

# National Self-Determination and Justice in Multinational States

by  
Anna Moltchanova



STUDIES IN GLOBAL JUSTICE  
SERIES EDITOR: DEEN K. CHATTERJEE



Springer

## Chapter 2

# Collective Agents and Group Moral Rights<sup>1</sup>

As I discussed in the introduction, the challenges posed by citizenship in pluralist societies and by claims to self-determination advanced in many parts of the world require a principled basis for determining the character and the entitlements of minority groups. While this book focuses on the entitlements of different national groups and what constitutes their just treatment, consideration of these issues requires that I go beyond the subject of my study to consider the constitution and entitlements not only of national groups but also of groups of other types. In this chapter, I distinguish between different types of group rights.

While the existence of collective legal rights is commonly acknowledged—the right to self-determination is an example—the notion that collectives have moral rights is often contested.<sup>2</sup> Scholars who deny the existence of group moral rights tend to argue that although collectives can certainly have legal agency, this agency has its basis exclusively in the moral rights of individuals. In the previous chapter, I explained why a position that derives group rights by counting individual preferences in a democratic fashion or by a straightforward summation of individual rights needs to be qualified concerning the nature of interactions among individuals that warrants considering a set of individuals as a group. Those scholars who recognize the existence of collective moral rights provide some account of how groups of individuals relevant to the rights in question are organized but still dispute what constitutes the holder of such rights: some claim that moral rights can inhere only in individuals and that collectives can, at most, acquire “derivative” moral rights; such rights are held individually, but individuals are capable of exercising them only as members of a group. Others argue that moral rights can belong to collectives as such; these are called “primary” collective rights.

In this chapter I consider the conditions under which primary collective moral rights exist and the difference, on this basis, between the right to self-determination and other minority rights. I develop a context-dependent account of collective agency to clarify what moral entitlements groups have. The theories of group rights I discuss in this chapter ascribe rights to groups by identifying corresponding collective goods or interests. I explain groups’ entitlements by emphasizing that groups are collective *agents* organized around the constitutive collective goods shared by the members in a certain way. Thus I argue that group rights, whether derivative or

primary, belong only to collective agents, but primary and derivative rights belong to different types of collectives: the type of right a group possesses is determined by how the members of the group relate to non-members concerning the shared collective good in question and the features that constitute the group agents in these relations.

The argument below proceeds as follows: First, I establish that human groups, or collectives, can be agents, and I apply to collectives H. L. A. Hart's argument that the equal freedom of individuals is a necessary condition of their holding a primary moral right. A collective can be the subject of a primary moral right *only if* it is capable of being in a relation of equal freedom with respect to other collectives with similar claims. Following the lead of Philip Pettit, I assess the freedom of collective agents in terms of discursive control, which allows us to apply Hart's necessary condition to collective agents. I argue that the equal standing of agents required for primary moral rights presupposes that the constitutive characteristics of the group with the capacity to hold a primary right allow it to be in a relation of equal freedom with other groups of the same type. Groups that lack such constitutive characteristics can only hold derivative group rights.

In the second section, I first establish the difference between individual and group rights by considering the interactions of individuals who share a distinct characteristic in need of protection. I explain that group rights belong to sets of individuals who organize as collective agents around the shared characteristic that requires protection. Then I reexamine the distinction between primary and derivative group rights. Whether a right is primary or derivative depends on the constitution of the collective agent that would possess it. The constitution of a collective agent is defined for its members by its members in the context of the collective good around which the group is organized. I show that groups organized around the shared good of self-determination have the capacity to relate to other collectives as free equals and can possess primary rights and that religious, linguistic, and cultural communities derive group rights from individual rights to collective goods that do not require such equal freedom.<sup>3</sup>

In the third section, I answer the concerns of those who are unwilling to assign to groups an ontological status independent of their members.

In the fourth section, I consider how the distinction between the two types of rights can be applied. I discuss the criteria that help us identify groups that are subjects of primary collective rights. Since primary collective rights may clash with individual rights, I consider how the two can be harmonized. I also argue that the application of the distinction between the two types of collective rights to the treatment of minorities underscores that the significance of the distinction goes beyond the satisfaction of the need for conceptual clarity.

Finally, in the last section of the chapter, I argue that self-determination is an important shared good to which certain group agents have a moral right. Self-determination brings significant benefits to the group agents that possess the right to it. In this chapter, I only deal with the benefits of self-determination that connect to its being a constitutive shared good for such groups. In Chapters 4 and 5, I consider the benefits of self-determination in a practical context.

## Group Rights and Hart's Condition

Before I introduce H. L. A. Hart's necessary condition, I need to explain why his account, designed for individuals, can be extended to human groups and justifiably used for my purpose of classifying their moral rights. Moreover, given the traditional opposition of the will and interest accounts of rights, I also need to demonstrate on what basis I choose to use Hart's account commonly associated with the "will" theories of rights, rather than an interest-theory-based account. The will account distinguishes rights by the sort of agent they protect and sets up a necessary capacity condition for having rights.<sup>4</sup> It considers rights to provide normative protection for the existence of certain choices. The will account is traditionally opposed by the interest account of rights, which prioritizes the benefits of rights to their holders: to have a right is to have an interest important enough to justify holding others under a duty, regardless of whether one is an agent capable of full-blown action or choice. For example, a non-human contemplative creature that never acts (and never communicates) but merely ponders cannot have rights according to the will theory because it cannot exercise choice, while it can in terms of the interest theory if such rights would benefit it and provided that an aspect of its well-being protected by the right in question is deemed important enough.<sup>5</sup>

I begin by demonstrating that the opposition between the "interest" and "will" accounts of rights does not manifest itself when we deal with the rights of human groups.<sup>6</sup> As a result, when applied to groups, the will account of rights covers the same incidents as does the interest account. (Such a range of incidents would be covered, in case of human individuals, by the combination of the two accounts of rights.) While the interest account is implied by the will account (the capacity to choose presupposes in general the capacity to hold corresponding interests), I show below that to apply the interest account to groups for the purpose of identifying their rights, we need to consider groups as *collective agents*, and thus the interest account requires groups to satisfy the same capacity condition as does the will account. Since groups also ought to be considered as agents for the will account of rights, either account of the nature of rights qualifies groups for Hart's necessary condition as it is formulated for agents. This means that if a group, in the absence of external impediments, has no capability of exercising equal freedom with other similar agents, it cannot hold a primary moral right. Later in the section I employ Philip Pettit's account of freedom to defend this approach to the freedom of collectives.

Defining a necessary condition for the possession of primary rights does not preclude the possibility that group agents simply do not exist. In the process of establishing that the interests associated with group membership imply collective agency, I demonstrate that group agents do exist (as sets of individuals standing in a certain, relatively long-lasting, relation to one another). But even if the enjoyment of certain goods by a set of individuals under certain circumstances implies that the set is a collective agent, why do we need to consider groups from this perspective at all? I concluded in the previous chapter that other perspectives on group entitlements are lacking, and I will bolster this conclusion below. First, we cannot consider group rights as reducible to individual rights. Second, any account of group rights requires

us to distinguish between different types of group entitlements, and this distinction can be made only if we pay attention to the constitution of group agents. Still, it could be the case that collective agents exist but do not have moral rights. This is precisely the question I am answering in this book. In this section, I consider what groups can hold a primary right and how their constitution distinguishes them from other collective agents that can have only derivative rights. In the last section of the chapter, I argue that self-determination is a moral right of certain groups based on their constitution.

### *Interest, Will, and Group Agency*

To apply the interest account of rights to groups, we first need to explain how any group interest is constituted and then consider the interest in question from the point of view of rights, judging whether the interest in question is “important enough to generate duties.” To attribute a shared collective interest to a group, we need to properly identify the bounds of the group and consider how the group members function in relation to the interest in question. And to judge the importance of any interest, whether group or individual, we need not only to consider the entity that has the interest in the context in which the interest is exhibited but also to assess the standing of the entity with respect to others with similar interests. My interest in hearing an opera may be very important to me, but it is important societally only if I require accommodation and only in relation to the accommodation afforded to or demanded by other members of my society with interests of a similar kind. Similarly, the importance of a group interest can only be judged in comparison to other kinds of interests and to similar interests of other groups. Thus, I consider how group members function with respect to non-members when engaged in interactions associated with a particular interest. In this section, I concentrate mostly on the formation of a group interest. I discuss how it can be compared to the interests of other groups through its constitution later in this chapter.

Some theorists deny that group interests exist. According to Michael Hartney, even the interest in group survival derives from the aggregate individual interest of a group’s members in its survival.<sup>7</sup> I contend, however, that there is more to the collective interest of group members than the summation of majority preferences. The knowledge that a set of individuals constitutes a group does not derive from considering individuals as an aggregate unless we also consider how they relate to others. To know that a set of individuals is a group and to count the majority of this set, we need to look into how members recognize that shared membership in the group exists and define the shared interest corresponding to this membership. Individual interests concerning relations of individuals, like the interest in group survival, allow us to identify a set of individuals as a possible group.

We simply cannot tell if a collective interest exists if it is not expressed, and to be expressed, it needs to be shared in a particular way. The members of a group must believe that they belong to the group. What makes an individual’s belief of

membership in a group socially meaningful and allows her to relate to other individuals identified as co-members is a second-order belief (a belief about the beliefs of others) that other group members share a similar conviction that they belong to the group, while individuals outside of the perceived group do not. I may believe that I am a citizen of Atlantis, but I do not share this belief with others as part of the culture of any group, and thus my belief is not socially meaningful. I may believe that I am a Russian and still not be one, but such a belief is, in principle, socially meaningful, as a corresponding group of individuals exists who share membership in a group based on their belief of being Russian. There are various communities of Russian individuals around the globe, and the boundaries of these communities are determined by their members' shared beliefs about membership and their relationships to non-members: they can constitute a linguistic or cultural community in one part of the world and a national community in another. Thus, group interest and corresponding beliefs about membership are *knowingly shared* by the majority of the group's members, who, in their capacity as members, have clearly recognized particular interests as related to the group's existence.

Individuals relate to one another within a group through their shared beliefs and their corresponding knowledge that these beliefs are shared. The actions of members of a group in their capacity as members are performed in light of beliefs about group membership and are interdependent with respect to both other members and individuals outside the group, because group members' beliefs about the beliefs of others serve as partial reasons for these actions. The types of actions constitutive of membership differ widely from one group to another. The action of a member of the Russian community in Minnesota as a member will be different from the action of a citizen of the Russian Federation as a citizen (though one can be both, of course). It also should be noted that the fact that individuals engage in interdependent actions is not itself sufficient to identify their membership in a group: some interdependent actions can be inherently hostile, such as trying to preempt an attack by a person whom you believe wants to attack you and knows that you know about it.<sup>8</sup> The actions of members of a group in their capacity as members, then, are cooperative and not merely interdependent, because they are joint actions performed in pursuit of the continuous enjoyment of the collective goods that are constitutive of the group.

The relationship between Quebec and the rest of Canada may help illustrate the distinction between interdependent and cooperative actions in the creation of national agency. The consistent refusal of the rest of Canada to acknowledge Quebec as a distinct society heightens the salience of the boundary between Quebec and the rest of the country. Quebecers share what they perceive as a national identity. Non-Quebecers know that Quebec will not accept their rejection of Quebecers' belief about the nature and bounds of their membership in Quebec, and they also know that Quebecers are aware of their knowledge. Thus, the Canadian non-recognition of Quebec has been a repeated interdependent—but not cooperative—action. Likewise, Quebec's attempts to use language laws protecting the prominence of the French language in the public sphere as a means to maintain its identity have been perceived by non-Quebecers as polarizing. Quebecers knew that the rest of Canada would perceive the laws as violating the rights of non-Francophones when they

passed them and that the rest of Canada knew that Quebec knew its actions would be met with this predictable reaction. Quebec thus also pursued interdependent but not cooperative actions with respect to the rest of Canada, contributing to a stricter demarcation of political space in Canada. Francophone Quebecers' efforts to maintain their language are cooperative, however, among themselves.

A group's members may discriminate against a subset of individuals within its midst. The beliefs and attitudes held by the members who are discriminated against are still accompanied, however, either by the conviction that they share membership with the rest of the group and that they resent the treatment afforded to them in part for this reason (and thus would want the rest of the group to cooperate by changing their behavior) or by the conviction that they belong to a separate group and aspire to leave the group that discriminates against them. A subset of cases involving discrimination includes situations in which the rules of membership themselves afford unequal standing and capacity to a group's members. Although the interactions of members of such a group based on beliefs of membership cannot be considered just, they still conform to what is seen as the identity-maintaining behavior of the group and to publicly accepted rules for action.

At a minimum, then, the members of a collective engage in actions supported by their group identity. They may also consciously aim to maintain the group identity. The consideration of group interest yields, therefore, that group members, when functioning together in relation to their collective interest, act and connect to one another in certain ways. We can say that they exhibit, as a group, the features of collective agency (and define themselves accordingly).

What are collective agents? There are different accounts of what groups constitute collective agents and of what evidence can be given in support of their existence. Pettit bases his account on the evidence that collective reasoning yields results different from the summation of the results of individual reasoning. He states that collective agents are discontinuous with the individuals who compose them; these agents form intentions discontinuously from the intentions of their members, and they act to fulfill these intentions.<sup>9</sup> Christopher McMahon defines a collective agent as a group of cooperatively disposed people that has made the choice of a cooperative scheme or of a procedure for selecting schemes.<sup>10</sup>

I consider collective agency as characterized not only by the irreducibility of the outcomes of the group's reasoning to the sum of individual decisions but also by the presence of a common set of beliefs having to do with membership, including corresponding collective interests. I agree with James Nickel that group identity and agency are closely related.<sup>11</sup> The agent may or may not have explicit purposes and procedures for collective decision making and action. A collective agent is neither an aggregate of its members nor an entity whose existence is independent of theirs, but rather a system of interactions of individual members who are fully aware that they share a sense of membership/identity in a particular context and, in the case of some agents, formulate and pursue goals as a collective, a whole. Collective interests cannot be defined, then, merely as aggregates of individual interests. This aspect of group existence is highlighted by the "social ontology" approach to group agency proposed by Carol Gould. A group, according to Gould, is a set of individuals who

stand in a certain relation to each other, whether they share a common purpose, have a common intentionality, act together, or have a common interest. A group ceases to exist, she argues, when the relation no longer holds.<sup>12</sup> The consideration of a group interest, therefore, reveals the underlying structure of group agency.

