Can a right borne by a group be a human right? For some analysts, the answer is obviously, "No." They argue that human rights are the rights of human beings and, self-evidently, each human being is an individual being. Groups may have rights of some sort, but, whatever those rights might be, they cannot be human rights. Human rights must be rights borne by human individuals.

Other analysts, unimpressed by that simple logic, insist that human rights can take collective as well as individual forms. They argue that much
of what is fundamentally important to human beings relates to "goods" and "bads" that people experience collectively rather than individually: if we insist that human rights must be rights that people can hold only as independent individuals, our conception of human rights will not match the social reality of the human condition.

Among those who distinguish between group rights and human rights, a further division is discernible. For some, the reality of the conceptual difference between human rights and group rights does not betoken any antagonism between the two forms of rights. Rather, they regard some group rights, such as the rights of peoples or the rights of cultural minorities, as close complements of human rights. They believe that the reasons that lead us to ascribe rights to individuals are also reasons why we should recognize certain forms of group rights: human rights may be conceptually distinct from group rights, but the two sorts of rights are united by the same underlying values and concerns.

For others, however, the distinction between group rights and human rights is of more than merely analytical significance. They conceive group rights as potential threats to individual rights: group rights are often rights claimed against, or over, individuals. Traditionally, a major purpose of the


4. See, e.g., Donnelly, supra note 1; Donnelly, supra note 1; Graff, supra note 1; Nordenfelt, supra note 1. Galenkamp also emphasizes the tension between human rights and group rights but mounts a communitarian case for group rights and defends them as correctives to the liberal individualism of human rights. Galenkamp, supra note 1, at 20–25, 64–73, 77–100.
The doctrine of human rights has been to protect individuals from the power of groups, whether or not that power is institutionalized. These theorists contend that revising the doctrine of human rights so that it incorporates group rights entails the risk of defeating that very purpose. Instead of safeguarding individuals against the predations of groups, they argue, a doctrine that legitimates those predations would result.

This article will attempt to clarify these issues by distinguishing between two conceptions of group rights. It will argue that, if one of these conceptions were to be adopted, there is no case for absorbing group rights within, or assimilating them to, human rights. If, however, the other conception were adopted, some group rights could be conceived as human rights or, at least, as closely akin to human rights. Before embarking on that argument, the general notions of a group right and a human right, as they will be used in this article, need clarification.

I. GROUP RIGHTS AND HUMAN RIGHTS

A right is a group right only if it is borne by the group qua group. If the individuals who form a group hold rights as separate individuals, their several individual rights do not add up to a group right. For example, scientologists constitute a group whose members might be said to have a right to conduct their lives according to their beliefs (provided that, in doing so, they do not violate the rights of others). In saying that, however, we need not be ascribing a group right to scientologists. Rather, we may be saying only that individuals, including scientologists, have the right to conduct their lives as they choose. Thus, the relevant right is one held by each individual scientologist rather than by scientologists as a collectivity.

In the same way, a right may have a content that relates to a collectivity without its being a group right. An individual can have a right to join a group, such as a trade union, only if there is a group for him to join. Having joined the group, that individual may have rights that he possesses only as a member of the group. In both instances, however, these typically will be rights held in an individual capacity rather than rights that belong to the group. If someone prevents another person from joining the group or prevents an individual from exercising his rights as a member of the group, the rights he violates are typically the individual's rights rather than the group's rights. We might, of course, hold that if someone prevents individuals from joining a group such as a trade union, such action violates not only rights held by the would-be joiners, but also a right held by the trade union as a group. In that case a genuine group right would be at stake. Simply put, not every right that is associated with group membership or group activity need be a group right. What distinguishes a right as a group right is its
subject rather than its object—who it is that holds the right rather than what
the right is a right to.

If we go on to ask whether a group right, so understood, might be a
human right, we could respond to that inquiry in a purely positivist spirit.
That is, we might assert that human rights are whatever the relevant
international authority says they are. Thus, we might examine the declara-
tions of some standard-setting body, such as the United Nations or the
Organization of African Unity, and accept that if that body designates
certain group rights as human rights, then that settles the matter. Disposing
of the issue in that way, however, trivializes the idea of human rights, and
most people would find this response unsatisfactory for that reason.

Serious commitment to human rights is commitment to the idea that
there are certain rights that human beings possess, or should possess, simply
as human beings. If a right is to have a serious claim to be a human right, it
must be a right that we can plausibly ascribe to human beings as such and
one that we can plausibly ground in their humanity. The adjective “human”
indicates both the range of beings that have the right and the status in virtue
of which they have it. Thus, when this article asks whether a group right can
be a human right, the question is whether it can be a human right so
understood. The inquiry is not whether international instruments categorize
group rights as human rights in fact, but, if they do, whether that
categorization is defensible.

II. GROUP RIGHTS: THE COLLECTIVE CONCEPTION

The first conception of group rights is the “collective” conception. Joseph
Raz sets it out most clearly.5 Raz subscribes to an interest theory of rights,
and he defines what it is to possess a right as follows: “‘X has a right’ if and
only if X can have rights, and, other things being equal, an aspect of X’s
well-being (his interest) is a sufficient reason for holding some other
person(s) to be under a duty.”6

Thus, according to Raz, to have a right to something is to have an
interest in that something. Merely having an interest, though, is not by itself
enough to create a right. An interest translates into a right only if it is an
interest of sufficient moment, all things considered, to justify imposing a
duty upon another. Therefore a right, for Raz, is conceptually tied to a duty.
That relation, however, is more than one of mere correlation: a right
grounds a duty in that the right provides the reason for the duty.

5. JOSEPH RAZ, THE MORALITY OF FREEDOM (1986). For Raz’ general analysis of rights, see id. at
165–216, 245–63. For his understanding of group rights, see id. at 207–09.
6. Id. at 166.
Individuals can have rights as individuals. That is, their individual interests are sometimes such as to satisfy the conditions Raz lays down for a right. Yet, they also may hold rights as groups. These group rights arise when the joint interest of a number of individuals provides sufficient justification for imposing duties upon others even though, if we were to consider the interest of only one of those individuals, that single interest would not provide the necessary justification. The formal conditions Raz lays down for a group right are as follows:

First, it exists because an aspect of the interest of human beings justifies holding some person(s) to be subject to a duty. Second, the interests in question are the interests of individuals as members of a group in a public good and the right is a right to that public good because it serves their interest as members of the group. Thirdly, the interest of no single member of that group in that public good is sufficient by itself to justify holding another person to be subject to a duty.7

Thus, imagine that a factory gives off polluting fumes that adversely affect the lives of people who live in its vicinity. Do those people have a right to stop the factory from engaging in the polluting activity? In answering that question, we would have to consider not only the adverse effects of the pollution, but also the costs of putting a stop to them. Suppose that the pollution is serious in that it has a significantly adverse impact upon the quality of people's lives, but is not so serious that it constitutes a significant threat to any individual's health. Suppose also that the costs of stopping the pollution are serious: the process will be financially expensive and will result in some of the factory's workers losing their jobs. In that case, we may conclude that the interest of any single individual in not suffering the pollution is not enough, on its own, to justify imposing a duty upon the factory's owner to stop the pollution. However, if we consider the interests of all of the individuals adversely affected by the pollution, their aggregate interest may well suffice to ground the duty. If it does, then those living in the vicinity of the factory have a right, as a group, to stop the factory's polluting activity. As a group, they jointly possess a right that none of them possesses individually. Thus, in this case, we have a right that is properly described as a group right.

