

RESEARCH ARTICLE

Can Liberalism Incorporate Group Human Rights?

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The protection of indigenous peoples and minority languages, as well as the guarantee of outreach to disadvantaged groups, can be considered using the language of human rights – specifically, group human rights. Liberalism is the view that individuals’ freedoms ought to be protected against the competing interests of other entities. From a liberal point of view, a number of challenges to the idea of group rights present themselves. Against these, I will argue that it makes more sense for a coherent liberalism to incorporate group rights than to deny them. I aim to achieve this in two main argumentative steps: by establishing the link between groups, identity and human dignity, and by borrowing the phrase ‘standard threat to human dignity’ (Donnelly 2013: 49) to identify groups that can bear group rights – whose protection is necessary to safeguard the dignity that, arguably, is the very thing that provides the foundation for any human rights claims in the first place. In Part 1, I set out the liberal view. In Part 2, I make my first main argumentative move by identifying a powerful relation between groups and human dignity through the idea of identity. In Part 3, I examine the objection that, even accepting the value of certain groups, group rights can be reduced to individual rights, or that group rights pose too great a danger to individuals and their liberties to go any further with the idea. I respond that, were liberalism to accept either of these objections, it would leave important work undone. In Part 4, once the possibility of group rights has been established, I examine their place in relation to other rights. The important question is not the ontological ‘what is a group?’ but the normative question, ‘what kind of group has the moral weight to be entitled to group rights?’ I make my second main argumentative move by suggesting a ‘standard threat to human dignity’ (Donnelly 2013: 49) condition that answers the normative question: what is at stake is the protection of the groups that, as established in Part 2, are an indispensable part of the identity and human dignity that grounds human rights claims in the first place. This discussion leads to an answer to the more basic question about the moral status of groups. In Part 5, I conclude that it makes more sense for a coherent liberalism to incorporate group rights than to deny them.

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1. Liberalism

Basic individualism

Liberal claims seem to assume 'basic individualism' (Appiah 2011: 274). Individuals seem to be the only units worthy of moral consideration: 'The group has no place in the moral ontology of liberalism' (Lustig 1996: 20). As a result, 'moral reasons' (Wellman 1999: 36) derive from our concern for individuals (who may be part of groups), but not for groups. Rights, in this view, apply only to individuals. Given that third-generation rights, and specifically group rights, have been given some attention, we will enquire whether group rights ought to be incorporated within a liberal framework.

Basic individualism poses an immediate problem for a group rights project. I will argue that basic individualism is not true, but it is worth noting that group rights are not necessarily at odds with basic individualist assumptions. Basic individualism does not entail individualism about rights. To affirm that basic individualism requires us to adopt individualism about rights, we must deny that rights may be instrumental to other goods. It seems, though, that rights individualists would not deny that rights may be instrumental: this 'might be the best available way of advancing the interests of individuals – which is our fundamental concern according to basic individualism' (Appiah 2011: 274). In fact, it would be difficult for a rights individualist to deny that rights may be instrumental without also denying the right of peoples to self-determination, which, even for basic individualists, seems to be an essential group right. It may be possible, then, to pursue an approach to group rights within a basic individualist framework – as demonstrated in Jacobs' attempt to derive group rights from the individual right to integrity (Jacobs 1991). However, it seems more philosophically interesting to attempt to provide group rights with firmer foundations by challenging basic individualism. In order to show that the claim that only individuals are relevant units of concern fails, we must establish the importance of groups in order that they may,

like individuals, be said to be fundamentally worthy of our concern, rather than just a function of individuals and an instrumental concern.

A liberal framework

In order to avoid abandoning individual concerns, it makes sense to assume a liberal framework: it would not be worthwhile to attempt to construct group rights only to have denied the liberal rights we started out with (Kymlica 1996: 8). The task will be to find whether group rights fit in such a framework.¹ Liberalism is the set of views that puts primary importance on individual freedom. Defining this freedom divides liberals, most importantly on the legitimacy and extent of state power over the individual (Waldron 1987: 131). It seems consistent with most liberal views that the individual demands 'respect for the existing capacities of his autonomy, his reason and his agency' (Waldron 1987: 150), yet some concession must be made against individual freedom in favour of others or of groups – state power over individuals and adherence to previously agreed social rules seem justified, even if we consider freedom of paramount importance; in fact, it seems that the state is designed more for 'the consummation of [...] freedom' than for its 'violation' (Waldron 1987: 133). Other examples of groups' power over individuals, though, are real threats to freedom. I will argue that a coherent liberalism would incorporate certain group rights, which consummate the freedom liberals take to be valuable.