The interests of groups, and correspondingly their bounds, cannot be defined by outsiders alone without being confirmed by the constitution and culture of the group. Suppose that Minnesota's legislature decides to consider Russian-speaking immigrants living in Minnesota as a group defined by its desire for access to Russian-speaking schools, even though Russian immigrants living in Minnesota have not expressed a desire for this access. The action of Minnesota's legislature does not amount to its having correctly identified the Russian immigrants as a group organized around the interest in Russian-language education: it may be that the immigrants in question are not a group agent or are a group agent organized around a different interest. In deciding what characterizes a group, we need to pay attention to what motivates group members to identify and to act as members of the group, and we must also attend to what they strive to realize through their actions. In other words, we need to base our judgment about the internal constitution and the boundaries of the group upon the insider perspective. In addition, we need to pay attention to the persistence of group agency. If we do not, any majority vote would constitute a group, but only a momentary one.

What if some individuals' status in a society changes their idea of group membership to accord with the way they are perceived by the rest of the society?<sup>13</sup> Can we say with certainty that a set of individuals who are not yet mobilized along the lines of a shared interest attached to their shared characteristic are not a group with its own constitution? Perhaps the Russian-speaking Minnesotans do not share an interest in Russian-language education for their children because the expectations of assimilation customarily directed at immigrants to the United States have caused them to expect only ESL classes to be provided. If they mobilize differently, they may become a minority that requires, to assure its just treatment, special public schools where the curriculum is taught in Russian, as well as special measures that support the immigrants' ambitions concerning the use of their language in the public sphere. While it is possible that groups that are currently not mobilized to demand group rights will mobilize in the future, we must rely on existing signs of the presence of collective agents and on presently expressed group interests. Certainly, in some political environments, a group's identity and its corresponding agency may not be actualized completely. But to be identified as a group, the members still need to have an understanding of themselves as a collective agent, even if they cannot act upon this understanding. They cannot be considered to be a group agent based only on the hypothetical idea that one day they might develop the corresponding type of identity that they do not now have.<sup>14</sup>

Finally, we need to be able to determine when individuals' interest in special treatment does not represent group interest and thus does not have a corresponding group agent. According to my approach, we have to determine whether individuals' interests associated with the protection of their distinct characteristic are shared in a way that constitutes a collective agent. Thus, we need to determine how the



individuals in the set identified by the shared characteristics interact, including how they behave with respect to non-members. Members of a group agent will share second-order beliefs regarding membership and will engage in the corresponding interdependent cooperative actions, and individuals with common characteristics who do not share such beliefs or take such actions cannot be considered members of a group agent. The shared characteristics of group agents not only belong to each individual member but are also consistent with the members' beliefs about their collective goals and with their self-understanding. All students who have taken a 100-level course at a particular college can take a 200-level course, but these students do not have the group identity required for agency. Each student shares the characteristic of having taken a 100-level course, but these students do not share collective goals and do not self-identify as members of a collective of 100-level-course veterans. Nor do they consider their eligibility for 200-level courses to be a collective good or possess a corresponding collective interest in this eligibility, as each of them can take upper-level courses independently of the others, and none of them has the characteristic because the others have it. (It is irrelevant whether there has to be a minimum number of students for a course to be offered, as each can take a guided reading class instead. Even if taking classes is a group activity, the group is specific to a particular class and has nothing to do with all students eligible for 200-level courses).<sup>15</sup> A number of individuals who possess a moral right tied to an individual characteristic they share are normally not a collective agent. As I show in the next section, collective rights, whether derivative or primary, belong only to collective agents.<sup>16</sup>

Summing up, to define the collective interests of a group, we need to look at how membership in the group is defined by its members; to assess the relative importance of some collective interest, we must consider how the group is composed and how it functions with respect to non-members. We need to identify a set of shared and stable second-order beliefs held by group members (with which they also self-identify) concerning group identity and the group's relational properties. Such beliefs guide the members' cooperative interdependent actions in part by defining their shared goals, which at the least will include the preservation of their group identity. Hence, a group's collective interest cannot be defined without considering the situation and circumstances of the group as a collective agent. The reverse relationship also holds: collective agency by extension defines collective interest as going beyond individual interest by virtue of its constitution. We can now use Hart's necessary condition for moral rights, because we have determined that groups, for the purpose of rights, are agents in terms of both the will-based and the interest-based account of group rights.

### *Hart's Condition*

Hart's necessary condition for the existence of moral rights is that all men have an equal moral right to freedom. Hart's condition must be reformulated if it is to apply

to collectives, because not all collective agents are surrounded by relevantly similar collectives, and “all men” does not translate immediately into “all collectives.” Hart’s language must be made more specific about the rights in question: a necessary condition for the existence of a primary moral right is the equal freedom of the right-holders, if it is a general right, or, if it is a special right, of the right-holders and all other groups of the same type beyond the special relation governed by the right.

Not all moral rules presuppose equal freedom, but rights do. As Hart demonstrates, this is a consequence of the justification—required for the existence of moral rights—for why individuals can limit the freedom of others. The possessor of a moral right is conceived, according to Hart, as having a moral justification for limiting the freedom of another. He has this justification not because the action he is entitled to require of another has some moral quality in itself but simply because, in the circumstances, a certain distribution of human freedom can be maintained if he is, by his choice, allowed to determine how that other shall act.<sup>17</sup> The very notion of a general moral right presupposes the equal freedom of its subjects as a necessary condition, and Hart’s challenge is to show that special rights also imply such equal freedom. In answer to this challenge, he first demonstrates that interference with the freedom of others is justified not by any special content of the actions the right-holders are entitled to but rather by the special right’s background conditions, such as promises, consent, submission to mutual restrictions, and the like. The right arises from the special relationship of the parties, which ensues from their previous voluntary transactions.

An example may help to clarify Hart’s point. If I promise to meet you at a coffee shop at 10 A.M. one morning, you have the moral right to demand that I be there at the promised time. You have the right, however, because I have promised to be there—my promise is the background condition to your special right—and not because my being there has any moral value independent of that promise. My presence at the coffee shop might comfort you before an important medical appointment. If so, this effect would be an additional reason for me to be there, and perhaps it even motivated me to make the promise in the first place, but it does not justify your limiting my freedom to be anywhere I wish at 10 A.M. on the agreed-upon morning. Your moral right is that I keep my promise. Rights can also be conferred based on consent or authorization. The voluntary transaction behind an authorization, to take another example, gives the authorized individual (and only this individual) the right to interfere within the sphere of her authority because she stands in a particular relationship to the authorizing person.

Finally, Hart argues that political obligations are based on the mutuality of restrictions—that the obligation to obey the rules is something distinct from “whatever other moral reasons there may be for obedience in terms of good consequences (e.g., the prevention of suffering).” “The obligation,” Hart explains, “is due to the cooperating members of the society as such and not because they are human beings on whom it would be wrong to inflict suffering.”<sup>18</sup> Hart looks for a principle that grounds all voluntary transactions among individuals as the basis for moral rights,

and he concludes that the justification for interfering with another's freedom indirectly invokes that "all men have an equal right to be free."<sup>19</sup>

It is important that the moral justification for interference with another's freedom, even if only in relation to particular powers protected by the right in question, be connected to the general status of the parties with respect to one another. Claims to interfere that are based on the general character of activities or persons rather than on the mutual status of individuals engaged in free and reciprocal relations do not constitute justifications of a "right." Thus, moralistic or a racist interference with the freedom of others cannot be justified, because the submission it implies cannot be said to be owed or due to the individuals who interfere. No voluntary transactions have warranted the interference.

Even if Hart's argument is limited to (rational) moral agents, it still applies to collective agents provided that they exist and exhibit properties that are analogous to those of individual agents in the relevant respects.<sup>20</sup> The primary moral rights of collective agents can exist, therefore, only if (1) there are such entities as collective agents and (2) those entities have the capacity to preserve their equal freedom. This capacity does not need to be exercised for the necessary condition to obtain: an oppressed group that is capable, were it not for some particular circumstances, of maintaining equal freedom with other groups of the same kind may not be able to exercise this capacity and thus may not be free, but by virtue of its unrealized capacity it can in principle satisfy the necessary condition and thus qualify for holding a primary right.<sup>21</sup> I explained the conditions under which collective agents can be said to exist in the first part of this section. I will offer additional support for the view that assigns some ontological independence to group agents later on in this chapter when I answer some objections to this view. For now, I will establish that collectives can be equally free agents, because this capacity of group agents is required to ascribe primary rights to them.

### *The Freedom of Collective Agents*

What does it mean for a collective agent to be free? In important ways, I follow Pettit's notion of freedom as discursive control. He argues that agents are free only if they can be centers of action, selfhood, and personhood, which requires that they possess exercisable discursive control.<sup>22</sup> Discursive control goes beyond rational control (the capacity to choose) and volitional control (the capacity to identify with one's choices). If an agent has volitional control, she identifies with her choices. The agent may, however, identify with her choices for reasons that are wrong for the constitution of her personhood. Under duress, individuals do not lose their capacity to choose, and they may even identify with their choices. When threatened with a beating, a woman may surrender her wallet willingly, but that does not mean that she has surrendered it freely: she makes her choice while being subjected to hostile coercion, that is, coercion that is not driven by the avowable interests of the coerced. Discursive control requires a particular standing or status in relation to others that is

beneficial to an agent's personhood. To discourse is to reason together with others in the attempt to resolve a problem by reference to what all parties regard as "inferentially relevant considerations or reasons."<sup>23</sup> Discursive control, according to Pettit, involves both ratiocinative and relational aspects: an agent has to have the capacity both to participate in discourse and to enjoy discourse-friendly relationships.<sup>24</sup> A discourse-friendly relationship excludes hostile coercion but allows "friendly coercion." The exercise of freedom, when defined in terms of discursive control, requires the absence of arbitrary interference but not of interference that is controlled by the avowable interests of the coerced.

The purpose of Pettit's notion of discursive control is to surpass the limitations of defining freedom in terms of volitional control. I argue that in order to do so, the notion of discursive control requires an external limitation on discourse, such as the equality of status of the subjects of the discourse. Unless Pettit assumes that agents in a discourse possess equal standing guaranteed by a third party or by some externally imposed norms, existing society-related paradigms defining the agents' mutual status may adversely affect the discourse. Individuals who are free to engage in a discourse may also freely accept unequal status due to a prior habituation/acclimation or to diminished self-respect. In such cases, the acceptance of certain reasons given in the discourse as valid can be shared by the participants but may not properly describe the participants' freedom. For example, all participants may accept that a dominant person's interests have more weight in the group than that person's equal standing would allow. The problem here is not the way the dominated individuals think about themselves but that the way they think about themselves allows others to limit their freedom in ways otherwise unacceptable. Since discourse participants' interests may be defined so as not to exclude covert subjugation, there ought to be some external restriction defining terms of membership. Constraining discourse so that all parties have equal standing ensures that discourse participants can be free agents: their options will not be limited in advance of the discourse by the conditions of their inclusion in the society, and any limitations on their ability to control their future that result from the discourse will have to be negotiated based on the initial premise of their equal freedom.

Pettit understands the freedom of collective agents in the same way as that of individual agents. Accordingly, the freedom of collective agents involves not only the capacity to make collective decisions and act but also the capacity not to be dominated by others in a discourse and thus the possession of equal status in relation to other collective agents of the same kind. Collective agents may be unfree in two different ways: they may be capable of freedom "from the inside" but lack it due to external circumstances that prevent them from exercising the capacity, or they may lack the capacity altogether, as I will show is the case with linguistic minorities that do not aspire to be self-determining. In both cases, the collective agent lacks the capacity to maintain an equal standing in relation to other similar agents and therefore cannot be considered free, but in the former case it may qualify for a primary right. Each collective action and decision can entail collective responsibility with respect to its consequences, but the collective agent nevertheless cannot be

considered free if it lacks the capacity to maintain an equal standing in relation to other similar agents.

Thus, although many groups are collective agents, in order to fulfill Hart's necessary condition, a group agent has to at least possess a capacity for equal freedom with other real or potential right-holders. It should be noted that satisfying this necessary condition for entitlement to a primary right does not imply that a group will be granted the entitlement, but a group that fails to satisfy the condition cannot hold a primary moral right. In the next section, I formulate the distinction between primary and derivative rights and illustrate this distinction by contrasting self-determining and linguistic collective agents.

### **Collective Moral Rights and the Constitution of Group Agents: Primary Versus Derivative Group Rights**

The account of group moral rights as derivative states that group rights derive from the individually held rights of the members of a group because individuals are capable of exercising these rights only as members of the group. Raz, for example, considers collective rights to be individual rights arising out of aggregate individual interests in public goods (goods that serve individuals' interests as members of the group). A collective right, according to Raz, is more than a mere individual right, because the interest of no single member of the group in seeing the interest secured is sufficient to justify imposing duties on others.<sup>25</sup> Leslie Green emphasizes that duties corresponding to group rights are imposed on others not for the sake of the aggregate interest of group members in a public good, as Raz would suggest, but because of the special type of non-aggregate interest they exhibit: collective interest.<sup>26</sup> However, Green does not think that moral rights belong to collective agents.