7. Id. at 208. For other theorists who have followed Raz in using this collective conception of group rights, though sometimes with significant qualification, see Freeman, supra note 2; Leslie Green, Two Views of Collective Rights, 4 CAN. J.L. & JURIS. 315 (1991); Leslie Green, Internal Minorities and Their Rights, in GROUP RIGHTS, supra note 1, at 101; Avishai Margalit & Moshe Halbertal, Liberalism and the Right to Culture, 61 SOC. RES. 491 (1994). For an interpretation of group rights that is critical of Raz, but retains features of the collective conception, see Denise Réaume, Individuals, Groups, and Rights to Public Goods, 38 U. TORONTO L.J. 1 (1988); Denise G. Réaume, The Group Right to Linguistic Security: Whose Right, What Duties?, in GROUP RIGHTS, supra, note 1, at 118.
In this collective conception, a group right is a right held jointly by those who make up the group. The group has no existence or interest that cannot be explicated as that of its members. In particular, the collective conception does not require us to give a moral standing to the group that is separate from the moral standing of each of its individual members. Certainly, the right is held only by the group, but the interests that make the case for the right are the separate, yet identical, interests of the group’s members. The moral standing necessary for any claim of right is provided by the moral standing of the several individuals who make up the group. In the collective conception, the group *qua* group has no standing that is not reducible to the moral standing of its members.

In the previous example, the individuals who formed the right-holding group were related by a common but contingent interest. But we can also apply the collective conception to groups that have strong sociological identities. Suppose, for example, that a society contains a cultural minority and that the culture of that minority is central to the lives of its members. In that case, we might claim that the minority has a right, as a group, that the majority society shall take steps to accommodate and protect the minority’s culture. The costs and inconvenience of safeguarding the minority’s culture could not be justified by the interests of any single member of the minority. Yet the combined interests of all of the members of the minority may provide that justification. In that case, as before, we have a set of individuals that, as a group, holds a right that no one individual holds independently.

A cultural minority is a body of people with a strong common identity as a group. By contrast, the people living in the vicinity of the factory in the earlier example may exhibit no such identity—they may share nothing with one another beyond their experience of the factory’s pollution. Yet, the moral structure of the group right, understood as a collective right, is the same in both cases. The right is grounded in the interests of those who jointly hold the right. Of course, groups with strong sociological identities may be more likely to possess shared interests of a sort that will ground collective rights. Also, the interests of those who belong to a group that, like a cultural minority, has a strong identity may not be of a sort that could exist as the interests of isolated individuals. Compare only one individual living near a polluting factory: that single individual could still have an interest in not suffering the factory’s pollution.

The collective conception of group rights does not suppose that the interests that individuals have as members of a group can always be represented as interests that they might have as independent and unrelated individuals. Morally, however, the case for a group right rests upon the interests of the individuals who form the group, regardless of the strength of their shared identity and the interdependence of their shared interests. As Raz himself observes: “Cultural, and other, groups have a life of their own.
But their moral claim to respect and to prosperity rests entirely on their vital importance to the prosperity of individual human beings."8

III. GROUP RIGHTS: THE CORPORATE CONCEPTION

The collective conception can be contrasted with the "corporate" conception of group rights. The principal difference between these conceptions is that, while the collective conception ascribes moral standing only to the individuals who jointly hold the group right, the corporate conception ascribes moral standing to the group as such.9 Thus, under the corporate conception, the holder of the right is the group conceived as a single, integral entity. Morally, the group might be said to constitute a right-bearing "individual." The right is held not jointly by the several individuals who make up the group, but by the group as a unitary entity: the right is "its" right rather than "their" right.

Typically, when people ask whether a group can bear rights, they are envisioning this corporate conception of group rights.10 They ask that question of groups in the same way that they might ask it of fetuses, animals, or future generations: is a group the sort of entity that is capable of bearing rights? To ask that question is to ask whether we should ascribe moral standing to groups in the way that we ascribe moral standing to individual persons. If the answer is yes, then we can conceive a group, as we can conceive an individual, as an irreducible right-bearing entity. Similarly, when people deny that groups can have rights, they usually mean to reject group rights corporately conceived. They deny that groups can bear rights precisely because they deny that we can properly ascribe to groups the sort of irreducible moral standing that we ascribe to individuals.11

9. For analyses of group rights that suppose, more or less explicitly, that group rights must be corporate in form (even though the authors may use the term "collective right"), see GALENKAMP, supra note 1; LARRY MAY, THE MORALITY OF GROUPS: COLLECTIVE RESPONSIBILITY, GROUP-BASED HARM, AND CORPORATE RIGHTS (1987); Michael McDonald, Should Communities Have Rights?: Reflections on Liberal Individualism, 4 CAN. J.L. & JURIS. 217 (1987) [Vernon Van Dyke, The Individual, the State, and Ethnic Communities in Political Theory, 29 WORLD POL. 343 (1977); VAN DYKE, supra note 2; JOHN NEVILLE FIGGIS, CHURCHES IN THE MODERN STATE (1913); Adeno Addis, Individualism, Communitarianism, and the Rights of Ethnic Minorities, 67 NOTRE DAME L. REV. 615 (1992); Roger Scruton, Corporate Persons, 63 PROCEEDINGS OF THE ARISTOTELIAN SOCIETY 239 (Supp. 1989).
10. Compare the approaches to this issue in PETER A. FRENCH, COLLECTIVE AND CORPORATE RESPONSIBILITY (1984); MAY, supra note 9; and GALENKAMP, supra note 1.
This sort of right is familiar enough from the case of legal corporations and from the form in which corporations hold their rights. However, the primary concerns of this article are with moral, rather than legal, rights and with groups whose legal rights, if they possess any, might be conceived as legal acknowledgments of their moral rights. The adjective “corporate” is used to indicate that only the right-holding group is ascribed a standing qua group such that it bears its rights as a corporate entity. This argument does not imply that only groups that possess all of the features that we normally associate with legal corporations can possess “corporate rights.” The only element of analogy between the two cases is that corporate rights, like the rights of a legal corporation, are held by a single corporate entity rather than, as in the case of collective rights, jointly by a set of separately identifiable individuals.