Human rights purport to guarantee the freedoms that liberals take to be valuable. Grounded in common humanity, they are described as 'literally the rights that one has because one is human' (Donnelly 2013: 7). Common to a number of modern formulations of human rights is a foundation of 'human dignity' (Donnelly 2013: 28). Human rights do not simply safeguard basic needs; rather, they respond to the demands of people's 'moral nature' – 'Human rights are "needed" not for life but for a life of dignity,

a life worthy of a human being' (Donnelly 2013: 15). Critics of liberalism, such as the communitarians whose objections we consider, make similar assumptions about human dignity. None of these critics would deny that individuals have moral worth that figures in decision-making. For this reason, an explicit argument in favour of common human dignity will not be required: it may remain an assumption, a foundation for human rights based on 'agreement rather than proof' (Donnelly 2013: 21) that our critics will supposedly not challenge. It is in a sense obvious, but in no sense trivial that the moral worth of humans is universal. The assumption must be stated, as only through its explicit assertion may we highlight the fact that it is all too often ignored (Williams 1962: 232).

Human rights, according to Dworkin, are 'trumps': they are weighty and significant, and cannot be overridden in favour of other goods, even if the whole community would benefit if they were (Dworkin 2009: 335; Dworkin 1977: 92). They are absolute trumps over non-rights goods, though we will have to say more about how they function in conflict with other rights. It seems most helpful to consider rights as a kind of moral reasons (Wellman 1999: 35) – weighty ones, certainly, but ones that can be overruled by weightier reasons (other, weightier rights). That is, rights are not 'the essential moral building blocks from which theorists argue to conclusions', but 'constituted of reasons' such that someone's having a right is constituted by the decision that the 'balance of moral reasons' is in their favour (Wellman 1995: 281–2). We have moral reasons towards a number of different kinds of thing. In Part 2, I argue that groups may be the objects of our moral reasons.

2. The moral importance of groups

The moral importance of groups as necessary for human value

Rights, in the liberal tradition, are founded on common human dignity. Human dignity grounds the kind of moral reasons that we identify with human rights. Dignity is

something that individuals have. Do groups have dignity, too? If not, what do groups have that might allow us to hold toward them moral reasons identifiable with human rights? It is appropriate to turn to communitarianism, which emphasises groups as central to what individuals take to be valuable, to consider the first part of our challenge to basic individualism. The communitarian may claim that human dignity cannot be specified without reference to groups.

Groups are necessary for the individual human dignity that grounds the moral reasons we identify with human rights. It is through talk of identities that groups may be said to be necessary for human dignity. I take identity to be important for human dignity: failure to take a person's identity into account 'conveys a refusal to acknowledge the truth about them'; 'the person is dealt with as though he is not what he actually is' (Frankfurt 1997: 12). Refusal to acknowledge identity is a denial of dignity – the two seem linked. Donnelly discusses the importance of the plurality of identities: 'almost no one defines herself entirely as an individual'. He names 'family', 'religion', 'race' and '[g]ender' as central to the formation of identities (Donnelly 2013: 53). It seems that 'as a matter of self-esteem – the most important Rawlsian primary good' (Rajan 1998: 1700) – we cannot discount groups. As individuals so often take themselves to be importantly constituted by their group identity (Young 2003: 225), an approach that takes only individual identity into account is descriptively false (Shapard 1990: 299). Groups are necessary for determining human dignity.