The account of group moral rights as primary claims that groups as such can have rights. Bhikhu Parekh considers religious, cultural, and linguistic rights to be primary collective rights. Michael McDonald grounds such rights in significant collective goods.<sup>27</sup> Proponents of both "derivative" and "primary" accounts supporting the existence of moral group rights attribute collective rights to the existence of collective (also called "public" or "shared") goods—goods that serve individuals' interests as members of the group, such as language or culture. The public aspect of these goods' production or consumption or both is what is valuable about them, according to Denise Réaume, and thus there can be no individual rights—that is to say claims made independently of having membership in the group—to public goods. She calls collective rights to public goods claimed by a group against non-members "group rights."<sup>28</sup> (I will use "collective" and "group" rights interchangeably.) Hence, a primary group moral right belongs to a collective itself, while a derivative group moral right belongs to individuals, who are capable of exercising the right only as members of a group. As I will discuss shortly, both derivative and primary group rights are different from individual rights held due to a shared characteristic that is not connected to a shared good.

I am sympathetic to the two approaches to group moral rights. Each of the two accounts, “derivative” and “primary,” provides, as I will show, an account of collective rights for a different type of group. In this section, I specify when each view is useful for identifying the valid rights claims of various groups. I argue that group rights are assigned only to collective agents and that the type of right granted to a group is based on the members’ relations to non-members and the features that constitute the agents in this relation.

I agree with the view that group rights exist and cannot be reduced to individual rights, because we simply cannot explain some entitlements in terms of individual rights. Any attempt to identify group entitlements or maintain the conditions for groups’ flourishing by means of a summation of the rights of their individual members implies an explanation of what type of individual interaction warrants counting these individuals as a group. As Raz points out, the interest of a single member cannot warrant the duty imposed on society in protecting a right to a collective good. Even identifying the nature of an interest as aggregate does not explain how many individuals will constitute a group of the size required to generate the duty. Additional criteria are needed to determine entitlement. I agree with Green that the interest in group rights has a special nature, but I argue that group rights belong to group agents—a conclusion with which he disagrees. I have shown that the interest and will accounts of rights cover the same range of incidents when applied to groups and that a right to collective interests is also the right of a group agent. I will show that what may help us distinguish between different types of entitlements is that individuals are organized in different types of groups based on how they interact. However, even individual rights are acquired through the interaction with a particular community in relation to which the rights are claimed. Therefore before I move on to the distinction between different types of group rights, I will first consider the distinction between individual and group rights.

### ***The Distinction Between Holders of Individual and Group Rights***

Brian Barry provides an account of group rights that distinguishes them from individual rights due to the fact that groups have the power of self-government. He thus pays attention to the modes of operation of groups and of individuals in relation to one another as members of groups. Barry distinguishes between two types of entitlements: an entitlement predicated over the group as a whole and an entitlement based on certain characteristics of individuals. The latter confers benefits on individuals rather than on a group as such, which is either a communal entity (like a family) or a corporate entity (like a church). I agree with Barry that characteristic-based individual rights can benefit individuals based on their membership in a group without turning their benefits into a group right.<sup>29</sup> For example, group members can enjoy individual immunity, like the right of Sikhs not to wear helmets, due to their membership in a group, but they acquire the right regardless of the actions of the

other members of the group, as Barry points out. Even when the eligibility of individuals for a benefit is determined by judging their actions in reference to the actions of others qualified to benefit from the right, the right they possess is not always a group right. To use Barry's example, a quota scheme in which a given applicant's test score is ranked in comparison with the test scores of the other applicants eligible to enter within a quota generates only individual rights.

What kind of individual interaction warrants group rights? Barry acknowledges that claims made by and on behalf of a group are a different matter than individual claims based merely on a characteristic attributed to group members. His project is limited in scope, however, to considering how to restrict the behavior of groups that violate individual rights. He does not extend his discussion to consider group entitlements. His background assumption is that groups exist and are characterized by self-government, the limits of which with respect to group members he wants to assess. He does not discuss what justifies groups' entitlement to self-government, but the question of entitlement is important if we wish to determine the justifiable limits on their *de facto* self-government. Some self-governing functions can be ceded without jeopardizing the group, while the revocation of others will change group practices but can still be justified based on the protection of their members' human rights. Still other practices need to be protected if the group is to be preserved. We must determine which ones are which if we are to provide a principled evaluation of group privileges. We therefore need to consider whether the entitlement to self-government is justifiable for a given group and what kind of self-governing powers a group needs based on the nature of the interactions of its members that constitute the group.

Of course, Barry may consider group self-government to be a sociological reality devoid of any corresponding normative entitlement by groups and thus aim simply to sketch out a coping strategy for liberal societies to employ toward illiberal groups. This is so in part because he thinks that although liberals do not have to be committed to promoting autonomy by changing the nature of group membership for minorities, neither do they need to endorse diversity by promoting the flourishing of groups. While Barry does not approve of Michael Walzer's focus on the nation-state as a meaningful group unit, arguing that this focus simply makes national minorities disappear from view,<sup>30</sup> and while he acknowledges that Kymlicka's view is preferable for multinational states, he advocates a third possibility: to consider a multinational state in civic terms as a state of all citizens. This does not solve the problem of groups' entitlements to rights, however, but rather avoids it. To address the entitlement problem, we need to explain what it means to make a state the state of all citizens—even those who think they belong to different national groups or other minorities. Thus, Barry does not consider the large group of cases of group entitlement wherein groups do not violate their members' physical and mental integrity.

We can determine what groups should not be doing to their members from the liberal point of view, but it is also important to ask what non-group members should or should not be doing with respect to a set of individuals who think they are a group. The general entitlements of real-life collectives that constitute the ground for peaceful and productive negotiations among their members remain to be defined.

There are better and worse ways of controlling group behaviors given that they are constituted as individuals-in-relations who mobilize along the lines of group identity. Barry's approach presupposes that the already set boundaries of groups are either acceptable or not meaningful for citizenship in the larger society, because he proposes to control the terms of membership in minority groups only to ensure the basic rights of minority individuals. But not all boundaries are sociologically innocuous and unimportant, as they are characterized in part by groups' relations with non-members and define the meaning of equal inclusion of minority individuals in the larger society. Without rules to determine whether group claims are legitimate and thus whether the state should adopt accommodation strategies that would allow the group to flourish along with those that secure the protection of the members' individual rights, it may be difficult to mediate the relationships between individuals from the group with the rest of the society so as to ensure the equal treatment of all citizens. I agree with Barry that group actions that harm individual members should be controlled or prohibited, and Barry's theory provides valuable guidelines for deciding when a group's actions should be restricted. Barry's identification of eligibility for group rights with the *de facto* capacity of groups for self-government is well-drawn, but he does not specify more general principles describing what kinds of relations of individuals qualify groups for these entitlements, and thus his theory covers very different ground from mine.

To illustrate my approach to the distinction between individual and group rights, I will start with the example of language rights.<sup>31</sup> The fact that the state language (or languages) prevails in the legal and political institutions even of a state that contains speakers of a number of other minority languages raises the question of linguistic minorities' proper membership in public and political domains and thus their relations to institutions of authority.<sup>32</sup> The use of language in the public sphere is a useful subject for exploring the types of rights that individuals' interactions with their societies generate.

Those language rights recognized in the Canadian Charter of Rights and Freedoms, for example, that are aimed at protecting the official language minorities across the country—Anglophone and Francophone—are group rights, because the protection afforded by the rights maintains the equality of the two majority linguistic cultures in Canada.<sup>33</sup> A different type of right related to linguistic identity is satisfied by providing a courtroom translator to an immigrant who is not capable of understanding English or French. The Supreme Court of Canada considers such translation services to be a formal due process guarantee in order to practice universal justice, not based on the need to respect linguistic minorities. The Canadian legal framework therefore acknowledges individual and group rights as different in their origin and function.

There are other linguistic communities in Canada, however, besides the French- and English-speaking communities. Could the Canadian policy of multiculturalism that promotes immigrants' access to publicly funded media broadcasts in their native tongues, for example, also be considered as being based upon collective language rights? If some but not all Russian-speaking immigrants to Canada want to have access to publicly funded media time in Russian, on what basis do we decide



whether their claim is warranted and whether, if it is granted, we are acceding to an individual right to equal treatment or a group right? My answer to this question is based on the consideration of whether a collective agent organized around the preservation of linguistic culture is present. Let us assume that the reason for granting publicly funded media time to Russian-speaking immigrants is the importance to the members of the immigrant group of maintaining the public status of their language. If a group of immigrants exhibits features of collective agency and is not merely classified by outsiders as belonging together on the basis of shared linguistic ability, the corresponding right is a group right.

For an immigrant group to qualify for a group right to language on the basis of identity, the group must have an organizational structure that reflects the identity of individual members who believe that the community exists with the shared goals of practicing and preserving the group's linguistic identity. That the group members all differ from speakers of the official language in sharing a mother tongue is insufficient to qualify them for a group right to language. In other words, the immigrant group needs not only to share a language but also to mobilize in some ways in order to qualify in principle for the possession of the right to language as a group right.

The collective agents that support the group language rights of the French and English linguistic communities in Canada have corresponding loci in Francophone Quebec and the rest of Canada. Under these circumstances, the right of the Francophone Manitobans to be educated in French where numbers warrant falls under the group right to the preservation of the French language for all Francophones in Canada. Perhaps in the case of Manitoba's French-speaking population, the right to language could fall be withdrawn from the aegis of the legal norms of the Canadian Charter that safeguard the existence of the two linguistic communities—and thus it could be justified on a different basis. In such a case, however, we would need first to determine whether there exists, as a group separate from the larger Francophone Canadian cultural community, a collective agency of Francophone Manitobans that is properly mobilized and possesses a distinctive internal constitution of its own. Thus, group as opposed to individual rights are granted to sets of individuals based on the presence of an internal constitution of the type that designates a collective agent.

Now I will consider how collective agents' entitlements differ depending on how they define their characteristic features of membership with respect to other groups.

### ***Identifying the Holders of Primary Versus Derivative Group Rights***

We need to determine what kind of benefits (or compensations) groups can justifiably claim vis-à-vis the larger society and what type of entitlement contributes best to their ability to flourish. To illustrate why differentiation between the types of group rights is necessary, consider a few problematic cases. The ability to use the Welsh language is a collective good (a good that serves individuals' interests as members of the group). Not all Welsh are interested in having public education in

Welsh revived. Do only the Welsh who want such education have the corresponding collective interest in it, or are all Welsh the relevant group? If the latter, do the proponents of education in Welsh have a right to such education against both the non-Welsh and the Welsh who oppose it? How should their self-government with respect to language be executed? The justifiable treatment of individuals by the group requires the determination of the nature of the group entitlement. This is so because the right holder and duty bearer vary depending on how a group perceives its constitution in relation to other groups. To determine whether the collective good of speaking French generates a moral right of a similar type for French-speaking immigrants to the United States, Manitoba Francophones,<sup>34</sup> or Quebecers, we need to look at the context in which the right may be claimed.

Identifying the presence of a collective good, moreover, does not on its own allow us to pick out the relevant features that describe the holder of the right to that good. Consider sports, Denise Réaume's example. Playing soccer or hockey is what she calls a "participatory" good for the players (a type of collective good): they have to participate to benefit.<sup>35</sup> However, we can look at playing soccer and its corresponding rights in different ways. My right to join others in playing soccer is as great as your right to play hockey with your team, because as members of our society we ought to be equally allowed to freely pursue legitimate recreational activity, and if one of us is aided in this pursuit by our society, the other has a right to be aided, too. The duty to provide necessary facilities is borne by all citizens, the facilities are sponsored based on an estimate of the average aggregate need of individuals interested in each participatory good, and the collective right to these facilities derives from the interest of players of each game. If there are 15 soccer teams and only 5 fields to play on, however, there is within the local soccer association a clear primary group right of each group claimed against other similar groups to have a fair amount of playing time.<sup>36</sup> The duty falls upon all teams to share the facility equally. Thus, for the purpose of determining the entitlement of a group, we need to distinguish the type of self-government of the group in relation to others.

Or, to take another example, if we look only at the collective good of language, we may divide communities that constitute "us" and "not-us" for the predominantly Anglophone community of Westmount in Montreal, Quebec along numerous lines. First, speaking English is as much of a collective good for the residents of Westmount as it is for all Anglophones in Canada. Second, if we fail to consider the group agents and their relations, candidates for an equal right to the enjoyment of the collective good of language may include any linguistic community: non-Anglophone Quebecers, Francophones of Canada, any of the non-English-speaking immigrant communities in Montreal, and even all Anglophones in Canada (either excluding or including Westmounters; in the latter case, Westmounters appear, as a smaller group, to be in a position to claim the right against themselves counted as members of the larger group). Considering the constitution of group agents in relation to others tells us more about what type of group right they qualify for.

We have established that any agent capable of discursive control in relation to other agents can be a subject of a primary moral right (whether this capacity is realized or not). The possession of discursive control with respect to other agents

requires collectives to relate to one another and to resolve problems in accordance with the maintenance of their equal status. It is possible to assess whether this equality is achieved in relevant respects only for those agents that share an aspect of constitution (including self-definition) that makes them comparable to one another. This feature of group constitution essential for discursive control can help us differentiate between groups capable of holding primary rights and the rest: those agents that share an aspect of constitution comparable to other groups are eligible for primary group rights, while the rest are not. Groups' constitutions ought to be perceived as commensurable not only in accordance with a criterion used by an outside observer but also from each participating group's perspective. The groups also ought to be comparable in the eyes of their members, and mutually so. If the Russians think that the Ukrainians are a self-determining group but the Ukrainians think they are not, the belief held by the Russian community does not change the nature of the Ukrainian community. Finally, comparable constitutions matter in the context of group interactions. In a mono-linguistic state, the majority, which is aware of its language and the existence of other linguistic groups, does not have linguistic rights within the state. This majority has a right to self-determination in the international context, and its right to language in this case is not separate from its right to be self-determining.