What features a group must exhibit to be the sort of group to which we might properly ascribe moral standing and corporate rights will remain unanswered for now. Clearly, it is a question that people might answer in significantly different ways. The purpose of this article is to distinguish group rights conceived corporately from group rights conceived collectively, and, for that purpose, the critical matter is the locus of moral standing. The corporate conception locates standing in the group rather than in the group’s members severally. By contrast, the collective conception locates standing in the individuals who jointly hold the right rather than in the group as such.

Whatever view we take of the criteria that a group must satisfy if it is to possess moral standing qua group, the groups that can bear corporate rights are likely to form a more limited set than the groups that can bear collective rights. A group that holds collective rights might be a tightly knit community with a common culture and a distinct form of life. Yet, it might also be a set of individuals who share nothing in common but a single interest, as in the example of the individuals affected by factory pollution. For the collective conception, all that identifies a group as a group for right-holding purposes is that its members share an interest of sufficient moment to justify the imposition of duties in respect of that interest. Aside from that single interest, there need be nothing that identifies the group as a group.

On the corporate conception, by contrast, a group must possess a morally significant identity as a group independently, and in advance, of

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12. For some different answers, see French, supra note 10; Galenkamp, supra note 1; and May, supra note 9. This article’s line of argument implies that the issue of which groups, if any, can possess corporate (moral) rights can be settled only after the more general issue of which sorts of entities possess moral standing has been settled.
whatever interests and rights it may possess. Just as an individual has an identity and a standing as a person independently and in advance of the rights that he possesses, so a group, if it is to be conceived as a corporate entity, must possess a morally significant identity and status independently and in advance of whatever rights it may hold. Its interests and rights follow upon its identity as a group; they are not what identifies the group as a group.

Thus, a group of individuals who distinguish themselves as a set only by their shared interest in clean air, coastal defenses, or community health measures might possess collective rights to those goods, but they do not constitute the sort of group that will possess corporate rights. They do not possess a morally significant identity qua group such that we might ascribe moral standing to the group separately from its individual members. If, however, we recognize a group as a “nation” or a “people,” that could be the sort of group to which we attribute standing qua group and whose rights we might think of in corporate terms.

IV. CORPORATE RIGHTS, COLLECTIVE RIGHTS, AND HUMAN RIGHTS

A. Fundamental Considerations

The principle claim of this article is that, if we conceive group rights as corporate rights, then we cannot represent them as human rights; but if we conceive them as collective rights, then we can represent some group rights either as human rights or as closely akin to human rights. Corporate rights cannot be human rights because they are rights held by corporate entities rather than by human beings. They are also rights grounded in whatever gives those corporate entities their special moral status rather than rights grounded in the status of humanity or personhood. Collective rights, on the other hand, might be represented as human rights in that they are rights held by individuals, albeit by individuals jointly rather than severally. They might also be rights grounded in considerations that relate to human beings and human interests in general.

Of course, there can be collective rights that are not human rights, just as there are individual rights that are not human rights.¹³ A collective right

¹³. Relatively straightforward examples of rights that are not, morally, human rights are rights that are special to particular individuals or groups because those rights arise from special arrangements to which those individuals or groups are party. So, for example, if a particular person has a right to something, but only because some other person has promised to provide him with it, that individually-held right will not be a human right. Similarly, if a particular group has a collective right only because the group is party to a treaty or some other form of agreement, then its collective right will not be a human right.
will be eligible for consideration as a human right, or for membership in the same moral family as human rights, only if it is a right that we can ascribe universally to human beings and that rests upon their moral status as human beings. If a collective right satisfies those conditions, there is reason to characterize it as a “collective human right.”

Consider the right of a nation or a people to be self-determining.\(^\text{14}\) (For the moment, this article will leave open the question of whether the terms “nation” and “people” describe a group distinguished by an ethnocultural identity or merely by membership in the same political community.) Suppose that we accept that there is such a right and that we conceive it as a corporate right. In that case, the right will be held not by human beings, but by nations or peoples conceived as corporate entities. Because we would be ascribing moral standing to nations or peoples as such, we would not be able to represent the ultimate holders of the right as the individuals who make up the nation or people. Moreover, the status that grounds the right will be the status of “nationhood” or “peoplehood” rather than humanity or personhood. Thus, neither the holder of the right nor the status upon which it depends provides any justification for characterizing the right as a human right.

A corporate right can, of course, be a universal right: it can be held by all tokens of the corporate type. The right of national self-determination can be, and typically is, asserted in a way that makes it universal to all nations. The right might also range comprehensively over humanity: if we assign each and every human being to a nation and claim that all nations have a right of self-determination, that right of national self-determination will encompass all humanity. However, this combination of universality and comprehensiveness is no reason to identify the right as a human right: the right will be simply a universal and comprehensive corporate right.

Consider now how a nation’s or people’s right of self-determination appears if we reinterpret it as a collective right. It will now be a right held by the individuals who make up each nation or people, even though each individual right holder will hold the right jointly with, rather than independently of, his fellow nationals. In addition, the right will be grounded in the interest that those individuals share in living in a self-determining nation. We can characterize that interest as one universal to all human beings. For any particular individual, the interest will relate immediately to the particular nation to which he belongs. Even so, that is not the sort of

\(^{14}\) This analysis assumes without argument that one is to understand a nation’s or a people’s right of self-determination as a group right of some form. Others have attempted to understand these rights as individual rights. See Donnelly, supra note 1, at 147; Yael Tamir, Liberal Nationalism 35 (1993); Carl Wellman, Real Rights 173 (1995).
particularity that prevents the right, and the ultimate interest upon which it depends, from being universal to all human beings. Similarly, rights of political participation are, for any particular individual, rights held in relation to a particular state. Yet, they can still be represented as rights possessed universally by human beings. Therefore, if we interpret a nation’s or people’s right of self-determination as a collective right, we can interpret it as a right grounded in interests general to humanity and in the moral standing of human beings rather than in any independent moral standing that allegedly stems from nationhood or peoplehood. Thus, we now have an understanding of the right in which it remains a group right but becomes a right that we can place either within, or in close proximity to, the doctrine of human rights.

