed).

A group has an interest, according to May, when adding up the individual interests of group members.

---


collective rights of group members does not capture the common interest, and when reference to the group must be made in order to fully explain the interests of its members. It is not simply that a group member is treated in such and such a way on the basis of that member’s possessing a certain property, but also that those who possess that property are treated by those external to the group as a coherent group. This latter fact justifies ascriptions of interests to groups.\textsuperscript{60}

For May the sorts of collective that can have interests (and rights) are, prototypically, corporations and certain ethnic and “minority” groups, as stated or implied in (7) and (8), respectively. While ethnic groups have interests based on the strong feelings their members have for each other, corporations have interests vicariously because (i) they can be harmed, and (ii) they engage in joint action.\textsuperscript{61} Indeed, “[t]he corporation is capable of decisions, actions, interests, and rights—but only \textit{vicariously} so.”\textsuperscript{62} May avers that interests expressed in and consistent with the corporate charter, though individual interests (i.e., interests possessed by individuals in the corporation) are nevertheless corporate ones.\textsuperscript{63}

May’s way of handling the challenge of Moral Rights Individualism is by attempting to refute the reductionist thesis it employs. Focusing on property rights, May argues that corporate property rights cannot be fully explained by reference to the aggregate rights of both stockholders and managers of the corporation.\textsuperscript{64} He writes: “As long as it is possible for the corporation to evade full liability because of the limited liability of its members, even taken collectively, then it is not possible to reduce corporate property rights to individual [property] rights.”\textsuperscript{65} In other words, because liability for corporate negligence is limited to the property of the corporation itself (instead of being extended to the property of its members), the corporation is seen as a legal or juristic person. In fact, it is the typical case of a juristic person.\textsuperscript{66}

\textsuperscript{60} May, \textit{The Morality of Groups}, p. 117. Compare Jeremy Waldron’s claim that since there is no adequate account of a social good’s desirability in terms of individual group members, there is no point in saying that the good is any single member’s right to pursue [See Jeremy Waldron, Editor, \textit{Nonsense Upon Stilts: Bentham, Burke and Marx on the Rights of Man} (London: Methuen, 1987), pp. 186–187].

\textsuperscript{61} May, \textit{The Morality of Groups}, p. 120.

\textsuperscript{62} May, \textit{The Morality of Groups}, p. 124.

\textsuperscript{63} May, \textit{The Morality of Groups}, p. 124.

\textsuperscript{64} May, \textit{The Morality of Groups}, p. 125. Even so, he argues, corporate property rights should not be afforded the same moral or legal status as individual property rights (p. 132).

\textsuperscript{65} May, \textit{The Morality of Groups}, p. 132.

But legal persons, as Kelsen reminds us, are the subjects of legal rights and duties:

The legal person is the legal substance to which duties and rights belong as legal qualities. The idea that “the legal person has” duties and rights involves the relation of substance and quality.

In reality, however, the legal person is not a separate entity besides “its” duties and rights, but only their personified unity or—since duties and rights are legal norms—the personified unity of a set of legal norms.67

This is a reconstruction of the basics of May’s view of collective rights. But how does my position differ from May’s? First, “something which is a good for that person” in (2) of May’s argument smacks of paternalism, while paternalism is absent from the Principle of Collective Moral Rights. Second, while May’s argument sets forth a sufficient condition for a collective’s having a right: that a group has an interest (a valid one, presumably), the Principle of Collective Moral Rights proffers degree-laden conditions for justified collective moral rights ascriptions, ones which serve as a foundation of a more complete analysis. Third, May’s position on collective rights speaks of rights in general, with some focus on corporate property rights. But my view emphasizes collective moral rights ascriptions and whether they are justified.

In following Feinberg’s model of a claim-right in the narrow sense, May does not tell us what sorts of rights, besides property rights, certain collectives can have.68 Certainly corporations, if they do have rights, have more than simply property rights. They have, for example, due process rights, rights to goods and services provided under proper contract, rights to free expression, etc.

The importance of May’s argument should not, however, be underestimated. It deserves credit for recognizing the importance of an argument for collective rights.

In sum, I have set forth an analysis of justified collective moral rights attributions. I then contrasted my view with those of Raz and May, respectively. Let us now consider and assess some crucial objections to Moral Rights Collectivism to determine its overall plausibility, as against the plausibility of Moral Rights Individualism.