Group agents do not exist apart from the rules of organization and group aims shared by their members; the mode of being of such agents is a set of interactions among members who are aware of the group's existence. To evaluate whether the standing of the group is equal in relation to other groups with similar collective interests, we must consider whether its members share beliefs both about the existence of other similar groups and about their group's status relative to these other groups. By virtue of their self-definition, the constitutive features identified by the members of the collective agent eligible for primary rights also define the agent's boundaries and its aspired-for or achieved ideal standing in relation to the set of all agents of the relevant type.

Since shared beliefs about members and nonmembers are essential to the existence of collective agents, members of an agent that possesses freedom, defined as discursive control, share beliefs about the group's standing in relation to other such groups. The constitutive features of such an agent include beliefs about the existence of other similar agents and the desired status to be achieved or maintained in relation to them. Because such a collective agent has (or aspires to have) a say about its future, it has (or aspires to have) self-determination, the capacity to be primarily determined by the conditions of its internal life. The limits of self-determining communities are maintained only in relation to those of other similar communities. A collective agent capable of discursive control and hence capable of being the subject of a primary moral right is organized around self-determination. This is the feature of group constitution essential for discursive control.

Why should we not merely define the good or interest that is characteristic of a primary right against the undifferentiated rest of the world that the group sees as "not-us" without specifying the constitution of other agents that are not part of the

group? Put simply, the “other” as merely “not-us” can be anything. A set of non-members is itself a non-member, but it has no structure or constitution of its own. Considering the constitution of agency against a non-structured “other as not-us” does not provide for the specific conditions that allow the equal status of the group and “non-group” in discursive control to be assessed, and thus it does not allow us to answer the question whether they have a capacity for holding a primary right. It may or may not be that “not-us” is an agent of the same type as the group. Concentrating only on the internal aspects of group constitution unrelated to the existence, structure, and standing of other groups does not help us determine whether the right in question is primary, because the structure of “not-us” as related to the constitutive characteristics of “us” is important to the outcome of this endeavor.

Réaume argues that groups deserving autonomy are distinguished by the presence of what Hart calls “secondary rules of change and adjudication.” These rules, Réaume explains, create internal “bodies or processes with the authority to change preexisting rules and resolve disputes about the rules,” and hence they give a group the ability, through “internal decision-making bodies, to interpret its own norms for itself.”<sup>37</sup> I agree with Réaume that the correct approach to a group depends upon the constitutional structure of the group. But the presence of such rules is not sufficient in itself to distinguish different types of rights. The presence of secondary rules does not allow us to determine, for example, whether the constitution of a group merely influences the terms of the group’s inclusion in the larger society (and hence whether the group’s collective goal is merely to maintain its constitution with respect to “not-us”) or whether it defines the freedom of the group as it relates to other similar collective agents (and hence whether the group’s collective goal is to be determined by the conditions of its internal life so as to maintain its status with respect to other groups of the same kind). Only in the latter case can a group be a subject of a primary collective right, because only then is it capable of being in a potentially equal relationship with other collectives.

### *Self-Determination*

The idea of self-determination as an agent’s capacity to be entirely determined by the conditions of its internal life is not confined to the contemporary international framework, but my project in this book is motivated by current international problems concerning group rights. I will explain now how the general idea of self-determination translates into self-determination as the capacity of a group to control its political future. If a group agent perceives self-determination as the good it wants to pursue, it aims to be entirely determined by the conditions of its internal life. This pursuit is relational in a world that contains more than one community, because each group agent can safeguard its autonomous existence only in relation to others. To do so, the agent has to maintain control over its constitution and the elements that sustain it and thus avoid interference by others with its effective agency. Presently,

a group agent cannot be entirely determined by the conditions of its internal life in non-political terms, because if the agent does not conceive its self-determination as political, it will be included in the political society of another group and thus be determined by external conditions. Thus, self-determination requires that a group agent have a say about its political future and political organization that places a group agent in control of its membership and the rules of its organization is normally tied to a territory.<sup>38</sup> A group agent that imagines self-determination in non-political and non-territorial terms cannot maintain its status with respect to others as equally free and thus possess a primary moral right to the non-territorial and non-political form of self-determination it envisions. Therefore, the reality of international relations at present requires that self-determination (understood as a group's freedom with respect to a number of other political communities) be conceived in political and territorial terms. In contrast, groups entitlements with respect to language, which I consider in the next section, require external accommodation from a political and territorial unit within which the linguistic group resides, but this accommodation is not characterized by equal freedom. I will discuss the status with respect to self-determination of groups like the Roma that define themselves in non-territorial terms in the next chapter to determine what aspects of a group's constitution place it in the category of self-determining agents.

That self-determination presently requires specific political powers for boundary maintenance is a contingent fact, but this contingency does not make the identification of a moral norm to regulate group relations impossible. I have already explained that contingent properties can acquire a normative dimension if agents have to interact to maintain these properties.

A scheme that identifies the holders of a primary moral right through their constitution in relation to other similar agents works with a very general definition of self-determination that is not couched in the terms of the present international order. If the world changes radically but continues to be composed of a number of communities, the condition of being a holder of a primary right will remain the same: all groups would have to be constituted in a certain way to qualify for the right. Those groups that will not utilize the understanding of self-determination that is contingent upon the world order they belong to simply will not have the capability of holding the right to self-determination because they will not be able to stand in a relation of equal freedom with respect to others. Their aspiration to be a different type of agent will place them outside of the category of holders of the primary right to self-determination.

It also should be noted that in the present international system self-determination is not conceived as the capacity of one worldwide political community to be shaped by the conditions of its internal life (and thus be self-determining, or in control of its future, in a non-relational sense). Such a community could exist. Its members would need to be able to maintain their group identity internally to avoid a split that would make some members outsiders, although they could not engage in self-determination as the exercise of freedom with respect to other similar communities. But if such a community did exist, the problem of moral entitlement to the

right to self-determination that now urgently requires resolution would simply disappear. One worldwide political community does not need to relate to others of the same kind or have any status with respect to them and is not a subject of a primary right.<sup>39</sup> It is obviously wrong to think that the self-definition of a political community always presupposes “the other,” for in a single world community, this would not be the case. Nevertheless, while a community can be constituted without “the other,” it cannot be “free” in the absence of other communities with respect to which it can maintain its status. Primary rights require this capacity for freedom, and my approach assigns primary rights to multiple self-determining communities, though it can nevertheless explain the nature of entitlements of one worldwide community and has resources to accommodate the disappearance and reappearance of multiple self-determining agents or the way self-determination is engendered at a particular historical period.

Presently, any group whose members share a particular kind of political culture—or set of beliefs and attitudes concerning politics—can be the subject of a primary moral right.<sup>40</sup> This political culture includes beliefs about the internal constitution of the group and the group’s ideal status in relation to all other agents whose functioning is organized around similar characteristics, as well as the limits of the group’s authority meaningful for its members. Thus, unless the constitutive features of membership are shared through such a political culture (and we have reason to believe that the constitutive features of the group have been identified correctly), we cannot conclude that the group is capable of equal freedom with other groups and thus that it qualifies for a primary right.

Group members’ notion of the powers and entitlements of the group, which contributes to the meaning of group membership and is shared through the group’s political culture, may refer to either the group’s achieved status or to the status members believe it deserves. An oppressed national minority, for example, may aspire to exercise self-determination while its real status denies it such power. If the group members perceive themselves as a group similar in kind to groups that possess self-determination and it is reasonably clear that their views are not manipulated but held freely, the group may qualify for the rights possessed by other self-determining groups. Some outside observers may consider the group’s demands unjustified, but so long as the group forms intentions and acts upon the set of its constitutive beliefs comparable to the constitutive beliefs of other self-determining agents, it is, as a matter of fact, this kind of agent. Outsiders can try to influence the way the group members perceive themselves, and historically national identities are not set in stone—nations are political communities that can be formed, change, and cease to exist—but a group that is clearly and persistently constituted ought to have its perception of itself accepted at face value.

Basic to the group culture associated with self-determination is the idea that the group is in control of its political future. This implies, first, the belief that membership in the group defines the bounds within which political authority can originate meaningfully for those it governs. That is, political power exercised over the group is authoritative only if it derives from the group as a whole. Second, provided other

political communities exist, the members of the group in question share the corresponding collective end of establishing or maintaining effective agency in relation to other groups with similar demands. Self-determination designates an important property of groups that allows them to be compared and to stand in the relation of equality.

Groups that enjoy or aspire to self-determination share an identity that describes a *primary political community* through the ideal correspondence of the identified domain of members to the political power representing them. The entitlement to the right of self-determination is possible only if the group agent is constituted so as to be capable of relating to other similarly constituted communities.

Another feature of the ideal of self-determination as a constitutive collective good for group agents is that the corresponding entitlement is claimed against non-specific others of the same kind and against all of them. A set of other self-determining communities provides a differentiated structure to “not-us.” In the corresponding general right, self-determination is claimed equally against all other similar agents, and the right requires the equal standing of the members of the set against one another and constitutes a particular exemplification of their discursive control. Collective agents capable of being in a potentially equal relationship with other collectives are also capable of possessing special primary moral rights based, for example, on treaties among them. The right of Tatarstan to control its natural resources within the Russian Federation is a primary right of a national group based on the division of powers with the rest of the federation. Any primary rights that agents possess—special or general—require the agents’ capacity for equal freedom. This capacity is secured within the context of the special rights and obligations toward one another of a number of self-determining agents, as in a federation, by the equal status of groups granted to them by the general right.

Importantly, it is also feasible that equality of status for self-determining groups can be provided in the current international system, although it is not required for the existence of a moral right to self-determination. Self-determining groups do not have to be in possession of their own states; that the satisfaction of self-determination claims does not require the acquisition of independent statehood has been commonly accepted.<sup>41</sup> The equal right to self-determination can be a right to equal status with other self-determining groups within a host multinational state. Group members can develop a double allegiance to the group and the host state (what David Miller calls “nested identity”),<sup>42</sup> but their association with the state is secondary to their group political allegiance and is conditioned upon a proper accommodation of their claim to self-determination.

Thus, the collective good of self-determination allows group agents to claim their entitlement to the enjoyment of the benefits of this good in relation to all other communities of the same kind. The corresponding right can be claimed by any agent of the required type against all non-specific but differentiated “others” of the same kind. The way the collective good of self-determination is constituted makes the corresponding agents capable of discursive control and thus of holding a primary moral right.

## *Linguistic Rights*

As I already discussed, individual rights serve the purpose of ensuring equal individual treatment, while group rights protect individuals as members of groups. The existence of a linguistic community is a participatory collective good.<sup>43</sup> Can a claim by a linguistic minority be construed as a claim against other linguistic groups (including the majority) as equal agents and thus provide grounds for a primary group right? The claim would need to be made against groups similar in constitution—a linguistic minority in Ontario cannot claim the right to language against Canada’s right to self-determination or against the right of Catholics to worship. Below, I demonstrate that, in the absence of self-determination claims accompanying linguistic claims, a group linguistic right aiming to preserve a linguistic community exists to grant equal respect to the individual interests of each of the community’s members *qua* members of the larger political community and is thus not primary. This is so because the collective good of language, as a constitutive feature of a particular linguistic agent that claims the corresponding right, is defined against a specific other or others that are, moreover, related to the agent in question only by means external to the constitution of the agent.

Language rights can be one of the facets of a more fundamental relationship that qualifies a group for a primary right rather than simply a derivative right. The possession of an official state language (like French in France), for example, is derived from the right to self-determination of the political community represented by the state. Likewise, a linguistic minority that advances a self-determination claim and mobilizes to create a primary political community qualifies for a primary right. In each of these two cases, the group’s linguistic relation to other communities is mediated by its self-determining status (or its aspiration to acquire such status), not grounded exclusively in its linguistic identity. Such a community is not purely a linguistic community. A self-determining group agent defines itself against a set of all similar “others,” and its right to language (general or special) is primary by virtue of the group’s qualification for primary rights. Quebec’s linguistic claim, for example, is tied to its claim to self-determination. If this claim changes with time, the constitution of the group will change.

It remains to deal with minority groups that consider the political community they share with the majority to be their primary political community. Under these circumstances, a linguistic community qualifies as a holder of a derivative, and not a primary, right.<sup>44</sup> Identifying who speaks a language does not necessarily define the boundaries of a community that requires the protection of a right to the corresponding language, because the limits of linguistic communities are not imposed by the elements of group constitution associated with the good of language. Elements external to this good (such as rules of political inclusion independent of the good) determine the structure of relationships and the standing of the agent with respect to other agents. There is simply no internal relatedness of linguistic communities to other similar communities imposed solely by the constitutive good of language and regardless of the external political context. Westmounters in Quebec may define their collective good of speaking English against all non-Westmounters, for



example, but they clearly do not have the right to language claimed against France, while they can make a convincing case for the right claimed against Quebec or, perhaps, the rest of Canada.<sup>45</sup> The linguistic entitlement of various German-speaking populations in Europe—in Austria and Switzerland, for instance—is “framed” by the political division among and within these territories defined externally to the good of language. The political division makes for specific “others” in each case. Or, the speakers of several very different dialects (as in Croatia) can, but often do not, perceive themselves as having separate claims to language because the structures of the relevant primary political community are shaped by factors external to the good of language. Primary political communities impose the rights structure on language communities, not the other way around. If Anglophone Canadians want to be a separate political community from Anglophones of the United States, it is not the collective good of language that drives their desire to be so constituted. There are so many other features unrelated to the collective good of language that come to play in the formation of primary political communities that it would be gratuitous to claim that language is the constitutive force behind political organization.<sup>46</sup> Linguistic communities are collective agents, but the collective good of language in itself is defined against non-differentiated non-speakers, while, for the purpose of claiming a right to language, membership in the group is defined against others made specific by the political context external to the good. Thus, linguistic rights are not primary.