Those who are wary of mixing group rights with human rights may still resist the claim that there can be collective as well as individual human rights. They may insist that a right can be a human right only if it is tenable by a human being as an independent individual, and that a jointly held right cannot be the genuine article. At this level, it is not easy to know how to determine correct usage, nor, perhaps, does that matter very much. This article’s principle claim is that, if group rights are understood as corporate rights, they will be rights that are categorically different from human rights. If, however, group rights are understood as collective rights, thinking about group rights can approximate thinking about human rights.

B. Conflicting or Complementary Rights?

There are many other ways in which human rights sit more comfortably with group rights conceived collectively than with group rights conceived corporately. For example, the idea of collective rights functions with the same fundamental moral units as the idea of human rights: individual persons. An argument for a collective right must appeal to the good of the individuals who make up the collectivity, and individuals will figure in a right-holding collectivity only if they share in the interest that grounds its right. There is, therefore, a continuity and complementarity between individual and collective rights: respect and concern for the individual drive both. The difference between the two sorts of rights simply reflects the fact that, sometimes, our respect and concern relates to features of people’s lives that they share with others and in relation to which they hold shared, rather than independent, claims.

For example, the respect and concern that leads us to ascribe to people individually held rights to freedom of worship and individually held rights against religious discrimination should also lead us to ascribe to people
rights that their religious sites not be desecrated.\(^\text{15}\) Yet, the right of the members of a religious faith that their sacred sites be respected really makes sense only as a right that those individuals hold collectively. Similarly, recognition of the evils of racism and racial discrimination leads us to oppose racist conduct targeted both at particular individuals and at racial groups generally. If, in a particular case, a racial group, but not specific individuals within that group, is the target of incitement to racial hatred, and if that incitement violates a right, then the right it violates is more intelligible as a right held by the group collectively than by its members severally.\(^\text{16}\)

Many of the rights that relate to people's enjoyment of their culture and use of their language are rights that they can hold and exercise as individuals. Sometimes, however, governments embark on policies designed to erode gradually the identity of a cultural or linguistic minority. Those policies can adversely affect the minority in general without visiting more specific harms on individuals within the minority. Again, if those policies violate a right, the violated right makes more sense as a right held by the members of the minority collectively than by each of them separately.\(^\text{17}\)

Thus, the respect and concern that generate a claim of individual right can generate a cognate claim of collective right. That commonality of concern applies to the burdens imposed, as well as to the benefits conferred, by collective rights. A group of individuals may share an interest that gives them a \textit{prima facie} claim to a collective right. If, however, the duties entailed by that putative right would prove unduly burdensome for


\(^{17}\) \textit{Cf.} Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, \textit{adopted} 18 Dec. 1992, G.A. Res. 47/135, U.N. GAOR, 47th Sess., Annex, arts. 1, 4(2), U.N. Doc. A/Res/47/135/Annex (1992), \textit{reprinted in} 32 I.L.M. 911, 914, 915; Draft Declaration on the Rights of Indigenous Peoples, U.N. ESCOR, Comm'n on Hum. Rs., 45th Sess., Annex Agenda Item 14, arts. 6–39, U.N. Doc. E/CN.4/Sub.2/1993/29/Annex I (1993). Article 27 of the ICCPR reads: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." ICCPR, \textit{supra} note 2, art. 27. In examining Article 27, commentators have frequently fastened on the phrase "persons belonging to such minorities" and inferred that it indicates that the Article invests rights in individuals rather than groups. See, e.g., \textit{Patrick Thornberry}, \textit{International Law and the Rights of Minorities} 173 (1991). However, once the distinction between collective rights and corporate rights is appreciated, it can be seen that the wording of the Article is entirely consistent with its providing a foundation for collective as well as individual rights.
the individuals upon whom they would fall, then the case for the collective right will fail. Provided we use only a collective conception of group rights, a moral contest between the claims of groups and the claims of individuals must reduce, ultimately, to a contest between the claims of individuals.

In contrast, by giving moral standing to a group as such, the corporate conception does not allow the claims of groups to be analyzed as those of individuals. The corporate conception accords groups a status that is ultimate rather than derivative. Consequently, a potential for rivalry between groups and individuals arises that is both fundamental and ineliminable. In turn, that potential gives rise to the reasonable fear that individuals and their claims of right will be crushed beneath the greater weight of groups and their claims of right.

One way in which a corporate conception of group rights threatens individuals is by making it possible for the moral standing of the group to displace that of individuals within the group. Suppose, for example, that within a well-established and well-defined cultural group some individuals develop a wish to live in ways that depart from, and are at odds with, the group’s traditions. Should they be free to break from the group’s traditional pattern of life? If we ascribe ultimate moral standing on the issue of how people should live to the group’s members individually, it will be for each individual to decide how he shall live. However, if we ascribe ultimate standing on this matter to the group qua group, the group’s voice will be authoritative. Of course, where there is dissension within a group, a corporate conception has to find some way of determining which voice is the authoritative or authentic voice of the group. Once that voice has been detected, however, that voice, not the voices of the dissenting individuals, should be heard. In particular, this question of who has standing on a matter—the group or its members severally—will determine to which of these voices the outside world should listen and to which it should defer. That is one of the issues that faces the outside world when it agonizes over whether it should intervene to “save” individuals from practices, such as female circumcision, that are sanctioned by the cultural group to which those individuals belong.

Corporate rights can also compete with the claims of individuals outside the right-holding group, although we need not suppose that they will in every case. If we conceive groups, such as nations or cultural groups, as corporate entities, then we are also likely, in some measure, to conceive their rights as entitlements directed against other corporate entities—other nations or other cultures—rather than at individuals. Nevertheless, individuals can also bear the costs of a group’s corporate right. Where, for example, a nation asserts its corporate right to a territory, it may embark on a policy of ethnic cleansing that aims to purge from its territory individuals whom it deems not to be part of itself and who, therefore, have no right to reside in its territory.
Corporate rights need not always exist at the expense of human rights. Indeed, human rights can be used to limit the range of corporate rights. In particular, we can insist that human rights must always take priority over corporate claims. The point is only that the corporate conception, in giving moral standing to groups as such, creates a world in which the claims of groups are not analyzable morally as the claims of individuals. Accordingly, in the corporate conception, it becomes morally possible for the claims of groups to challenge and override the claims of individuals.

This article does not claim that proponents of individual rights have nothing to fear from group rights collectively conceived. In particular, the aggregative nature of Raz’s version of the collective theory—that interests accumulate across individuals to make the case for a collective right—may provide reason to worry about how the claims of individuals taken singly will fare when set against those of individuals taken collectively. The same aggregative feature of collective rights may create reason to worry about how the claims of small groups will fare when they compete with those of large groups. However, that is ultimately a matter of how we regard the various interests at stake, and there remains a critical difference between the two theories.