This complaint need not undermine liberalism. It may prompt us, though, to revise liberal assumptions and to take the role of groups into account. As an important constituent of identity and human dignity, it would be wrong to discount groups' fundamental importance. We saw that individuals have the required moral worth (their human dignity) to be granted human rights; if we accept, to some extent, the contention that groups are necessary for that human dignity,

we must consider groups as having some moral importance. If we deny this, we risk ignorance of 'the very foundation of human rights' (Shapard 1990: 306). It is possible, in this sense, to attach value to groups while remaining guarded against violations of individual freedoms. Groups, then, are important for individuals. Challenging value 'atomism' (Wellman 1999: 25), though, is not enough to firmly ground group rights. Groups must be taken as important not only in their instrumentality to individual sites of value, but also as foundational, morally important entities in themselves.

The moral importance of groups qua groups

My first main argumentative step is to establish the moral significance of groups qua groups, 'as fundamental units of value' (McDonald 1991: 237)² rather than simply as instrumental to what we take to be valuable in individuals. This is not the claim that groups may be entirely separated from individuals, or that they do not derive their value from the individuals making them up. Following Korsgaard's *Two Distinctions in Goodness* (1983), something may be considered objectively good, or a final, non-instrumental end (as I claim about groups) without entailing the claim that they are intrinsically valuable. If groups were intrinsically valuable qua groups, their worth would derive from themselves qua groups. This is not the case – the value of groups comes from their members. This does not entail, though, that groups must be considered instrumental to their members in every case. In certain conditions, the group itself is a morally important entity in terms of human rights. Later, I will set out a suggestion for what these conditions may be.

Some examples allow us to separate the group from its members, in some sense: it seems to be a bad thing, for example, that minority languages are frequently lost. We do not ask, in these cases, whether any individual has been disadvantaged by such an extinction before concluding that the loss is a bad thing; only after the fact do we

conclude that individuals have been disadvantaged because they have lost the chance to make a certain expression of their culture. The two complaints are significantly distinct: the group's loss would be no less strong if no individual were disadvantaged by it. Even if individuals' 'language interests' have changed (such that there is no-one left who would want to speak the minority language) it would be counter-intuitive to say that the 'disaster' has disappeared (Brett 1991: 354). Individualism cannot capture the real loss at hand. Group concerns are sometimes distinct from individual concerns. I will argue that the only way to adequately defend morally important group concerns is through group rights.

Some groups are morally important.³ Regarding the right of peoples to self-determination, Kymlicka writes that the liberal assumption that political boundaries and the boundaries of peoples converge is false: 'in some cases there are two or more "peoples" in a single country, each with the right to govern themselves' (Kymlicka 1996: 11), such as indigenous peoples and national minorities. This is an appropriate point at which to reconsider the communitarian claim that groups are foundational. It is impossible to conceive of human values or choices without realising that the individual must be framed by the group; without the group, the individual is 'empty' (Kymlicka 1991: 47). Lustig's example illustrates this criticism:

A Canadian proposal [...] simply to compensate indigenous peoples financially for past wrongs is nonsensical because "saving money for the pursuit of one's ends is of little help if the price involves giving up the context within which those ends are worth pursuing..." Cultural membership is not an object of choice: it establishes the grounds for choice. It is not an interest to be weighed and bargained but something which helps determine how interests themselves will be conceived. (Lustig 1996: 21)

As in the case of the loss of a minority language, we are concerned by two kinds of losses in Lustig's example: those of the individuals (who are disadvantaged by insufficient compensation) and those of the group (the loss of something 'worth pursuing' (Lustig 1996: 21) in the first place, the 'traditions and cohesion that allow it to maintain its distinct existence' (Jacobs 1991: 382). It is worth distinguishing the two: the group has properties that can be distinguished from the properties of its individual members; groups' properties can be valuable as foundational such that the individuals in it can only be understood with reference to the group, a separate site of value. This claim requires only that the liberal recognise groups as well as individuals as units of moral concern. Nothing in the structure of considering groups as foundational intrudes upon the moral importance of individuals; all we need do is recognise that there is something else that matters too. Conflicts between the two types of claim need not concern us at this point: they need not concern us in the same way that we should not be put off the claim that individuals matter because one individual might conflict with another. Individuals and groups may both matter and be foundationally important in a morally significant way.