To further elaborate this claim, let us first consider how claims to linguistic rights can be justified in the case of only two groups, a majority and a minority within one political community. It should be noted that “not-us” for either group is not the rest of the world *simpliciter*. It is not against all of the Francophones of the world that non-Francophone Quebecers would claim the right to language but against Quebec Francophones. “Not-us” is limited for either the majority or the minority to the other *within* the shared political community. What, then, is the constitutive feature of the majority and minority with respect to the other as a group? To make these linguistic communities eligible for primary rights, their constitutive feature needs to be defined with respect only to the good of language in relation to the other.

If a linguistic minority does not advance a self-determination claim, its primary political community is the one it shares with the majority. If the members of the minority were to claim their right to language equal to that of the majority, the claim would be based upon their joint membership in the larger political community. The protection of the good of equal citizenship of the minority and majority members allows the minority to demand the majority’s cooperation in the preservation of its minority language. Without the cooperation of the majority, the minority would not have resources to protect its linguistic well-being, and its members demand this cooperation of their fellow-citizens based upon the circumstances of political inclusion in the shared primary political community, such as the ideal of equal citizenship. While the minority’s right to language is the minority members’ right to the enjoyment of the collective good of language, it is not defined against the majority as a linguistic group but against the majority as an aggregate of individuals

with access to a collective good (and a collective interest) similar in kind to that of the minority.

One may object that each of the two groups is a collective agent that qualifies for a group right and that the claims are made by the minority as a group against the majority as a group and vice versa. Since each group is constituted based on the members' shared identity associated with the good of language, in this particular case the linguistic rights appear to be primary. Yet the collective good of language can constitute a community only in some contexts, not regardless of the context. It is only in the particular context of joint membership in the same primary political community that the minority and majority's entitlements to a linguistic right arise. Prior to their inclusion in this political context, they did not have a right. In the case of self-determination, the entitlement to self-determination is prior to the circumstances of the group's inclusion in a particular political arrangement and is claimed against all communities of the same kind. A right to language is claimed only against the group(s) that relate to the group in question in the given political context. Therefore, linguistic communities do not possess features enabling them to be equally free agents based solely on their constitutive feature of shared language regardless of a specific political framework, and they thereby do not qualify for primary group rights. The minority and the majority both have a derivative group right to the preservation of their linguistic communities; their right to language is claimed on the basis of their equal citizenship in the shared primary political community by the members who also share in the collective good of the relevant language.

To find out the entitlements of more than two linguistic communities, we need to determine what group agents are present, how the collective good of language fits with the constitution of each collective agent in relation to others, and what primary political communities provide the framework for their claims. Several agents with the right to language can be compared in terms of how well the larger primary political community satisfies their initial derivative group rights. If one group is given resources for schools, another group comparable in size and circumstances of inclusion may demand similar resources. While a claim is framed in reference to what the other linguistic group received, the right is not asserted based on the relation of mutual limitation of freedom in which these minorities stand to one another. The comparison is rather to the terms another group was able to negotiate with the larger society concerning the status of its individual members both within the group and in relation to the larger society.<sup>47</sup>

### ***Other Minority Rights***

Cultural and religious rights are akin to linguistic rights: in the absence of aspirations for its own political community, a minority's claim to the enjoyment of the shared good around which it is organized is based on the relation of its members to non-members within the context of the larger political community it shares with non-members.<sup>48</sup> Given that minority individuals are differentiated from the rest of the citizens by virtue of their participation in the minority group, these rights

secure the minority members' equal status in the larger society. A group minority right is claimed against other members of the larger political society on the basis of shared membership in this larger society and not against other collective agents that are similarly situated with respect to the claims the rights in question protect. The collective agent in question does not qualify for a primary moral right, because it does not define itself in terms that allow it to be free equally with other similar agents. The Catholic Church's exemption from anti-sex discrimination legislation, for example, is a group right based on shared ends and rules of acting, but it is a derivative group right that is based on the need for individual Catholics, equal with other members of a state, to have religious freedom and engage in collective actions defined by a shared set of beliefs pertaining to the agency of their religious denomination. Catholics would have this right even if other religious groups claiming special exemptions did not exist in the state.

Not being in a position of equal freedom with other agents does not exempt minority groups from collective responsibility. Collective agents that qualify only for derivative group rights can exhibit free collective action and reasoning and thus can be held responsible for their decisions and actions. If members of a cultural organization decide to have a procession that unintentionally blocks ambulance access to a hospital's emergency room, the ensuing harm to some patients' health is the organization's collective responsibility.

Summing up my position concerning the two types of group rights, the moral status and entitlements of group agents for the purpose of primary rights are defined in relation to those of all other similar agents. Hart's necessary condition for the existence of a moral right is the equal freedom of subjects in a general primary right and, in a special moral right, of subjects and all other agents of the same type. Agents cannot be free if they have no capacity for discursive control. Collective agents can have the capacity for discursive control if and only if their constitution allows them to consider their entitlement in a general relation to all other similar agents, which enables them in principle to be in an equal relationship with these agents. Among themselves, moreover, such groups have the capacity for the mutual recognition of their equal freedom.

All group rights are given to collective agents sharing in the good that the right in question promotes and are claimed against non-members. To determine whether a right is derivative or primary, one must consider how constitutive characteristics of the group in question affect its moral status in relation to other similar agents. Collective agents can have the capacity for discursive control required by primary moral rights if and only if they are in principle capable of acquiring and maintaining an equal relationship to all other similar agents by virtue of their constitution alone and do not require an external authority to shape their membership and relations with non-members.

Groups organized around self-determination define their agency based on the limits of political authority they perceive themselves to be capable of maintaining entirely on the basis of the conditions of the group's internal life, whether the exercise of this authority is realized or only aspired for. The shared good of self-determination around which such a community is organized can be a basis for

relationships among such agents based on their equal capacity for freedom, and the corresponding right can be primary. For the right to self-determination to exist, there must be a set of collective agents with similar self-definition and a similar aspiration to control their separate political futures.

Collective goods constitutive of linguistic, religious, and cultural communities do not uniquely designate corresponding collective agents. The boundaries of membership in groups organized around these collective goods are identified by the circumstances of each group's inclusion in its host primary political community. Since this inclusion, external to the corresponding shared good, determines those aspects of the group's constitution that define its status in relation to others, linguistic, religious, and cultural collective agents do not have the capacity for equal freedom required by discursive control. The collective moral rights of these agents are derivative and originate in the moral right of each group's individual members to the protection of a constitutive collective good for the purpose of their equitable inclusion in the larger society. Thus, derivative collective rights mainly serve the purpose of ensuring the equality of citizenship within the same primary political community by supporting the constitution of a minority group for the joint enjoyment of a shared good around which the group is constituted.

We should also remember that introducing group agency into the consideration of collective rights settles the auxiliary question of how to distinguish between derivative moral group rights (linguistic or ethnic rights, for example) and the moral rights individuals possess due to characteristics they share with a set of other individuals (such as the moral right to assistance based on disability): sets of individuals who possess a moral right tied to a shared individual characteristic are not collective agents organized around the characteristic in question, and their corresponding moral rights are neither derivative nor primary collective rights. An individual moral right based on a shared characteristic regardless of the person's inclusion in a group agent (such as a privilege enjoyed by senior citizens) is asserted by the individuals with the characteristic against individuals without the characteristic only on the basis of their equal citizenship in the larger society. It is not claimed based on shared membership in a collective agent (and thus based on a collective good or interest), and it does not generate either a derivative or a primary group right.

Satisfying the exercise of group rights becomes problematic when groups are pitched against their individual members. Should Quebec's Francophones be allowed to send their children to public schools where the school curriculum is taught in English? Such schools are presently designated only for those children whose parents were educated in English in Canada. Or does the right of the Quebecois as a group to preserve French as their language allow them to deny this opportunity to their fellow Francophone citizens? Education in the Welsh language in Wales is a similar case: the native language, dying out due to its prior suppression by the English, is being revived, often against the wishes of English-speaking Welsh families who do not see the value of education in Welsh and prefer to teach their children a foreign language more useful, from the parents' point of view, to the children's future. They see the effort to teach Welsh as a futile nationalist attempt to impose a cultural attribute marginally relevant to their identity.<sup>49</sup> Does the restitution

right to correct prior wrongs entitle Welsh nationalists to require that immigrants and native Welsh study the Welsh language in public schools? Moreover, is there a duty on the part of the individual Welsh to preserve their language even if it is beneficial for them to assimilate into the mainstream English linguistic culture?

Let us assume that in a utilitarian calculation the aggregate benefits of linguistic assimilation outweigh the costs of language preservation for individuals; the decision whether the Welsh as a group are to bear the burdens of language preservation or leave it up to individual members to care for their linguistic heritage cannot be justified solely on the basis of this calculation. Any determination about what policy is to be implemented needs to be based on the group preference, which must be determined by means of an appropriate decision procedure. If we consider the Welsh and Quebecois communities as collective agents, we will have a better vantage point for evaluating the claims of linguistic nationalists and considering under what circumstances the Welsh or the Quebecois may decide to abandon education in their language. Individual members will have to bear with the results of collective decision making if it is based on legitimate collective deliberation in accordance with the constitution of the group as a collective agent. If the outcome of this deliberation is that immigrants are to be required to learn Welsh or French, the justification for this decision would be that they have chosen to move to a place where they must live under the constitution of a Welsh or Quebecois collective agent that attaches a great deal of importance to language. The immigrants could, however, have their language rights protected in addition to learning Welsh or French.

### *The Ontological Status of Group Agents*

One may doubt the need to defend the claim that group rights belong to group agents. One may have the same doubt about the claim that self-determination is a primary collective right, that is, a right that belongs to collectives as such. The hesitation to appeal to group agency is usually rooted in a reductionist group ontology. A proponent of this reductionist view argues that groups only have rights because of the individual rights of the members of each group. Even if the reductionist admits that groups have certain interests that are not reducible to the aggregate of individual interests, she would deny that groups actually have an ontological status and existence independent of the individuals that make them up. I agree that group agency supervenes on its individual membership, but this supervenience is more complex than what can be captured by a reductionist view: not just any supervenience generates rights. There are groups that supervene on individual membership but do not possess the capacity for holding moral rights, either independently or in virtue of the rights of individual members.

The refusal to accept realism about the existence of groups may come from a worry that acknowledging the ontological independence of groups assigns to them a moral status equal to that of individuals. On the contrary, attention to group constitution prevents a simplistic treatment of group entitlements and duties as analogous

to those of individuals. A realist account works better in explaining different types of group rights; more importantly, it is well-equipped to address the issue of group rights in the transitional and oppressive societies, the political environments that present difficulties for the reductionist. For example, most members of a national group, such as the Chechens, considered the Soviet authority governing them to be illegitimate; most believed that the institutional design of the autonomous republic of Checheno-Ingushetia did not express their group interest in self-determination. Although the Soviet institutions didn't provide the proper environment for the enjoyment of this interest, they emulated a functioning self-determining entity. The rank and file inhabitants of the territory performed many individual and—jointly with other individuals in that territory—group actions that engendered the autonomous unit the existence of which they didn't endorse. These group actions realized the goal of self-determination of the autonomous unit of Checheno-Ingushetia, but not of either Chechnya or Ingushetia. Individuals may have intended to perform the actions that maintained the Soviet institutions to avoid persecution, but they didn't perform them to exercise their group's self-determination. The actions expressed the interest and preferences of the group, but they didn't qualify the group to be entitled to self-determination.

The problem with group interests in oppressive environments is as follows. In group actions prompted by the state, the rank and file members bring about the exercise of self-determination of their political unit, but they do not bring about the enjoyment of the collective good of self-determination that aligns with the shared individual understanding of what constitutes their group interest. Moreover, citizens may believe, as a matter of fact, that participating in the social and political system results in the maintenance of the system as a self-determining entity, but they simply do not endorse this goal.

The reductionist suggests that group interests that generate group entitlements are not reducible to the aggregate of the interests of group members. What interest supports a group's entitlement to the corresponding group right in an oppressive environment? In Checheno-Ingushetia, was it the Chechen people's interest in self-determination or the official interest of Checheno-Ingushetia in self-determination? Both groups supervened on the set of individual members and could have been ascribed group interests independent of the aggregate of their individual members' interests. A reductionist may say that only the group interest in the enjoyment of self-determination that corresponds to the preferences of group members counts. Thus, we should assign the group the capacity for holding the moral right to self-determination only if there exists a shared preference of group members that they enjoy the collective good in question. I agree with the reductionist on this, but her approach is missing an account of how we can identify the state as persisting through time in the *absence* of such a preference, when the majority of citizens do not endorse the enjoyment of self-determination on the terms offered by the state. How does the reductionist account for the continuity of regimes in which a majority or rank and file members do not share in the group interest? If she does so by referring to the continuity of the leaders' plans, or to the continuity of state institutions, would this institutional framework be an ontologically independent entity

that expresses group interests and looks after the enjoyment of the corresponding collective goods?