The corporate theory can characterize a matter as one on which a group alone has standing and, therefore, on which the competing or dissenting claims of individuals should simply be ignored. The collective theory provides no similar warrant for writing individuals out of the moral calculation. If we adopt the collective theory, the claims of the few may have to yield to those of the many, but at least the claims of the few will be heard and counted.

This is one context in which it matters whether a collective right is a human right. If it is, it must be a right possessed by everyone, so that one set of individuals cannot prevail over another because the former has collective human rights while the latter does not. Collective human rights also must be consistent with whatever other rights we ascribe to human beings. In particular, the assessment of what should be the form and content of the entire set of human rights requires an intra-personal, rather than an interpersonal, calculation. It is a matter of weighing different interests possessed by each and every human individual: it is not a matter of pitting the interests of some against those of others. If there is a tension between a putative collective human right and a putative individual human right, it must reflect a tension within the interests of each human being. Such tension cannot reflect a conflict between two rival moral claimants, group and individual. For example, if we conceive both the right of collective

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18. Raz, supra note 5, at 187, 209.
self-determination and the right to individual liberty as human rights, we must think of the balance between those rights as a balance to be struck within the interests of each person. We should not think of ourselves as balancing the collective interests of some against the individual interests of others.

There is a further contrast between corporate and collective rights that is significant for human rights theorists troubled by the idea of group rights. One of the most common fears is that the rights of a group will be held against or over its own members so that, in ascribing rights to a group, we are simultaneously placing its individual members at the mercy of the group.19 Group rights may then seem to license group oppression. Such a fear is properly directed at corporate rights but not at collective rights.

It is generally accepted that one cannot hold rights against oneself. The duties entailed by one's rights must be duties borne by others. In other words, a right-duty or a power-liability relation must involve two separately identifiable parties: a party that has the right or power, and another that incurs the corresponding duty or liability. The corporate conception of group rights makes it possible for a group to hold rights against its own members because it accords moral standing to the group independently of its members. Existentially, there may be no group that can be separated from its members, but, morally, the group has a being that is separate from that of each of its members taken severally. Therefore, on the corporate theory, a group can hold rights against, or powers over, individuals within its own ranks.

By contrast, the collective conception of group rights provides no warrant for the claim that a group can hold rights against its own members. In the collective conception, the right is held jointly by the individuals who make up the group, and the group has no standing that is separate from the standing of its individual members. Thus, morally, there is no group that has an existence independently of, and that can hold rights against, its own members. There are only individuals who hold rights jointly, and, by common consent, right holders cannot hold rights against themselves. Rights held by individuals jointly, like those held individually, must be rights directed "outward" at other individuals or groups of individuals rather than

19. See Donnelly, supra note 1, at 145; Graff, supra note 1; Nordenfelt, supra note 1, at 7; Peter R. Baehr & Koo VanderWal, Introduction Item: Human Rights as Individual and as Collective Rights, in Human Rights in a Pluralist World: Individuals and Collectivities, supra note 1, at 33, 36; Green, supra note 7; Eugene Kamenka, Human Rights, Peoples' Rights, in The Rights of Peoples, supra note 2, at 127, 131–34. For discussions of this fear of group rights, see Gillian Triggs, The Rights of Peoples and Individual Rights: Conflict or Harmony?, in The Rights of Peoples, supra note 2, at 141; Maleiha Malik, Communal Goods as Human Rights, in Understanding Human Rights 138 (Conor Gearty & Adam Tomkins eds., 1996).
“inward” to the right holders themselves. Thus, if we ascribe collective rights to ethnic, cultural, religious, or linguistic groups, such groups hold those rights against the outside world. Such rights will not entitle the group to tyrannize its own members.20

V. PEOPLES AND THE RIGHT TO SELF-DETERMINATION

A number of group rights have been claimed as, or associated with, human rights.21 Foremost among these have been rights claimed for peoples, indigenous minorities, and cultural groups that, in various ways, entitle them to shape their own destinies.22 Those who embrace so-called “third-generation” or “solidarity” human rights—rights to peace, development, a healthy environment, communication, humanitarian assistance, or a share in the common heritage of mankind—often characterize these as group rights.23 That characterization, however, has proven controversial.24 That the


21. Examples of UN human rights documents that (clearly or arguably) ascribe rights to groups, frequently but not always in the form of peoples’ rights, include: Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 Dec. 1948, art. 2, 78 U.N.T.S. 277 (entered into force 12 Jan. 1951); ICCPR, supra note 2, art. 1; ICESCR, supra note 2, art. 1; Vienna Declaration and Programme of Action, supra note 15, pt. I, art. 2; Draft Declaration on the Rights of Indigenous Peoples, supra note 17. Compare with these, however, the Vienna Declaration and Programme of Action, supra note 15, pt. I, art. 20 and pt. II, arts. 28–32 (recognizing the rights of “indigenous people,” rather than “indigenous peoples”). The African Charter on Human and Peoples’ Rights, supra note 3, catalogues several rights of peoples but, as explained in note 3, supra, it presents them as rights that are distinct from, rather than encompassed by, human rights.


bearers of these rights must be distinct groups of human beings, rather than individuals or mankind at large, is not readily obvious from the content of these rights. Insofar as solidarity rights are conceived as rights that are collective to mankind as a whole, they might be better characterized as common objectives for humanity rather than as rights that are particular to individuals or groups. This article will not, however, pursue the much discussed issue of whether these third-generation rights are properly characterized as group rights or human rights, or as rights of any kind.25 Rather, the remainder of this article limits itself to examining more closely how the collective and corporate conceptions of group rights bear upon our understanding of peoples and the rights of political self-determination claimed for them.

A. The Identity of “Peoples”

What is it that distinguishes a population as a “people” entitled to self-determination? That question has proven difficult to answer with any theoretical precision.26 It has also proven to be a potent source of political conflict.27 This article strives here to indicate only how the corporate and
the collective conceptions of group rights can embody different understandings of what it is that makes a population a right-holding people.\textsuperscript{28}

1. Conceptual Distinctions

If we conceive a people's right of self-determination as a corporate right, a people must be identifiable as a corporate entity. It makes sense to attribute moral standing to a group \textit{qua} group only if that group has a clear identity to which we can ascribe moral significance. If we confront a set of disparate individuals bereft of any unifying identity, we have reason to ascribe to them moral standing as so many individuals, but no reason to accord them any independent moral standing as a group. Therefore, if a population is to constitute a group that can bear a corporate right, then it must be distinguished by an identity that marks it off as a people such that the group can be regarded as a moral being in its own right.\textsuperscript{29} What sort of identity that must be is open to argument. Nevertheless, the most obvious candidate is the sort of identity that is commonly thought to mark off a population as a "nation," where nationhood is understood to mean something more than, or other than, mere statehood. Thus, a population may be distinguished as a people by virtue of its ethnicity, culture, history, or some other feature or combination of features that separates it from the rest of humanity. Identifying populations as peoples in this sense is fraught with difficulties that are too well-known to merit rehearsal here.\textsuperscript{30} Yet, escaping those

\textsuperscript{28} This analysis takes for granted that peoples' rights are not to be understood as the rights of states, although the state may serve as an instrument through which a people secures and exercises its rights.