3. Are groups the kind of thing that can have rights?

In a liberal framework, then, some groups may be said to matter. We must next enquire whether this is the kind of foundation that allows us to attribute rights to groups: are groups the kind of thing that can have rights? Individuals certainly matter; liberals add to this individualism a conception of egalitarianism, and from here conclude that because each morally important individual is equally morally important, each individual is worthy of equal rights (Kymlicka 1991: 140). Shapard writes that as 'talk of rights arises when humans believe that they or others are being wronged' and '[s]ince humans may be wronged not only as individuals, but also specifically because of some aspect of

group identity', it makes sense that the violation of certain rights in certain cases may be described as being committed against 'us' rather than against 'me' (Shapard 1990: 302). As well as this possibility of conflict, we must find the source of the moral weight required to be legitimately attributed rights.

It will be helpful, at this point, to consider examples of weighty group conflicts in which groups have, in fact, been judged to have the necessary moral weight to be attributed rights.⁴ Colonialism, Donnelly writes, 'is a well-recognised standard threat to human dignity. Decolonization thus is a practical prerequisite to the enjoyment of internationally recognized human rights. And it is the subjected people as a group that have this right' (Donnelly 2013: 49). It is in examples parallel to this requirement of decolonisation or emancipation of subjected peoples that we will find the strongest evidence for group rights. Citing Wellman, we may make use of the example of American secession from Great Britain: 'it seems clear that the conflict is between two groups [...] If the Colonial delegates have a legitimate claim to political self-determination, it is not as individual persons, but as representatives of colonies' (Wellman 1999: 21). This is an appropriate example because it draws on a group right that liberals do, in fact, accept – the right of peoples to self-determination (to which Donnelly admits that he is 'committed methodologically' (Donnelly 2013: 48)). In the case of American secession, Kymlicka's complaint (that political boundaries and those of peoples problematically do not converge) is clear: the American people were subjected to the rule of another people. As a people, they did not possess the content of the right to self-determination. This was, of course, a source of conflict, and the reason that it would be correct to claim that the American people as 'a group which has a cultural identity' (Brett 1991: 355) could claim a right to self-determination against Great Britain. American individuals could claim that *as Americans* they had the right to self-determination only in the specific sense that it is collectively (as a group) that

Americans have that right. It does not make sense to say that an individual has a right to self-determination (at least in this political sense) – '[i]t is collective autonomy rather than individual autonomy which this right to self-government protects' (Brett 1991: 355). The American people would no less have been denied the right to self-determination if, for example, half of the population were denied the vote (on entirely arbitrary grounds) than if no Americans were. As a people, they would still have been denied the right to self-determination.⁵ The right is assigned to a group, but in this case, the group right in question is significantly distinct from that of the group whose language is under threat. In the American self-determination example, it is through the denial of individual rights that a distinct group right is denied, whereas in the language example, the group right may be denied without affecting any individual rights. Later in this part, I will argue that even though self-determination-type rights are necessarily linked with individual rights, it is insufficient to describe them in terms of individual rights – this leaves important work (done by group rights) undone. Groups can have rights. How, though, can we distinguish between groups that can be assigned rights and groups that cannot?

A critic might argue that what seem to be group rights are, in fact, 'simply convenient devices constructed from the legal rights of individuals'; group rights are, in this view, a 'shorthand' for (in some way aggregated) individual rights (Shapard 1990: 300). The force of a group claim is contained only in the claims of its members; specifically, might not group rights be better expressed as (or at least reducible to) the right not to be discriminated against? We might, in this way, protect both groups and individuals by 'protecting members of despised or disadvantaged groups against discrimination based on group membership' (Donnelly 2013: 46). In addition, we might express them as a right to association held by individuals: 'If a particular identity is valued sufficiently, it will survive, perhaps even thrive.

If not, then it will not. And that is the way it should be' (Donnelly 2013: 54). It is certainly true that the rights not to be discriminated against and to group association are important. It is also true, as previously mentioned, that we might want to endorse group rights in order to better guarantee the rights of individuals (Shapard 1990: 306–7; Appiah 2011: 273). Our critic might claim that the rights of wrongfully disadvantaged groups are a shorthand for the rights of individuals who have been wrongfully disadvantaged; affirmative action, for example, would aim to 'connect [its] beneficiaries individually with some wrongful disadvantage and connect those who are passed over individually with some advantage' (Appiah 2011: 273) in order to make up for the fact that in other forms, individual rights had not previously been protected. Such a reduction of group rights to individual rights, however, seems unsatisfactory. Highlighting the difficulty of an individual-focussed approach to affirmative action, Lustig cites 'Bakke v. U.C. Regents (1978)', in which

a white medical school applicant, protesting the set-aside of sixteen out of a hundred slots for the disadvantaged minorities, saw his own non-admission despite high MCAT scores as a case of exclusion on the basis of his race [...] "at the expense of innocent individuals," (Lustig 1996: 20).