To complicate matters, it could well be the case that the officials themselves act to implement public rules out of fear and not because they believe in their rightness or endorse the institutional group's self-determination. In this case, the day-to-day existence and continuity of an oppressive regime becomes an even greater mystery: no one intends to promote the goals they routinely advance through group actions, but these actions have a corresponding group interest. The group definitely supervenes on its individual members but we cannot give a satisfactory account of how this happens in reductionist terms. Since we need to identify all of a group's interests that supervene over the same set of members in order to consider which ones among them can generate group entitlements, we are committed to some form of realism concerning group ontology. We will be looking at two group interests supervening over the same members engaged in the same actions and holding the same beliefs. We can only avoid confusion if we acknowledge that two group agents exist under these circumstances. This allows us to be careful not to define the group interest associated with the group's entitlement to moral group rights as based exclusively on the manifestation of its elite's views or on the official institutional expression of group identity and the corresponding realization of effective group agency.

Paying attention to shared individual beliefs about group membership and intentions requires us to consider group agency according to the minimal definition of group agency that I put forward. After the existence of group agents and the corresponding group interests in the enjoyment of collective goods constitutive of these group agents is established, we can determine which rights would protect legitimate group interests. Not all interests that are not reducible to individual interests qualify groups for moral rights. According to the mechanism I employ in characterizing group entitlements, group interests belong to ontologically significant entities. However, this mechanism disqualifies those interests that are not supported by properly formed individual attitudes: such interests do not ground moral entitlements for the groups that hold them. Hence, my account can sort out complex cases of supervenience and not make mistakes about group entitlements. It is not more complicated than is necessary for ascribing rights to groups, and thus it may satisfy the reductionist critic.

## **Practical Issues Associated with Primary Group Moral Rights**

This chapter classifies the valid rights claims of various groups by differentiating types of collectives. In this section I consider three issues connected to the application of this classification. First, it needs to be specified by what criteria we are to identify groups that are holders of primary collective rights. Second, we need to clarify how individual and primary collective rights can be reconciled. And, finally, however clear a conceptual distinction between primary and derivative group rights

seems to be we need to consider whether there any real differences between the application of primary and derivative collective rights in practice.

The idea of group rights is often criticized due to skepticism that satisfactory criteria can be developed for locating entities entitled to such rights. Julius Grey, for example, claims that collective subjects are not identifiable unless there is a unilateral assertion of membership or some arbitrary process is employed to identify them.<sup>50</sup> But considering the constitution of group agents with respect to their corresponding shared goods not only solves the problem of identifying rights-holders but also makes it possible to differentiate holders of primary collective rights from holders of derivative collective rights.

Looking at the self-definition and goals of a group agent and its relations to outsiders allows us to determine whether the group qualifies for a primary or derivative collective right. Groups that qualify for the right to self-determination can be identified by the kinds of demands they advance and the sets of beliefs that characterize their collective actions.<sup>51</sup> If a group possesses a political culture of self-determination and its members identify with this culture, the group qualifies for holding primary rights. Quebec considers itself a national group with the corresponding moral right to self-determination. Francophone citizens of Manitoba want to receive education in French and do not aspire to be self-determining. The former qualifies for a *prima facie* moral right to self-determination, while the latter qualifies only for the derivative right of a linguistic minority group. I will deal more with this issue in the next chapter, in which I provide a pragmatic definition of nationhood.

It may be objected that sometimes groups may argue for linguistic or cultural rights but not self-determination because they are too small or scattered to make a claim for the latter, whereas they can pursue the former. In this case, the political calculation of whether to pursue self-determination would seem to influence the philosophical issue of the category of right the group should or does have. I do not argue that those who claim linguistic rights are never self-determining agents; this is simply false. However, group claims important in the context of group rights are relevant only insofar as they *constitute* the corresponding group agents. A group agent constituted as a self-determining group may settle for less than self-determination, but this is not to say that it does not have a moral right to self-determination. If its members define the group as a self-determining group but claim only rights to language or culture, they are constituted as a self-determining agent (for how else would we know that their claim to language rights is not their highest aspiration, but a compromise?).

In all likelihood, the group will pursue self-determination if it can, since it is organized around this idea. If there is no indication that the group defines itself in terms of self-determination, the group qualifies only for a derivative right. Finally, at some point, a group may lose the features that previously qualified it for self-determination, because it simply may not be able to perform the functions required to constitute itself as the right kind of group. A group with very few members may not be able to operate as an agent capable of equal freedom. In this case, a linguistic or cultural claim may truly reflect its constitution. The group may be entitled to some symbolic recognition of its past, but such a group in transition does not qualify for



the right to self-determination. If a group has lost its capacity to self-determination due to some prior deprivation by another group, its members need to be compensated, but the group may not be able to regain its capacity for self-determination and may cease being a group that can qualify for a primary right. My approach, by maintaining the distinction between different types of group moral rights, helps to clarify the entitlements of the transitional group.

Voluntarism in defining which group agents qualify for the right to self-determination is avoided, first, because we are looking for relatively stable defining beliefs. Such beliefs are stable in part because they are about relationships with others, often involving long-drawn-out conflicts that require regulation on the basis of group rights. Second, voluntarism is avoided by insisting on a search for the “objectified” beliefs of the corresponding political culture. Although at any given time there has to be a critical mass of individuals who identify with and support the institutions that have grown out of the political culture, continuity is assured, because we are looking for a political culture continuously and jointly practiced by its individual members.<sup>52</sup>

Now let’s turn to the second question, regarding how individual and primary collective rights may be reconciled. In the case of derivative rights, individual members of a group are also members of the larger community that offers them some protection against the group (provided the larger society protects individual rights; if not, the problem lies not with group rights but with an oppressive state). On the other hand, the primary moral right to self-determination may appear dangerous, because the protection it gives to groups may enable them to infringe upon the freedom of their individual members to promote the collective good. The objection here is that, at most, human rights can be protected if the right to self-determination is understood as deriving from the rights of the group’s members.

We can construe human rights as a fundamental condition for the exercise of collective agency of the kind that qualifies groups for primary moral rights. First, if basic human rights are not respected, it is often hard to even identify a group as a collective agent, owing to the difficulty that the group members face in expressing their beliefs and maintaining everyday group functions. Only after the basic human rights of the members are satisfied and they can function in a minimally normal political and social context can we identify the constitution of the group with sufficient certainty and employ the idea of group rights. Moreover, if group agents are properly constituted around the shared good of self-determination, a territory acquires identifiable structures of authority associated with group membership, which should work to diminish lawlessness, thereby reducing the causes of human rights abuses and providing the conditions for a political environment of the type necessary for the respect of human rights. A territory that encompasses warring factions or is governed by a corrupt government that does not enjoy the support of its citizens does not contain a group agent properly constituted around the shared good of self-determination. (The problem of detecting and identifying group agents in non-democratic or oppressive societies is beyond the scope of this chapter, and I will discuss a cautious approach to the composition of transitional or

non-democratic societies to avoid premature judgments about group entitlements in Chapter 4.)

Second, the primary right to self-determination can be demonstrated to be limited by human rights. Should a group that qualifies for the primary right to self-determination possess a state of its own, it is prevented from abusing the rights of its members as much as any other international agent is bound to respect the standard of human rights in accordance with international law. And if the group exercises its self-determination within a federal state, other self-determining groups within the state may assist the international community in assuring the group's compliance with the standard of human rights, both because they would like to improve the state's international standing and also because the group's actions may not be in tune with the norms of behavior agreed upon by all group members of the state. The condition of equal freedom grounds a special right of group members within each state to require from one another equal compliance with the rules of membership in the state, including respect for human rights as the norm derived from international law. Therefore, the primary right to self-determination does not weaken the chances that individual rights will be protected or the means of protecting them.

Moving on to the last question of this section, although differentiating between collective agents with the capacity for primary and derivative collective rights seems to be conceptually important, we need to compare self-determination to other group rights in terms of the type of treatment that satisfies it. Often, the right to self-government is offered in answer to national groups' claims to self-determination. But giving groups a say concerning some governmental policies is also used to satisfy a number of derivative group rights, such as linguistic, religious, cultural, or ethnic rights. For example, one of the recommendations of the Congress of Local and Regional Authorities of Europe to the Council of Ministers,<sup>53</sup> in accordance with the European Charter for Regional or Minority Languages, encourages the preservation of minorities' identity in two ways. First, where minority populations have their own administrative subdivisions, they have to be given adequate competences to protect the minority's identity. Second, where the appropriate administrative divisions are absent, the congress specifies that they ought to be established to afford minorities effective protection. Territorial boundaries should be marked in consultation with the population to prevent the dispersal of minorities. In most cases, however, minorities are required to learn official languages. Article 3 of the Spanish Constitution, for example, states that it is the duty of every Spaniard to know Castilian, the official language of Spain.

If provisions for the protection of minorities afford the minorities the powers of administrative rule ranging as far as local self-government rights, do these provisions answer the claims of those minorities who also demand self-determination? We can determine the justice of offering self-government as a way of satisfying self-determination claims only after we clarify what the right to self-determination means, both for the members of the group and for outsiders. We must consider how the meaning of "self-determination" differs, if at all, from "self-government," and what aspects of individual members' well-being and a group's constitution are

attended to by the protection afforded to the group through an autonomy (or self-government) settlement.<sup>54</sup>

Self-determination is the capacity of a group to determine its future political status. Self-government, in contrast to self-determination, requires a group to make and apply laws for itself within the parameters of an already given political status. Self-determination in most cases includes self-governing aspects, but if a group is not in control of its status after having relinquished certain powers and prerogatives, it is not self-determining.

While self-government rights are the most progressive and adequate of all possible rights for the protection of national minorities, national groups' securing of self-government rights does not preclude a situation wherein some national groups are associated with the state while others have self-government rights as a means of relating to the main nation or nations of the state. In such a case, the minorities do not have equal freedom as defined in terms appropriate for discursive control, and it cannot be said that their right to self-determination is satisfied. Self-government, while providing for mutually reduced influence between the state authorities and the minority, is a right *in relation to* the state, to which the power of controlling the group's political status ultimately belongs. Self-determination requires that the group possess a status with respect to its control over its political future equal to that of other national groups with which it shares the state space, including the majority. Self-government that is not accompanied by the recognition of self-determination claims, then, does not give a minority group enough discursive control to maintain its equal freedom and cannot satisfy a primary moral right. Unless minority groups that claim the right to self-determination freely opt for self-government and minority rights as a way of satisfying their claim, these modes of accommodation do not satisfy the right to self-determination.

A self-determining group does not necessarily have to have the highest level of self-government, so long as those powers it does not have are ceded voluntarily and can in principle be taken back. Countries in the European Union, for example, have relinquished many significant functions associated with full self-government, but they still remain self-determining. Canadian provinces, on the other hand, are not self-determining, although they have a very high level of self-government. With the exception of Quebec, none of the provinces wants to be self-determining, at least for the time being. Instead, they locate their self-determining capacity at the level of the federal government, which represents the Canadian nation. Although Quebec has self-governing powers even greater than those of other provinces—for example, it has control over immigration—it does not perceive self-governing powers per se to be a sufficient expression of its self-determination.

Although a substate group that is self-governing is not self-determining unless it also has a say about its political future, it is also not fair to say that a group is self-determining only if it has a constitutional and international right to secede. Determining one's own political status does not straightforwardly imply the right to secession; rather, it requires a group to be able to control its political space in relation to other similar groups. I will argue that there is an essential connection

between nationhood and self-determination but not between statehood and either nationhood or self-determination in Chapter 3.

There is a conceptual difference between individual and group rights, but could the measures aimed at preserving an individual human right to nationality approximate the protection that the right to national self-determination can give a group in practice? That is, can a state show equal respect for citizens' national belonging merely by complying with the requirements of the human right to nationality? As they are listed in the Universal Declaration of Human Rights, human rights include equality rights, legal rights, mobility rights, and basic freedoms.<sup>55</sup> Article 15 of the declaration introduces a right to nationality. It states:

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

A set of people who share the same nationality and are protected by the individual right to nationality may not even be a group as defined in terms of collective agency. For example, acknowledging the right of those Anglophones in Quebec who perceive themselves as Canadian not to be discriminated against on the basis of their national identity is not the same as acknowledging that the people of Westmount, a fraction of all Anglophone Quebecers and a group that toyed with the idea of declaring its independence from Quebec, are a national group or that they have a right to self-determination. If the Westmounters are to be granted a group right of any kind, it will not be based on their individual members' rights to nationality. A group right may be given to them based on the members' preferences with respect to what they want for their group, and thus based on a determination of whether the corresponding collective agent exists—a consideration external to the human right to nationality. However, the right to nationality may *seem* to give a group of people who do form a national group the right to self-determination. For example, we may say that recognizing the right of each individual Albanian in Kosovo to nationality amounts to the recognition of the group's political identity as a self-determining people. The protection of group members, however, will have to be translated into the protection of group preferences, which does not fall under the right to nationality.

Finally, I have shown that the shared good of self-determination, unlike the shared goods of culture, language or religion, provides a precondition for the equal freedom of collective agents and can signify a corresponding primary collective moral right. But can the protection of the linguistic, religious and cultural rights of minorities sufficiently address the conditions of their membership in their host states, accommodating them fairly in such a way as to satisfy minorities' claims to self-determination without adjusting their political status? Although the mechanisms of minority rights that are not associated with self-determination can help us to identify and solve the problems of the corresponding minorities, they are not adequate to satisfy the aspirations of minorities to determine their own political status. Groups organized around the shared good of self-determination can be more

complex than other minority groups: self-determination can be claimed by a multi-ethnic, multicultural, and multilingual group. Inhabitants of Tatarstan, for example, conceived of themselves as a multicultural nation at the time of their referendum on sovereignty.<sup>56</sup> To comprise its combined linguistic, ethnic, and cultural groups as members of the same community, Tatarstan's identity as a group agent needs to go beyond each group identity: it includes the encompassing political identity that unites all the groups. As a collective agent, such a group is organized around the aspirations and goals that members share for the group as a whole that they do not associate with any other aspect of their identity. Thus, ethnic, linguistic, and cultural minority rights address only fragmented aspects of the shared identity of members of a multiethnic or multilingual group that is also organized around the shared good of self-determination. Supporting the rights of ethnic, linguistic, and cultural minorities in Tatarstan without supporting Tatarstan's self-determination would have failed to adequately address its citizens' membership in the Russian Federation. Groups organized around self-determination can also have similar cultures, like Moldova and Romania, but they are, at least at present, different groups organized around the collective good of self-determination. Linguistic, cultural, and ethnic claims would, therefore, inadequately represent either Moldova's or Romania's interests as a group agent.