\textsuperscript{30} Nationhood is the quality most commonly invoked to identify peoples pre-politically, where nationhood is supposed to identify a people independently of statehood. However, the claim that humanity divides into 'nations' in this sense frequently attracts skepticism. See, \textit{e.g.}, Graff, \textit{supra} note 1; Eli Kedourie, \textit{Nationalism} (4th ed. 1993); David
difficulties is not possible if we wish to conceive a population as a pre-legal entity distinguished by a common identity and possessing, in virtue of its identity as a people, a corporate right of self-determination.

If, however, we understand the right to self-determination as a collective right, the people that bears the right can be understood in a much less demanding way. Indeed, the group that bears the collective right may be defined merely in political terms. To share in a collective right, a group of individuals need share only in the interest that grounds the right. A set of individuals may be members of the same state but, apart from falling within a common political jurisdiction, may share nothing that distinguishes them as a group. Even so, the mere fact that they belong to the same political community is enough, we might argue, to give them a shared interest in that community being self-determining. Individuals who fall within the same political jurisdiction share an interest in being able to determine their common political future and in not being subject to external rule. That shared interest is, we may hold, of sufficient moment to give such a population a jointly held right of collective self-determination.

A collective right of self-determination is, then, consistent with a purely political conception of the people that holds the right. In this form, the right of self-determination is neutral with respect to the issue of where political boundaries should fall.31 The “self” that is to be self-determining is something that is defined by, rather than something that itself defines, the unit of political rule. The claim is simply that, however political boundaries are drawn, individuals encompassed within the same political unit have a shared interest in that unit being self-determining. It is this shared interest that makes the case for the existence of their collective right of self-determination.

This purely political conception of a people is one that matches some...
appeals to the popular right of self-determination better than the corporate conception. For example, much of the drive that led to the inclusion of peoples’ rights of self-determination in UN declarations and covenants came from anticolonialism.32 Yet, many of the colonial units for which self-determination was demanded had populations that were far too diverse to have any convincing claim to be peoples in the corporate sense.33 This demand for self-determination made more sense as a claim that, whatever the demographics of a population that formed a political unit, that population was entitled to be governed internally rather than externally.

Why cannot we identify a people as a corporate entity in a similarly political fashion? We can, but its right of self-determination will then be legal, rather than moral, in origin. Any population can be legally incorporated as a people and invested with rights of a corporate form, but those rights will then be merely legal rights, rather than moral rights that indicate what legal rights there ought to be. In the collective right of self-determination, the people is certainly an artifact of legal definition, but its right of self-determination is not. The right is not a legal creation but a moral entitlement arising from the interests that individuals have in living in a self-determining community.

In arguing that a collective right of self-determination can be borne by a people defined merely politically, this article does not mean to suggest that it can be associated only with that conception of a people. On the contrary, we might point to common cultural and sociological features exhibited by a group, then argue that the individuals who share those features have a joint interest in forming a self-determining unit. Joseph Raz and Avishai Margalit argue for a collective right of national self-determination in just that way.34 They identify a number of features—such as a common culture, a shared history, and significance for individuals’ self-identity—that distinguish groups that are commonly labeled “nations” or “peoples,” and argue that a group of individuals who share those features also share an interest in forming a distinct political community.35 Thus, we might appeal to the idea of a collective right not only to argue that a politically defined people has a right to be self-determining, but also to establish which sets of individuals have a right to form self-determining peoples. In making the case for that sort of collective right, we are likely to appeal to the same kinds

32. See Casse, supra note 2, at 44; Hurst Hannum, Self-Determination in the Post-Colonial Era, in SELF-DETERMINATION: INTERNATIONAL PERSPECTIVES, supra note 22, at 16; Morphet, supra note 2.
33. This is true of most of the post-colonial states of sub-Saharan Africa. See William Tordoff, GOVERNMENT AND POLITICS IN AFRICA 28 (3d ed. 1997); Naomi Chazan et al., Politics and Society in Contemporary Africa 73 (2d ed. 1992).
34. Margalit & Raz, supra note 30.
35. Id. at 442–447.
of distinguishing features as figure in a conception of peoples as corporate entities.

So is there any significant difference between the collective and the corporate approaches to the issue of which populations should form self-determining peoples? Perhaps the major difference is that a collective approach can be more "relaxed" and flexible than a corporate approach in its handling of that issue. A theory that regards peoples as right-bearing corporate entities is one that will have to use fairly strict criteria of what distinguishes a group as a people. The critical matter for that theory is whether a group possesses moral standing qua group, and moral standing cannot be a matter of more or less: a group either has it or it does not. Thus, a population will either meet the criteria, in which case it will be deemed a people with full rights of self-determination, or it will not, in which case it will have no equivalent status or entitlement.

For a theory that adopts the collective approach, the critical test is rather different. It is not a matter of which groups have standing and which do not; rather it is a matter of which sets of individuals share features of a kind that give them an interest in forming a self-determining community. In one case, the shared feature that gives them that interest may be a common language. In another case, it may be their shared religious beliefs. In a further case, it may be simply a shared sense of identity. Thus, the feature or features that relate to the right of self-determination might be quite different from one population to another, and those features need not form part of a single conception of nationhood or peoplehood. The considerations that argue for independence for Tibet may be quite different from those that argue for independence for Taiwan, yet, provided that each set of considerations is of sufficient moment, each can ground a collective right of self-determination. Where interest rather than status is the test, larger considerations, such as beneficial or adverse consequences for the outside world, may enter the calculus of whether a population should become a self-determining people.