The mistake made here is to conceive of affirmative action only in individual rights terms – as a measure that supports the right not to be discriminated against (a right held by all individuals). Conceiving of affirmative action in this way is problematic for two reasons. First, we focus on discrimination as only the act of one party against another, and so may only redress harms done by some against others. In the Bakke v. U.C. Regents case, this conception allows the white applicant to claim that as there has been no active discrimination in his favour, affirmative action has no place. We ought still to have

something to say about harms done by some against others in the individualist sense, but the problem is not reducible to this, and leaves important work undone. Secondly, the individualist conception of affirmative action relies on a probabilistic interpretation of harm – one that might aim, for example, to neutralise the effect of race on the probability of any individual's getting a certain job. This is a valuable tool for assessing harm, but it is not sufficient. In this case, the white applicant may also claim that the probability of his getting a place has been reduced – but we would not agree that this is a rights violation in the same way that discrimination against disadvantaged minority groups is a rights violation.⁶ A conception of rights is needed that informs us why the latter, and not the former, counts as a rights violation. A probabilistic individualist view also leaves important work undone.

A conception of affirmative action as the irreducible right of the group in question seems to avoid these problems. Of course, it is possible to speak about group rights in terms of the benefits they confer to individuals – any human rights discourse is surely motivated by concern for humans – but this does not entail that they are reducible. Affirmative action, then, can be referred to in terms of the rights it confers to relevantly wrongly disadvantaged individuals, but this is far from the full claim that the group right in this case is making. Take Appiah's example, 'the right of qualified black people in the Chicago area to be made aware of jobs at the University of Chicago': if this right is not upheld, it would require that the University of Chicago had gone to insufficient lengths to make information about their jobs available to qualified black people in the Chicago area (Appiah 2011: 270). Were this the case, it would be true that a group right of black people in the Chicago area had been violated, requiring the University of Chicago to make information about its jobs available to all race groups equally in response. No claim could be made, though, by any individual. The university is not required to 'make each

qualified black person aware' of its jobs or even 'to assure each individual an equal probability of inclusion' (Appiah 2011: 270). The right is 'a predicate of the group', not of any or all individuals making it up (Appiah 2011: 270).

In our American secession example, too, it seems clear that the right in question – that of peoples to self-determination – is a group right that is not reducible to a set of, perhaps, voting rights. To illustrate, we may compare three fabricated situations in which all other things are equal:

- (1) all Americans over the age of 18 are able to vote;
- (2) half of the Americans who were formerly able to vote are chosen arbitrarily and at random and are prevented from voting;
- (3) all Americans who were formerly able to vote are prevented from voting.

Part of the situation could be described in terms of individual voting rights: in these terms, situation (1) is best, and situation (2) is better than situation (3). In situation (2) half of the individuals in the population have been denied their right to vote; the other half has been denied nothing. In situation (3), all individuals have been denied their right to vote. If we take seriously the right of peoples to self-determination, though, an individual rights complaint is unable to do all the needed work. Something valuable other than individual rights to vote have been lost in both cases (2) and (3) when we compare them to situation (1). It is not true to say that in situation (2), the half of the population that is still able to vote has been denied nothing, as in situation (1). Even this half, whose individual rights have not been affected, makes up part of a people (their existence as part of this group is what gives value to the people) whose right to self-determination, as a group right, has been denied. These individuals have, by virtue of being the group 'the American people', been done an injustice despite the fact that there is no

identifiable injustice in terms of individual rights. The right of peoples to self-determination is, in this sense, indivisible and not susceptible to the claim that group rights are simply aggregated individual rights, or that group rights are ultimately reducible to individual rights.

4. Isolating eligible groups and group rights

What kinds of group can have group rights?