The democratic character of the rules governing political life in a multinational state in and of themselves would not allow members to be equal discourse participants in matters concerning their group agency. Membership in the larger state would not satisfy the minority members' individual expectations unless it also provided acceptable terms of inclusion for all of them as members of their national collective agency. Their equal inclusion, then, requires institutional and legal guarantees of the conditions for equal participation in discourse for their group, and thus a chance for equal freedom with other similar groups. Since most nations and states do not match, the idea of a self-determining people is important in the context of belonging to a multinational state. Membership in such a state is, therefore, determined in part by how the state accommodates the self-determination claims of its national groups and thus how it creates conditions for equal status in discourse for all such groups.

## **Self-Determination as a Moral Right and Its Benefits**

Since the benefits brought to groups by substate self-determination are different from those of independent statehood, the challenge associated with my approach to self-determination is to demonstrate that substate self-determination brings tangible benefits to national groups comparable to the benefits of independent statehood. One may argue that there aren't any non-trivial benefits of self-determination—benefits beyond the satisfaction of vanity preferences for one's own flag or Olympic team. Moreover, if groups express their preference for attaining a certain status, this does not mean they deserve to receive it. If self-determination is not a substantial good, it

may be morally justifiable to “level down” by taking self-determination from those groups that enjoy it now rather than “leveling up” by institutionalizing a right to self-determination for all groups who desire it. I provide a two-stage explanation of what benefits self-determination can bring to groups and their members. In this section, I consider group aspirations as they relate to the group’s constitution and demonstrate that self-determination is a tangible good that deserves promotion through the moral right to self-determination. I explain how such a right can be formulated in Chapter 5. The modified right to self-determination I introduce does not require the acquisition of independent statehood for the exercise of self-determination. This means that minority substate national groups are entitled to self-determination equal to that of other national groups in their host multinational state. In this way, their status is, most likely, “leveled up.” For the formerly state-controlling majorities in multinational states, however, this is a form of leveling down. The elevation of the status of other substate national groups will mean that the majority has less power to control them. We need to specify under what circumstances the effects of substate self-determination on the life of the group can be considered comparable to those of independent statehood despite being institutionally different. And if substate self-determination brings significant benefits to groups but these benefits are not as significant as independent statehood, we must explain why this situation is acceptable.

It may be suggested, for example, that presently groups benefit from self-determination only if they either acquire a mononational state with all the privileges of international status or control a multinational state as if it belongs to them and thus disadvantage others. I argue in Chapter 6 that the substantial benefits that self-determination brings can be achieved while respecting the entitlement to self-determination of all groups living in the territory of a political unit. In this section, I only state what these benefits are in relation to the constitutive good of self-determination and what about this good makes these benefits significant even if self-determination is exercised in its modified form.

One may also argue that an approach like mine that values and encourages the preservation of group intentions creates groups where they could have been eliminated. I will leave aside the question whether it is feasible to redesign groups’ constitutive features so as to avoid unwanted types of group mobilization. Even if it is feasible, and a group can be eventually redirected to organize around a different type of shared good, in the process of transitioning a group to a different type of collective agency we cannot avoid recognizing what the group was first. We simply must determine this before attempting to redesign its constitution. Once we have recognized and acknowledged the initial form of group members’ relationships in their mode of functioning as group members, however, the issue of their moral entitlement immediately comes up. The same issue will arise if we decide that only some groups organized around self-determination are entitled to enjoy the corresponding benefits. Unless a change in group members’ shared beliefs takes place, we will still be faced with the residual problem of regulating the relations of those agents who do not relinquish their hope of achieving or maintaining their self-determining status.

Furthermore, if we decide to “level down” and deprive *all* groups of the enjoyment of the right to self-determination (assuming this is feasible), unless this results in the creation of a worldwide political community that is fairly homogenous, we will have to decide who controls the political future of each society and on what grounds, and the problem of regulating relations among sub-units will inevitably arise. Thus, we cannot avoid settling the question whether self-determination is a substantial shared good such that a group’s interest in its enjoyment requires a corresponding moral right.

As I established in this chapter, self-determination is a constitutive feature of a particular kind of group agents. Self-determination, as the defining feature of such groups, is the capacity of a group to be entirely determined by the conditions of its internal life, or to have control over its political future. Although this capacity does not need to be realized perfectly (some aspects of group life can be influenced by non-members or ceded by the group), groups of this kind are in a category distinct from others: they are capable of being in relation of equal freedom with similarly constituted group agents. That being organized around self-determination provides group agents with the capacity to hold a primary right is not sufficient, of course, to grant groups the enjoyment of the corresponding right. I maintain that a moral right to self-determination exists based on the corresponding constitution of group agents. First, I will establish eligibility for the right that groups hold in relation to similar agents. Second, I will maintain that the argument for the entitlement to self-determination has effect only if collective agents organized around self-determination are to be preserved. I will defend their right to survival both in relation to other agents and from the point of view of the equal treatment of individual citizens in a multinational state. Finally, since I defend the meaning of national group membership to their members as a question of preference, I argue that individual preference for the preservation of a certain national membership is not arbitrary.

To begin with, then, let us recall why self-determination is a shared good. Self-determination designates the mode of functioning of certain types of groups. It generates a corresponding set of second-order beliefs and aspirations, as well as members’ cooperative interdependent actions. Is functioning in this way—being a group whose boundaries demarcate the meaningful limits of authority for the group’s members—a moral fact? While the group’s relationship to self-determination may be seen in purely descriptive terms—being a self-determining agent implies functioning in a certain way, like being a biped implies moving by walking—there exists a normative connection between agency of particular kind and equality among agents of this kind expressed in the right to self-determination, as in the right of a biped not to be prevented from walking if other bipeds are allowed to walk. The bounds of group agents are historically contingent, but the norms that ought to regulate their relations and prescribe their entitlements are moral. As I discussed in the introduction, sociological and normative realities are not incompatible. Refusing benefits to some groups constituted around self-determination while providing them to other similarly constituted groups amounts to morally unjust treatment. The moral rights of self-determining groups are determined in their mutual relations. Self-determination as a primary right cannot be consistently afforded to some and

denied to others. Even if we decide to compensate groups that for pragmatic (or other) reasons cannot be granted the right, this compensation will be based on an acknowledgment of their entitlement.

One may object that even if groups constituted around self-determination are morally entitled to self-determination, to be able to claim it, they must first be morally entitled to survive. Groups are not ontologically prior to individuals, and the moral need for their survival is not immediately obvious. Why should collective agents organized around self-determination be preserved? I advance the pragmatic argument that groups will resist attempts by outsiders to erode their constitutive features in Chapter 5. In this chapter, I am not concerned with pragmatics but with moral entitlements. If it is possible to influence the constitutive beliefs of group members so that they willingly and freely accept the change, this will alter the character of the group agent; if this experience is successfully repeated with a number of groups, it will reduce the number of self-determination claims they advance. (An ideal and presently unattainable solution of constructing one world community devoid of national allegiances would resolve the problem of the right to self-determination, although such a community would still be self-determining in a non-relational sense.) However, if the group members do not accept the change willingly, they will continue to try to exercise their effective agency, and the pressure put on them to alter their constitutive features and to suppress their attempts to mobilize along self-determining lines will have to come from non-members, the members of other group agents. The primary right to self-determination establishes how the relations of agents of a particular kind have to be regulated on a principled basis. It can be formulated as a conditional right: if a set of group agents organized around self-determination is present, they are equally entitled to preserve their constitutive good. Thus, they are allowed to exercise their collective agency within the restrictions imposed on them by the fact of the existence of other similar agents with the same entitlement. An attempt by one or more group agents organized around the shared good of self-determination to influence another group agent similarly constituted in order to prevent this agent from the reasonable enjoyment of self-determination would violate the agents' equality established by the right to self-determination. Preserving some groups constituted around self-determination and not others is not just.

Another angle of approach to the moral right of groups to survival and consequently self-determination is the benefits group members receive from self-determination. One might argue that if members' well-being is protected without self-determination, it is acceptable not to give a group this benefit, even if it is organized around self-determination. That membership in their own group is important to the well-being of members is argued extensively by Kymlicka, Raz, Gans, and other scholars discussed in Chapter 1. Self-determination is a shared good for a particular type of group. Can members of a group organized around self-determination be made to join another group that shares the good of self-determination without imposing an undue burden upon them? Kymlicka shows it is unreasonable to ask an individual to make such a transition, due to the difficulty that normally accompanies it. I think that we can, on the basis of equal respect for individuals, consider the



question of surrendering group membership not as one of possibility but as one of preference. If members of one group can become members of another but do not wish to, their preference ought to be respected. The proper maintenance of group agency through the recognition of their preferred mode of mobilization associated with the shared good of their choice creates a basis for individual and group self-respect. This supports the moral right to self-determination only if the members' preference can be accorded weight as a non-arbitrary preference.

Are group members' preferences for self-determination for their particular community as arbitrary as, say, the flavor preference for chocolate over vanilla is? I would argue that they are not, first because arbitrary preferences are preferences regarding access to goods that are equally available (this is what makes these preferences arbitrary), whereas the option of self-determination is not available to most groups aspiring to be self-determining, and thus when it comes to self-determination they are not really allowed to have a preference that might be deemed arbitrary. The flavor analogy here would need to be adjusted: imagine that the chocolate preference of only some chocolate lovers was satisfied, while the rest were given a list of choices that did not include chocolate. The flavors per se have no moral weight; it is the opportunity to choose any of the available flavors that matters. While having a preference is often a matter of taste, the moral aspect of this experience lies in being allowed to have choices and to express preferences concerning taste. Thus, being given an option to assimilate into another self-determining group is not equal to being permitted to remain within a self-determining group, because only some groups are granted the latter option.

The arbitrary preference examples are not analogous to the case of the preference for self-determination also because the options in arbitrary preference examples, such as two flavors of ice cream, satisfy needs of the same kind. If the choice minority members face is between self-determination and other minority rights, such as linguistic rights, these two types of entitlement do not satisfy needs or preferences of the same kind, as I have demonstrated in this chapter. So even assuming self-determination is among the choices groups are offered, which it is not always, the choice between the right to self-determination or other minority rights is not analogous to the choice between two flavors. Then an argument that the refusal to accept the substitution of a similar good, in the event of a "shortage" of the preferred good, is arbitrary does not work for the substitution of minority rights for the enjoyment of self-determination: the option for substitution is different in nature from the denied choice. Therefore, the individual preference for one's own group's self-determination is not an arbitrary preference.

### ***Self-Determination as Beneficial to Group Agents of the Required Kind***

My analysis in the chapters to come will clarify the ways in which facilitating the functioning of group agents can limit the destabilizing effects of their claims to self-

determination. I suggest that a number of self-determining groups can be accommodated within one state so long as they receive equal recognition of their status. One may object that self-determination in my equality solution will be meaningless, because the “reduced” self-determination I propose makes its attainment less attractive for groups. Thus, while self-determination, if legalized in the way I suggest, may bring some legitimate benefits to national groups, these benefits will not be significant, as my proposal severely limits the ways in which groups can benefit (and presently often do benefit) from their self-determination, such as the full control of the state apparatus—even if this means disadvantaging other groups in the state. However, historically prominent ways of benefiting from self-determination may not be the only way to benefit from self-determination. Groups that benefit from self-determination unjustly do not exercise their freedom properly, in accordance with their moral right.

One may ask what group members will be able to do if granted substate self-determination that they otherwise could not do in a democratic state that respects minority rights. If a democratic state has a principled basis for respecting minority rights, it will include the good of self-determination in the set of shared goods the enjoyment of which qualifies individuals for the enjoyment of the corresponding group rights within the state. This state will include self-determination rights (where self-determination is not considered equivalent to sovereignty) in its list of minority rights and thus will treat national minorities fairly by allowing them to control their political future within the state. Allowing the enjoyment of self-determination to substate national groups makes membership in a multinational state more equitable and just for their members and enhances the legitimacy of such a state. In a state with a national minority, for example, government decisions apply to the minority only if the state’s government represents the minority in a just way. A national group’s members’ well-being in the larger state is diminished by the state’s refusal to acknowledge them as a group organized around self-determination. If their right to self-determination is not recognized, they are likely to perceive their membership in the larger state as unequal to that of the majority. Since individuals’ beliefs about identity and membership are tied to their group status, failure to recognize their entitlement to self-determination violates the freedom of individual members by disregarding their preferences concerning group membership without providing alternatives.

While a substate option for the exercise of self-determination “downgrades” self-determination from its current association with sovereignty, it is better than the status quo. State institutions will have to be organized so as to treat all national groups on an equal basis, and no group will be able to control the state to privilege its interest over that of other groups. This is a significant benefit for all substate groups. Minorities that were formerly denied self-determination in any form will benefit from the elevation of their status; the majority may perceive its status as being demoted, but this “demotion” allows the members of the majority to exercise their group freedom correctly and increases the stability of multinational states.