Objections to Moral Rights Collectivism, and Replies

Even though it has been shown that the leading philosophical analyses of collective rights are ultimately inadequate, this is insufficient to show that my own version of Moral Rights Collectivism fares well. It is necessary,

68 May, The Morality of Groups, p. 112.
then, to consider the most important challenges to my position in order to discern its plausibility.

One general critique of the notion of collective moral rights is that their existence and exercise undermine the importance of individual moral rights.\textsuperscript{69} Just as the interests and rights of a totalitarian majority undermines the interests and “rights” of dissenting minorities, there is a worry that making room for collective moral rights will leave little or no room for the moral interests and rights of individuals.

To this objection, it may be replied that one of the reasons for respecting collective moral rights is precisely to protect the moral interests of minority groups from tyrannical majority leadership. Moreover, the mere potential for collective moral rights abuse is not in itself a conclusive reason against the reasonableness of certain collective moral rights attributions.\textsuperscript{70} Moral Rights Collectivism does not hold that collective moral rights necessarily override individual moral rights, as this first objection implies. Rather, it claims simply that collective moral rights ascriptions are sometimes justified. Whether or not a given collective moral claim or interest outweighs a given individual moral claim or interest must be decided in light of a robust theory of rights conflict (or, according to a robust theory of claims and interests conflict, as the case may be). For instance, a community’s moral claim to a right to safety need not outweigh a perceived criminal’s moral claim to be treated as an equal and not harassed because he is a member of a group perceived to be a threat to the community. It appears, then, that this first concern with collective moral rights is misplaced.

A second concern about collective moral rights might be that respect for them in addition to individual moral rights proliferates the language of rights unnecessarily.\textsuperscript{71} And with the proliferation of rights claims and attributions comes a confusion regarding the place of rights in both political and moral theory and in society. Collective moral rights attributions are unnecessary, if not downright confusing.

However, this worry about collective moral rights rests on the dubious assumption that an adequate theory of moral rights can admit of simplicity in regards to rights attributions. Moreover, this concern simply begs the question against collective moral rights. Why not argue that general views


\textsuperscript{70} A similar point is made by Shapard, “Group Rights,” p. 306.

\textsuperscript{71} The caution against the proliferation of rights is registered in Sumner, \textit{The Moral Foundation of Rights}, Chapter 1; Lomasky, \textit{Persons, Rights, and the Moral Community}, pp. 4–7, 82, 224, and 229.
of individual rights, instead of collective rights, proliferate moral rights talk unnecessarily? These points tend to neutralize the force of this second objection to Moral Rights Collectivism. A prima facie case is made for the plausibility of Moral Rights Collectivism based upon the plausibility of a collectivist (nondistributivist) notion of the moral right to civil disobedience.

Furthermore, it might be argued that the real question about collective moral rights ascriptions is a metaphysical one that concerns the moral personhood and status of collectives. Some argue against the plausibility of the claim that moral rights may be attributed to a collective independently of the moral rights of the individuals it serves. Thus, unlike an individual’s right to life, there is no collective and nondistributive moral right to life, or any other collective moral right, because collectives are not moral persons.72

In reply to this objection, the moral rights collectivist might plausibly argue the following. First, if being a moral person entails possessing moral properties, then it begs the question against Moral Rights Collectivism to argue that collectives do not have moral rights because they are not moral persons. Second, if one accepts the claim that nonhuman animals (nonpersons) can have moral rights without providing an adequate reason why collectives (nonpersons) cannot plausibly be ascribed moral rights, then this poses a problem for such a position. For the moral personhood of a putative right-holder, then, is not a necessary condition of justified moral rights ascriptions. Thus, that collectives are not moral persons (i.e., are artificial persons) in itself does not preclude them from plausibly being attributed moral rights on the assumption that nonhuman animals are correctly ascribed moral rights.

It might also be argued that my analysis of collective moral rights serves as an internal critique of a more general rights theory. By doing this, my view tries to incorporate collective moral concerns into a more general framework of rights. Perhaps, it might be argued, the very framework of rights is inadequate to capture moral concerns having true value. This implies that it might be more plausible to adopt an external critique of rights theories, one that does not construe rights as essential to human values and social living.