In responding to a possible objection, I have argued that rights held by groups cannot be reduced to those held by individuals. Not all groups can have rights, though. What kind of group is the right kind?

Wellman suggests that certain groups qualify for group rights by virtue of the fact that they are made up of 'individual members *and* an organisational structure' (Wellman 1999: 23). In his American secession example, two specific conditions seem to be involved: an organisational structure and legitimate representation. The group must be both appropriately organised and capable of coherently exercising its 'group will' (Wellman 1999: 14). We can rule out, then, '[g]roups like the red-haired citizens of Canada or all those people who have attended a Rolling Stones concert' because they have neither the appropriate organisational structure nor a way to legitimately communicate their group voice (Wellman 1999: 22). We can also rule out numerous cultural groups whose will is traditionally expressed by dominant individuals or subgroups, as in many patriarchal cultures, because although they are organised appropriately, the group's voice represents only the dominant minority within the group (Zechenter 1997: 331). Wellman's distinction is unsatisfactory, though. We have already discussed the rights of black people in the Chicago area and the rights of subjected peoples to decolonisation. In these cases, we do not require that a lawyer or elected representative bring a human rights case against the University of Chicago

(which, in our example, did not adequately distribute information about jobs) or against the colonial power in question in order to safely conclude that the rights of a group have been violated. Representation seems to be irrelevant in such examples of injustice. Furthermore, the idea of organisational structure seems unclear. It would not be satisfactory to say that simply being a black person in the Chicago area were enough of an organisational structure: such distinctions could be applied to any group, including red-haired Canadians and Rolling Stones fans. What do the black people of Chicago and a people subjected to the rule of a colonial power have in common, then, with the American people claiming secession that they do not have in common with the red-haired citizens of Canada and the people who have attended a Rolling Stones concert?

Perhaps the groups in question can legitimately be attributed rights because they have been unjustly treated as groups. Black people in the Chicago area, the American people claiming secession and a people subjected to the rule of a colonial power have been disadvantaged as groups. Rajan points out that 'majority communities do not require group rights – individual rights are adequate to protect their interests' (Rajan 1998: 1699), and Jacobs that 'uneasiness is apparent when some English Canadians outside Quebec talk about their collective rights' because 'few people seriously believe that English Canada faces the prospect of assimilation' (Jacobs 1991: 282–3). Disadvantaged communities, though – those that have been unjustly treated – may require group rights. It is '*as blacks*', '*as a group*', Appiah writes, that black people are disadvantaged: 'all within the group are tarred with the same burdensome presuppositions as a member of that group, irrespective of individual concerns' (Appiah 2011: 277). As we saw earlier, this seems to be a case both of individual harm and distinct group harm which is important because it is systematic: 'a standard threat to human dignity' (Donnelly 2013: 50) that is

both historical and continuing. I have argued that conceiving of these examples in individualist terms is insufficient. Such harms can only be rectified 'if you grant black people entitlements *as blacks*' (Appiah 2011: 277) – because we cannot sufficiently describe the problem in only individualist terms, the collective group must be taken into account. Donnelly, generally sceptical of group rights, admits that in the case of indigenous peoples, we may require group rights the work cannot all be done by rights not to be discriminated against and to freely associate. Group rights are required because 'this is a standard threat to human dignity' (Donnelly 2013: 50); that is, it is a case of systematic unjust treatment, not just historical, but continuing. Such cases justify our use of human rights language about the moral reasons we have toward them.

My second main argumentative step is to suggest a 'standard threat to human dignity' (Donnelly 2013: 50) condition for the use of group human rights language: a group is eligible for group rights if it is faced with a standard threat to human dignity. It seems that this way, we avoid Donnelly's worry that choosing our groups as historically disadvantaged ones limits us simply to all those who are not 'prosperous white Western males' (Donnelly 2013: 50). Rightly, he is concerned that if we focus only on disadvantage, we will be swamped with group rights claims in a way that will devalue their force. A 'standard threat to human dignity' condition may highlight the important distinction between intuitively reasonable and intuitively unreasonable group rights claims. Wolff and Shue use a 'standard threat' (Shue 1996: 17) condition in the case of the human right to health: rights cannot be used to protect against all threats, but '[w]hat the ordinary citizen can have [...] is protection from standard threats' (Wolff 2012: 222). It will be helpful to adapt Wolff's use of this condition to the group rights end. In both health and group cases, we may define standard threats similarly. 'Standard' must depend largely on 'historical contingency' (Wolff 2012: 222): for example,