The form that self-determination should take might also vary more readily if it is a matter of collective rather than corporate right. An identical status implies an identical right. For a corporate theory, then, all peoples will be entitled to the same form of self-determination: typically, fully independent statehood. However, an approach that turns on a calculus of interests can argue for different rights in different circumstances. An all-things-considered judgment might yield a right to full political independence for one population but a right to a more limited degree of autonomy, such as a federal or devolutionary arrangement, for another. Thus, although the corporate and collective approaches may overlap at certain points in their response to the question of who should form a self-determining people, they can also deliver significantly different answers to that question.
2. Distinctions in Application

How do these different ways of conceiving peoples bear upon the question of whether peoples' rights of self-determination can be interpreted as human rights? It should be clear that, if we conceive the right as a corporate right, then there is no case for characterizing it as a human right. If, on the other hand, we conceive it as a collective right, then the answer depends upon what sort of collective right we claim. If we claim that the right is held by a people understood only as a politically defined unit of population, the right has as good a claim as any to be a collective human right. All individuals live in, and are subject to the authority of, political communities. The individuals forming any particular political community have a shared interest in determining, and arguably, therefore, a jointly held right to determine, the future of their political community. Understood in this way, peoples' rights of self-determination are universal to humanity and are held jointly by individuals in politically defined groups.

What about the other sort of collective right identified above: the pre-political collective right of a group to form a self-determining people in virtue of the shared identity of its members and their shared interest in forming a self-determining unit? Characterizing this right as a human right is altogether more problematic. Some segments of humanity may have sharply defined sociological or cultural identities that mark them out as groups that have an interest in forming separate political communities, but others may not. In addition, movements in the world's population and the polyethnic and multicultural character of most contemporary societies belie the feasibility of suggesting that each and every individual has a jointly held right to live in a political community (whether sovereign or less than sovereign) distinguished by that particular individual's culture, religion, language, or whatever else contributes significantly to his identity. That is not to say that there are no cases in which a group can reasonably claim a collective right to form a politically self-determining community by virtue of its shared identity. It is to observe only that, in our world, it is hard to see how that right could be realized such that it ranges over, and provides for, each and every human being. It is difficult, then, to see how this particular version of the collective right to self-determination can be represented as a form of human right—not because it is a group right, but simply because it lacks the universality that is an essential property of a human right.

B. Self-Determination: External and Internal

In the arena of international relations, a people's right of self-determination is asserted, first and foremost, as a right against "outsiders": ceteris paribus,
it vetoes any form of external government, such as imperial rule, and any
form of unsolicited external intervention.\footnote{See \textit{Cassese}, supra note 2, at 55, 67; \textit{Pomerance}, supra note 26, at 24.} Understood as a corporate right, the
right is an essential concomitant of the moral status enjoyed by a
people. Depriving a people of self-determination is the international
equivalent of depriving a person of self-determination. In both cases, the act
of deprivation fails to accord the "self" the recognition and respect to which
it is entitled. Understood as a collective right, the right is one jointly held by
those individuals who form a people and is grounded in their shared interest
in not being subject to external rule or interference.

Scholars and commentators frequently hold that self-determination has
an internal as well as an external dimension.\footnote{See \textit{Cassese}, supra note 2, at 52, 101; \textit{Pomerance}, supra note 26, at 37.} This may be no more than the
flip side of the same coin: if a people's affairs are not determined externally,
they must be determined internally. Yet, self-determination is often taken to
imply rather more than that. If a people is said to be self-determining, that
may mean that its members themselves choose, control, and participate in
the government of their society. An internal military coup that displaces a
popularly elected government would not violate the people's right of
self-determination understood as a right against the outside world, but
would violate its right of self-determination understood as its right to
conduct or control its own affairs.

We may then inquire, how do the corporate and collective conceptions
of group rights compare when they are applied to self-determination
internally? More particularly, how does each relate to the right to demo-
cratic government? If we start from the right of self-determination as a right
against the external world, and work back from that right, neither concep-
tion of group rights need deliver a right to a popular form of government.

Conceiving a people as a corporate entity with rights against the outside
world need entail no view of how the internal life of that corporate entity
should be structured. That is what makes it possible for a dictatorial and
undemocratic regime to feel no compunction about the lack of internal
self-determination that it extends to those it governs, even though it insists
that the outside world must recognize and respect its people's (corporate)
right of self-determination.

For the collective conception, the issue turns upon how we construe the
interest that grounds the right that people hold against the outside world.
The interest could be linked to democratic government, but it need not be.
We might claim, for example, that external rulers are likely to be less well-
informed about the society and less committed to promoting its good than
internal rulers, and that is why people have an interest in being governed

\footnote{See \textit{Cassese}, supra note 2, at 55, 67; \textit{Pomerance}, supra note 26, at 24.}
internally rather than externally. Or we might claim merely that it is humiliating for a people to be subject to external government, and that is why they have a right not to be so governed. In either case, the interest that grounds a people's external right of self-determination does not, of itself, imply that a people must be governed democratically.

We might, however, interpret the right of self-determination the other way around. Rather than treating the externally directed right as primary and searching for its internal implications, we might give primacy to self-determination as an internally directed right. That is, we might give primacy to the right of a people to order its own affairs and regard its right to be free from external interference as merely a secondary and consequential requirement of that internally focused right. Clearly, while a right to be free from external interference need not entail a popular form of government, a right of popular self-government will preclude the legitimacy of externally imposed rule.

Even if we shift the focus of self-determination in this way, the right of self-determination can be interpreted in a form that does not require democratic government. It might be understood as the right of popular sovereignty—the right of a people to determine how it shall be governed, which, of course, will include its right to opt for an undemocratic government. An unconstrained right of popular sovereignty also allows a people to forsake its independence and make itself part of a larger political entity, and perhaps even to opt to be governed externally.\(^\text{38}\)

Notwithstanding that possibility, suppose that self-determination requires democracy.\(^\text{39}\) In one respect, the right to democratic government makes more sense as a group right than as an individual right. There is something oddly disproportionate and implausible in the claim that a single individual, solely as an individual, has a right that an entire society should be governed democratically. How could a single individual, all on his own,

\(^{38}\) The doctrine of popular sovereignty does not entail a commitment to democracy. To be committed to democracy is to be committed to the rightness of a particular form of government. To be committed to the doctrine of popular sovereignty is to be committed to the rightness of whatever form of government a people chooses for itself. Article 1(1) of the ICCPR states that all peoples, by virtue of their right of self-determination, “freely determine their political status,” ICCPR, supra note 2, art. 1(1). That phrasing, which also occurs in several other UN documents, suggests the doctrine of popular sovereignty rather than the unique legitimacy of democracy. The ICCPR does go on, however, to lay down rights of a specifically democratic character. Id. art. 25.

have a right that not just he but that everyone else should be governed in a particular way? If there is a right that a people should be governed democratically, *prima facie*, that right seems more credible as one possessed by a people as a whole rather than by any single member of its population.

There is, however, a plausible way of arriving at democracy through individual rights. Rather than formulate the right as simply a right to democracy, we might formulate it in more modest terms: if an individual is to be subject to political authority, that individual has a right to participate in the exercise of that authority on terms equal with others. This formulation is more modest in that the individual’s right registers a claim only for the way in which that individual is to be governed rather than for the way in which everyone else is to be governed. However, the consequence of every individual having that right is, of course, a democratic form of government.