Given the complexities of a rights-skeptical standpoint, such a position is tempting. However, I remain unconvinced that rights are valueless. From what thesis would it follow that rights ought to be rejected in favor of some perspective which would omit rights from the central core of value in human

---

72 A similar position to this is argued by Rafalko in regards to corporations and rights (Rafalko, “Corporate Punishment: A Proposal,” pp. 917–920). Contrast Rawls, who considers certain collectives such as nations, provinces, business firms, etc. to be “persons” [John Rawls, “Justice as Fairness” The Philosophical Review, 67 (1958), p. 166; A Theory of Justice, p. 521].
existence? Surely this result would not follow from the supposition that certain rights, when respected in specific circumstances, promote individualism or atomism. For these sorts of cases simply show that such “rights respecting” needs rethinking in those circumstances. But it does not follow that rights per se ought to be rejected. What external critiques of rights do tell us is that the very foundations of rights need rethinking, yet on grounds other than purely individualistic ones. My view of collective moral rights begins to take political and moral philosophy in this direction, suggesting that if rights (in particular, moral rights) are important, then so are collective moral rights. It is precisely such a proposition the plausibility of which forces us to restructure our conceptions of social and political life.

Finally, it might be argued with Jan Narveson and Jacobs (respectively) that collective moral interests and/or claims are derived from the aggregate interests or claims of the members of the collective. Moreover, this derivative status of moral collective interests or claims renders the notion of collective moral rights untenable.

But this objection seems to assume that individual moral interests and/or claims are in some way basic and are themselves underrived. Even if collective moral interest or claims are derived from individual ones as stated in the objection, it does not follow straightaway that certain collectives have no valid moral interest or claims that require protection. Moreover, at least some individual moral interests and/or claims are derived from collective ones. Yet one would not argue that such interests or claims somehow lose significance because of their derived status. As a faculty member of a university, I have certain moral interests or claims I would not otherwise have if I was not serving in such a capacity: the interest in being treated fairly as a faculty member, academic freedom, etc. To this point, the moral rights individualist must be careful not to reply that the reason collectively derived individual moral rights are rights is because individuals are the basic unit of society and morality. For that begs the question against the moral status of collectives.

Moral Rights Collectivism seems to withstand these criticisms. If the above arguments succeed, then Moral Rights Individualism is problematic and there is a prima facie case made out for Moral Rights Collectivism.

---

73 If McDonald is correct, certain other individualist (liberal) challenges to Moral Rights Collectivism run afoul (McDonald, “Should Communities Have Rights? Reflections on Liberal Individualism,” 229f.).

74 There are questions that would require adequate answers by a full-blown theory of collective rights, queries which I did not take on in these pages. First, there is the matter of justifying legal and other nonmoral collective rights ascriptions. Second, there is the question of whether or not Rights Realism (the view that rights are ontological con-
My primary target in this chapter is Moral Rights Individualism. As one author points out, it is strange that (moral) rights individualists have few problems in holding that rights possessed by individuals imply certain moral duties are imposed on certain collectives. He argues that collective rights are not endorsed by many rights individualists because they believe that the interests of individuals override competing interests of collectives. However, if such collectives truly possess moral duties, then on what grounds should they be denied candidacy for possessing moral rights? Moreover, I have argued that the moral right to secede, if it does exist, is a collective (nondistributive) right, and I set forth and defended an interest/choice model of justified collective moral rights.

My arguments have significance for social and political philosophy. Insofar as liberals and communitarians argue about whether or not individual rights or community virtues exclude each other, Moral Rights Collectivism seems to carve out a hybrid position, which affirms both individual and collective rights. In arguing that some collectives have valid moral interest or claims, I am claiming that such interests or claims ought to be respected and protected by a system of legal rules. Thus I am arguing that collective moral rights serve to ground collective legal rights. Both individual and collective moral rights must be respected by any plausible social and political theory. Surely there is no logical contradiction in affirming both that certain individuals and certain collectives are the proper subjects of moral rights attributions. Political philosophy should make a place for both sorts of rights, without granting a priori primacy to either class of rights. I am attracted by the liberal concern for individual rights. However, to the extent that certain collectives have valid moral interests or claims, they do possess some moral rights. It is precisely these rights that should also form part of the foundation of a plausible moral and political philosophy, and a reasonably just domestic or global legal order.

stituents of the universe) itself is plausible. A complete theory of rights, it seems, must answer these and other important queries.