Of course, even if norms are formulated and promulgated, this does not guarantee that all group agents will abide by them: they may opt to profit from self-

determination by oppressing others. History suggests that it is possible that one group or a few groups will dominate the world landscape. But this is precisely why moral norms regulating self-determination ought to be formulated. Moreover, the constitution of group agency is partly supported through public discourse, and it involves reasoning and justifications. As Buchanan suggests, the mere presence of moral norms supporting legal rules will have a positive effect on the behavior of group agents.

In this chapter, I have considered how to justify the group moral entitlement to self-determination. In Chapters 5 and 6, I discuss the set of advantages allowable under the universal right to self-determination as well as pragmatic benefits of self-determination and how to achieve them legitimately without privileging the interests of one group over those of others within the same territory. I explain why majorities may be motivated to comply if a proposal like mine is implemented in Chapter 5 and consider why “equality within a state” is still self-determination in Chapter 6.

## Notes

1. An argument defending the distinction between primary and derivative rights that appears in this chapter was first published in Anna Moltchanova, “Collective agents and group moral rights,” *The Journal of Political Philosophy*: 17(1), (2009), 23–46, reprinted by permission of the publisher: Wiley and Sons Ltd.
2. For example, James A. Graff argues that individual human rights alone can justify the creation of ethnoculturally based sovereign states or self-governing entities, while Michael Hartney maintains that the idea of collective rights is not conducive to clear thinking and that the rights of individual members of communities to the preservation or protection of their communities suffice to defend those communities’ interests. James A. Graff, “Human Rights, Peoples, and the Right to Self-Determination,” in *Group Rights*, ed. J. Baker (Toronto: University Toronto Press, 1994), p. 213; Michael Hartney, “Some Confusions Concerning Collective Rights,” in *The Rights of Minority Cultures*, ed. Will Kymlicka (Oxford: Oxford University Press, 1995), p. 221.
3. I do not discuss groups like business corporations, trade unions, parties, or families.
4. Leslie Green, “Two Views of Collective Rights,” *Canadian Journal of Law and Jurisprudence* 4, no. 2 (July 1991).
5. Thanks to James Nickel for bringing to my attention the issue of incommensurable types of various collective agents.
6. Leif Wenar offers an extended framework for the classification of rights that goes beyond the dichotomy of the “will” and “interest” conceptions of rights. “The Nature of Rights,” in *Philosophy and Public Affairs* 33, no. 3 (Summer 2005). He argues that even the combination of the two accounts is not exhaustive of the incidents that qualify as rights. For the purpose of this paper, I do not need to extend my consideration beyond the incidents covered by the will and interest theories. This paper is about the classification of the moral rights of groups, and the longstanding debate between the will and interest approaches of rights exemplifies a special status of moral rights—it deals with the entitlement warranted by individuals’ standing in relation to one another mediated by the system of social rules. Wenar’s scope of consideration is broader—he extends his approach to all types of rights (e.g. legal and customary, not only moral) as they are understood in common language use. Since I am dealing with the justifications for moral rights and the two approaches cover the core justifications of rights properly

related to the status ascription, I do not need to go beyond the range of incidents covered by the two approaches.

7. Hartney, "Some Confusions Concerning Collective Rights," p. 210.
8. As Seumas Miller argues, collective (what he calls "social") action, including discourse, is not just any interdependent action: the existence of second-order beliefs about the beliefs of others that also serve as partial reasons for acting can characterize an openly hostile action. Although being based on shared collective ends and governed by a set of public rules are both important conditions for collective action, Miller characterizes social actions more broadly as actions performed in accordance with social forms, such as conventions, social norms, institutions, and social groups. See *Social Action: A Teleological Account* (Cambridge: Cambridge University Press, 2001), p. 6 and Chapter 2.
9. Philip Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency* (Oxford: Oxford University Press, 2001), p. 116.
10. Christopher McMahon, *Collective Rationality and Collective Reasoning* (Cambridge: Cambridge University Press, 2001), p. 40.
11. To be what he calls an "effective agent," a group ideally has to possess the capacity to formulate its goals, to recognize and follow norms, and to act and evaluate outcomes. On the conception of effective group agency and the relation of identity and agency, see James W. Nickel, 'Group Identity and Group Rights,' in *Ethnicity and Group Rights*, ed. Ian Shapiro and Will Kymlicka, NOMOS 39 (New York: New York University Press, 1997), pp. 235–56.
12. Carol C. Gould "Group rights and social ontology," pp. 43–57, *Groups and Group Rights* eds. Christine Sistare, Larry May, and Leslie Francis; (University Press of Kansas, 2001), pp. 44–45.
13. For a discussion of this phenomenon see Moore, *The Ethics of Nationalism*, p. 106.
14. It can also be the case that in some context speakers of language L have individual rights and in other—group rights; we need to see the context in which we are considering the benefits and the corresponding duties as far as a set of individuals is concerned.
15. I agree with Denise Réaume that the correct approach to a group depends upon the constitutional structure of the group. See "Common-Law Constructions of Group Autonomy: A Case Study," in *Ethnicity and Group Rights*, ed. Ian Shapiro and Will Kymlicka, NOMOS 39 (New York: New York University Press, 1997), pp. 257–89.
16. For example, if we consider the Welsh community as a collective agent, we will have a better vantage point for evaluating the claims of linguistic nationalists and considering under what circumstances the Welsh may decide to abandon their language. Individual members of the community have to bear with the results of collective decision making based on legitimate collective deliberation in accordance with the constitution of the agent.
17. H. L. A. Hart, "Are There Any Natural Rights?" *Philosophical Review* 64, no. 2 (April 1955): pp. 182, 178.
18. *Ibid.*, p. 185.
19. *Ibid.*, p. 190.
20. The tension between the will and interest accounts of rights does not present a problem for collective agents. I will nevertheless briefly consider how a "contractarian" view of rights based on equal freedom applies to individual moral recipients that lack the fully developed or present capacity for agency in order to demonstrate the importance of equality of status within the scope of the right in question. It may be argued that compliance with moral rules required for the treatment of incomplete agents (such as animals) is owed not to them but to other agents, because the members of a society have the right to hold other members who are capable of freedom responsible for breaching moral rules that they have all reasonably accepted as members of the group. In this case, the rights of incomplete agents become merely a figure of speech. A stronger claim, however, is that the rights of incomplete agents can be ascribed in the areas in which their moral status can be compared to that of full agents. Regardless of who executes rights on behalf of incomplete agents, the freedom of full agents can be limited in relevant respects. Animals, for example, do not have a right to go to elementary school,

but they do have a right not to be treated cruelly or killed needlessly. Although the scope their right covers is highly limited, in relevant respects the equality of status of the agents is preserved.

21. It should be noted that in some cases, since collective agents are constituted through the interactions of their members, we may not be able to verify the constitution and intentions of an oppressed group: it is conceivable that when oppression is absent, group members will change them if they are allowed to freely express them.
22. Pettit, *Theory of Freedom*, p. 104.
23. *Ibid.*, p. 67.
24. *Ibid.*, p. 70.
25. Joseph Raz, *Morality of Freedom* (Oxford: Clarendon Press, 1988), p. 208.
26. Leslie Green, "Two Views of Collective Rights," p. 327.
27. Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Cambridge, MA: Harvard University Press, 2000), pp. 213–19; Michael McDonald, "The Personless Paradigm," *University of Toronto Law Journal* 37, no. 2 (Spring 1987): 223.
28. Denise Réaume, "Individuals, Groups, and Rights to Public Goods," *The University of Toronto Law Journal* 38, no. 1 (Winter 1988): 17; Denise Réaume, "The Group Right to Linguistic Security: Whose Right, What Duties?" in *Group Rights*, ed. Judith Baker (Toronto: University of Toronto Press, 1991), p. 120.
29. Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge, MA: Harvard University Press, 2001), p. 113.
30. He points out, for example, that Walzer would not be able to account for 20 percent of "Arab Israelis." *Ibid.*, p. 137.
31. Ruth Rubio-Marin distinguishes between instrumental language rights, which are individual in character, and non-instrumental language rights, which are collective. See "Language Rights: Exploring the Competing Rationales," in *Language Rights and Political Theory*, eds. Will Kymlicka and Alan Patten (Oxford: Oxford University Press, 2003), p. 53.
32. On the impossibility of linguistic neutrality, see Will Kymlicka, *Multicultural Citizenship*, p. 111.
33. *Ibid.*, p. 56n.
34. Moreover, does the right to be educated in French in Manitoba belong to individual Franco-phone Manitobans (although it is a group right to a collective good that cannot be exercised unless there is a sufficient number of Francophone children present in a given area)? See the Canadian Charter of Rights and Freedoms, article 23.
35. Réaume, "Group Right to Linguistic Security," p. 120.
36. I assume here that the allocation of sports facilities is fair across various sports and that the field problem cannot be solved by allocating more funds to the game of soccer.
37. Denise G. Réaume, "Common-Law Constructions of Group Autonomy: A Case Study," in *Ethnicity and Group Rights*, ed. Ian Shapiro and Will Kymlicka, *NOMOS* 39 (New York: New York University Press, 1997), pp. 257–89: 276.
38. A group can opt for a guarantee from some other group within whose territory it resides that its self-determining status will be respected, but if the group is to remain self-determining, this situation requires a guarantee that its capacity for self-determination can be preserved, such as an agreement that allows the group unilaterally to take back the powers it has relinquished. Even in such an extreme case, the group's understanding of self-determination is political and territorial, because it merely delegates the tasks of maintaining these aspects of its existence to another group, while retaining ultimate control over its political future.
39. I do not entertain the possibility of extraterrestrial intelligent life capable of political organization, and I do not consider human moral obligations to the environment and the animal world in this book.
40. Archie Brown, for example, finds that a useful conception of political culture considers it as that part of culture that bears relevance to politics, while not only laws and formal institutions but also behavior patterns are excluded from the scope of culture. See Archie Brown

“Conclusions,” in *Political Culture and Communist Studies*, ed. Archie Brown (London: MacMillan, 1984), p. 155. Stephen White offers a definition of political culture that includes behavior. According to him, political culture is “the attitudinal behavioural matrix within which the political system is located.” Quoted in Brown, *Political Culture and Communist Studies*, p. 6. I exclude both behavior and political institutions from the notion of political culture.

41. See Allen Buchanan, *Justice, Legitimacy, and Self-Determination*, p. 69–70; David Miller, “In Defence of Nationality,” *Journal of Applied Philosophy* 10, no. 1 (1993): 3–16; and Miller, *On Nationality*.
42. The concept of rival and nested nationalities is developed in Miller’s “Nationality in Divided Societies,” in *Citizenship and National Identity* (Cambridge: Polity Press, 2000), pp. 114–117.
43. Réaume, “The Group Right to Linguistic Security,” p. 127.
44. I discuss minority groups within liberal states here, for the existence of collective agents in nondemocratic societies cannot be confirmed with certainty given the lack of political expression permitted in these societies.
45. Should they legitimately claim the right to self-determination, the context will not matter for the initial determination of whether they have the right. They will be entitled to self-determination (1) by virtue of a particular culture that designates a primary political community (or a warranted aspiration for one) and (2) by virtue of the fact that such communities are present and the right is against them all equally.
46. Perhaps someone like Johann Gottlieb Fichte, who ascribed some primordial force to languages going beyond mere communication and entering the ontological structure of collective agency, might attempt to claim that language is the feature that substantially defines political communities. But by claiming so, he either identifies political communities corresponding to languages or has to prove how the good of shared language defines linguistic communities with respect to one another for their members and not as evaluated by an external observer according to a specially established criterion. (Fichte ranked nations according to the degree to which their languages were “alive” and “connected to the force of nature.” A language that ranks highly in both categories, he argued, links the members of the nation to the “whole previous life of the nation.”) Fichte, *Addresses to the German Nation* (New York: Harper and Row, 1968), p. 58.
47. If a group wants to separate completely, we may be talking about its claim for self-determination.
48. Even for minority groups that wish to isolate themselves from the larger liberal society in which they are situated, moral and corresponding legal powers over their members have to be reconciled within the framework of the individual rights that are fundamental for membership in the larger society.
49. David Laitin and Rob Reich, “A Liberal Democratic Approach to Language Justice,” in *Language Rights and Political Theory*.
50. Quoted in Darlene M. Johnston, “Native Rights as Collective Rights: A Question of Group Self-Preservation,” in Kymlicka, *The Rights of Minority Cultures*, p. 182.
51. For an argument of why the group identity/continuity can be explained as the persistence of sets of rules, see Réaume, “The Group Right to Linguistic Security,” pp. 124–125.
52. Groups with persistent aspirations for self-determination that exhibit a sufficient number of the features of political culture characteristic of self-determining agents also qualify for the right, even if they do not have institutions of self-government.
53. Recommendation 43, 1998, in Rubio-Marín, “Language Rights,” p. 59n.
54. I will provide additional support for the introduction of self-determination as the central notion to consider for the regulation of relations among substate national groups in the next chapter, where I define nationhood and explain its relation to self-determination.
55. Accordingly, political theorists—John Rawls in particular—recognize some human rights as more basic and propose a minimal set of human rights that should be accepted and enforced universally. They do not include the rights of national groups. The fundamental human rights

are limited to basic rights such as the right to life, a right to liberty, a right against religious persecution, and a right to the material conditions of subsistence. See John Rawls, "The Law of Peoples," in *On Human Rights: The Oxford Amnesty Lectures 1993*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), pp. 43–82.

56. A good argument defending the multiethnic type of national mobilization there can be found in Elise Giuliano, "Who Determines the Self in the Politics of Self-Determination? Identity and Preference Formation in Tatarstan's Nationalist Mobilization," *Comparative Politics* 32, no. 3 (2000): pp. 295–316.