standard threats to indigenous peoples changed significantly after European colonialism began.⁷ Wolff's second condition is that 'a solution could reasonably be expected to be in reach' (Wolff 2012: 223). With these in mind, in Appiah's University of Chicago case, we can identify racial discrimination as a standard threat to human dignity that is sufficiently serious and has a reasonable solution – here, affirmative action. Cases of colonialism, the denial of self-determination and the persecution of peoples are further examples of such threats (which seem to overlap). It is in this light that we must consider Wellman's objection to our proposed condition. He uses the example of the Kurds to suggest that the condition requiring a group to be the victim of unjust disadvantage to have group rights is unsatisfactory: 'then groups like the Kurds had only individual moral rights before they were treated unjustly. But if there were only individual rights when the injustice occurred, only individual rights were violated' (Wellman 1999: 32). The objection is, then, that once we consider having suffered injustice to be a condition which allows a group to make rights claims, such claims can only be a secondary response to the individual rights claims that matter. It is by introducing the standard threat condition and exploring what that entails for groups as moral entities that a response is possible. Returning to Korsgaard, groups do not achieve a moral status with no reference to the individuals that make them up; a group's moral status can only be understood with reference to the dignity of the individuals making it up and the conditions of a standard threat to that dignity. 'The Kurds' qua group cannot have been persecuted if this were not true of individual Kurds. This allows, though, that under these specific conditions, the persecution of individuals can take on a new aspect: the persecution of a people, understood differently to the sum of the unjust treatment of individuals. The Kurds can bear a group right because they have been persecuted as a people. Rights are necessarily relational – they generate duties in others – and the moral

status a group's right is grounded on can be distinguished from the human dignity of the group's members, which is a source of non-relational intrinsic value. The persecution of a people, recognisable as a standard threat to human dignity, is insufficiently expressed in individual terms. It is the recognition of a standard threat that allows the language (and greater weight) of group human rights to be used when we consider our moral reasons toward the group in question.

One such standard threat is the loss of native language, most obviously in the case of indigenous peoples exposed to mainstream society. First, it is necessary to restate that loss of language is irreducibly a group concern: considering it individualistically (say, language as a resource that individuals may take advantage of), it is not possible to grasp the entire problem – the moral importance of 'the survival of a milieu in which one can use one's native language' (Brett 1991: 354). The threat of language loss satisfies the standard threat condition – it is serious enough (language carries 'patterns of culture' in a way that other conventions, such as traffic laws, do not (Brett 1991: 359)) and measures to protect against it could readily be put into place, such as enforcing the use of a certain language on signs, such as advertising boards, as is done in Quebec (Brett 1991: 347). There are substantial reasons for granting such rights as the right to protection of a group's native language. How, though, does this right relate to other rights?

Conflicts of rights

Our critic might eventually accept that we may grant group rights 'conceptual room' (Wellman 1999: 27) while maintaining that because they 'may be used as an excuse to violate individual rights', no concession should be made to group rights (Shapard 1990: 304–5). Perhaps, Wellman suggests, 'the correct liberal view includes such a weighty emphasis upon individual liberty that all group rights will in fact be dismissed' (Wellman 1999: 36). Liberals, it seems, maintain that 'individuals should not bear duties for the sake of collectivities'

(Green 1991: 315) and deny 'that the loss of freedom for some is made right by a greater good shared by others' (Rawls 1971: 28). Our critic may be concerned that any concession to group rights will invariably undermine individual rights, suggesting that we must reject them on a normative basis. If we see rights, our critic may continue, as liberalism often does, as 'trumps over collective goals or the common good', then we must surely admit that any concession to groups poses too great a risk to individuals (Shapard 1990: 304). Attesting to this risk, group rights have been used in defence of practices that liberals would not accept. Group rights might lead, according to our critic, to the protection of traditional tribal practices which would allow the abuse of individuals within those groups (Shapard 1990: 304), such as claims that 'female circumcision amounts to a right to cultural self-determination for tribal peoples' (James 1994: 8) and that there is a right of Rajput people to commit *sati*, the practice by which a widow is 'burned alive on her husband's funeral pyre', because it is a 'part of their ethnic culture' (Zechenter 1997: 328). These examples highlight the distinction between individual and group rights. It seems that liberals 'are hostile toward collective rights because the former value individual autonomy and the latter restrict the dominion of individuals' (Wellman 1999: 14).