That we might arrive at democracy via rights possessed by individuals does not preclude the possibility that democracy might also be the object of a group right, particularly because we may have many reasons for considering democracy the best, or the uniquely right, form of rule. It may then be that the case for democracy is morally “overdetermined,” but there is nothing wrong with that. Once again, however, a group right to democracy will assume a significantly different form depending upon whether one conceives it as a collective or a corporate right. This article can do no more than give the briefest indication of the difference between these two forms of democratic right, including the different traditions of democratic thinking associated with each, and the way in which each relates to human rights.

1. Democracy and the Collective Conception

Consider first the proposition that a people has a collective right to democratic government. There are many ways in which democracy may be characterized as a public good—a good public to the individuals who make up a *demos*. For example, people may have a shared interest in having their political system assume a form that will be most consonant with the ideal of individual self-determination,40 will minimize the risk of abuses of power, or will ensure that governmental decisions remain reasonably close to the

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40. The phrase “most consonant” is apt because, in the absence of enduring unanimity within a population, one cannot claim a simple equivalence between individual self-determination and collective self-determination. Rousseau, though, famously did try to show that one might. **Jean-Jacques Rousseau**, *The Social Contract* (1762). That does not mean, however, that the ideal of individual self-determination has no implications for the form that collective decision making should take. See **Peter Jones**, *Rights* 177 (1994); **Keith Graham**, *The Battle of Democracy: Conflict, Consensus and the Individual* 75 (1986).
wishes of the general population. These are the sort of grounds upon which we might claim that the individuals who form a political community have a collective right to a democratic political system.

There seems to be no difficulty in finding a place for this sort of group right within the tradition of liberal-democratic thinking. Holding that democracy is, in some respects, the object of a collective right is consistent with holding that it is, in other respects, the object of an individual right. In particular, the ultimate bearers of these two sorts of democratic rights are the same persons even though they bear their rights jointly in one case and singly in the other.

This sort of group right does not hold out the prospect of a collective demos tyrannizing its individual members. A collective right is a right held jointly by individuals, and it makes no sense to suppose that those individuals hold their right against themselves such that they incur the duties and liabilities consequent upon their own right. The right to democracy as a collective right is not about subordinating individuals to the group. It is simply the right of a people, grounded in the shared interests of its members, to be able to conduct its public affairs in a particular way. A people holds that right against anyone who might seek to impose upon it any other form of government.

The interests that might ground a collective right to democracy are general to humanity and are, therefore, consistent with the claim that democratic government is the object of a collective human right. That collective right is also entirely consistent with the claim that individuals have human rights that limit the extent to which their lives remain at the mercy of political power. We can hold that human beings have rights that limit the proper domain of political power, for example, rights to freedom of religion, freedom of expression, or to be tried fairly. We can also hold that they have rights, individual or collective, or both, that dictate the form that political power should take within its proper domain.

2. Democracy and the Corporate Conception

If we conceive the group right to democracy as a corporate right, things become very different. The right is no longer one held jointly by individual citizens: it is a right borne by a people conceived as a single corporate entity. It arises not from the confluence of interests of the several individuals who make up a body politic, but from the moral status claimed for a people as a corporate entity. Democracy, then, describes a political order that enables a people to realize its will to be, as a unified “self,” self-determining.

Whereas the notion of a collective right to democracy can find a place in an individualist or liberal conception of democracy, the corporate democratic right belongs to a very different mode of democratic thinking.
The latter can be located within that tradition of democratic thinking that has its origins in Rousseau's conception of the general will, that was developed by the Jacobins during the French Revolution, and that found expression in the Communist idea of people's democracy.41

There are two ways in which human rights thinking must find it more difficult to accommodate a corporate than a collective right to democracy. First, claiming that democracy can be simultaneously the object of an individual and a corporate right seems incongruous. Collective and individual claims relating to democracy marry easily because both appeal, ultimately, to the moral standing and the interests of the same set of individuals. By contrast, a people, as the bearer of a corporate right, has an identity, a standing, and a will that is not reducible to those of individuals. The implication of a people having a corporate right to democracy is that the entitlement to democracy belongs to it rather than to individuals. Moreover, the sort of democracy that aspires to realize (what is reckoned to be) a people's corporate will is likely to be very different in character from one grounded in the moral claims of individuals.

Second, the corporate conception sets up a fundamental tension between democracy and individual rights, the latter of which aim, implicitly or explicitly, to limit democracy's scope. Of course, even if we give moral standing only to individuals, we still must confront the issue of where democratic political power should end and where the immunity of individuals from that power should begin. As long as we recognize only the single and joint claims of individuals, however, that issue will be an intra-personal rather than an interpersonal issue: the competition will be between competing interests possessed by each and every person rather than between different persons. The issue becomes very different if we introduce a corporate right to democracy. The competition is then between two rival moral claimants: the people with its right of self-determination, and individuals with claims that compete with that right. There is nothing in the idea of a corporate right of self-determination that implies that, at some point, it should defer to claims of individual rights. This does not mean that a corporate conception of democracy must exist at the expense of individual human rights. Logically, it is possible to recognize a corporate right to democracy while insisting that the scope of that right is circumscribed by a number of individual human rights. Nevertheless, it is easy to see why corporate conceptions of democracy might not be ready to defer to individual claims of right that frustrate the people's will.

VI. CONCLUSION

A people's right of political self-determination is only one of a number of group rights that are commonly placed within, or alongside, the doctrine of human rights. For example, the UN 1966 Covenants also credit each people with closely associated rights “freely [to] pursue their economic, social and cultural development” and “freely [to] dispose of their natural wealth and resources.” Rights of a similar, if more qualified, sort are frequently ascribed to indigenous peoples and cultural minorities.

The central thrust of this article has been that these group rights take on an essentially different character depending upon whether we interpret them as collective rights or corporate rights. The two sorts of group rights are differently grounded and carry significantly different implications, and that makes their differentiation a matter of practical importance rather than mere conceptual nicety. In particular, the distinction between the two forms of rights is crucial to the issue of whether group rights are in sympathy with, and perhaps form part of, the morality of human rights, or whether they belong to a quite different and potentially conflicting morality. We cannot, therefore, profitably debate whether we should find a place for group rights within the doctrine of human rights without first deciding whether the group rights at issue are collective rights or corporate rights.

42. ICCPR, supra note 2, art. 1(1); ICESCR, supra note 2, art. 1(1).
43. ICCPR, supra note 2, art. 1(2); ICESCR, supra note 2, art. 1(2).