We are able to respond to this objection in two ways. First, the objection seems to suggest that in liberalism, individuals are always placed in a privileged position over groups. However, this is not the case. Liberals often make concessions to groups, ceding individual liberties for the good of something else; ceding certain 'negative' (Berlin 1969: 2) liberties, for example, for the sake of a 'consummation' of freedom (Waldron 1987: 133). States, for example, 'stand in positions of sovereignty in a number of contexts' (Wellman 1999: 36). We often admit, in a liberal framework, that individuals bear duties to states. Wellman gives the example of states' monopoly on criminal punishment: on the occasion of being stabbed by a neighbour, he writes,

even if 'I am [...] uninterested in bringing criminal charges against my aggressor, [...] I actually have a legal duty to report the crime to the police' (Wellman 1999: 36–7). The fact that we do allow such instances of duties to groups suggests that our critic's objection against any infringement of group concerns into the domain of individual liberty fails simply because it reflects a view of liberalism that is more stringently individualistic than that of most of liberal thought (Waldron 1987: 139). Any reasonably moderate liberalism does allow duties to groups in a number of circumstances, and even duties to groups that appear to infringe on individual liberties. Individuals do not gain absolute precedence over groups; it would be equally ill-advised to give groups automatic precedence over individuals (Shapard 1990: 304). No remark, at this point, can be made either way with regard to the moral weight of each; neither can be given *prima facie* precedence over the other.

There is a second defence of group rights against the objection that they undermine individual rights: conflicts of rights are nothing foreign to the liberal framework. Most conceptions of rights will admit situations of conflict between different individual rights; just as such a possibility is not fatal to the idea of universal human rights in the first place, it is not fatal to the idea of group rights. Clearly, careful application is required, but it seems that individual rights claims are equally difficult to put in place – they, too, can be abused in the same way that group rights can be abused in our examples above. '[S]lavery was once defended', writes Shapard, 'by appeal to the individual property rights of slaveholders' – a rights claim that was 'both successful and unjustifiable' (Shapard 1990: 306). Such cases do not prompt us to doubt our use of individual rights, but to revise our application of them – in this case, what it is that we mean by a property right (for a start), rather than the possibility of property rights, or of individual rights at all.

We ought to consider group rights with the same mediating approach as we do in cases

in which only individual rights are at stake: 'on a case-by-case basis' (Shapard 1990: 305), judging the relative strengths of competing claims. In the case of our language example, in which a group's native language is threatened by exposure to mainstream society (the result of which is likely to be the loss of their native language, a recognisable standard threat to human dignity), the value of preserving the language must be weighed against the loss of individual liberties caused by language laws. In Quebec, for example, where such language laws have been put in place, businesses are prevented from advertising in English (Charter of the French Language, CQLR chapter C-11 2014: Article 58). Whether or not this measure harms individuals, it certainly restricts their freedom of expression to a certain extent. The remaining task is to judge whether the moral importance of protecting the group against the loss of its native language exceeds the weight given to the individual liberties restricted by measures put in place to protect the language. Less restrictive measures, in this view, would be preferred in the protection of languages to maintain liberalism's concern for individuals, but such concern ought not to extend so far as to obscure the context that forms what individuals take to be valuable – the group. It is for this reason that we may justify some compromises in individual freedom in order to protect against standard threats to human dignity which would undermine what individuals value in the first place.

5. Conclusion

A coherent liberal human rights framework ought to incorporate group rights. I have responded to a number of challenges to the possibility of group rights, namely basic individualism and individualism about rights. I have made two main positive argumentative moves. First, there is a strong and important link between groups and the human dignity that grounds human rights. Groups are so involved in this dignity that, when we consider moral value, they ought to be conceived as units of moral consideration. Second,

standard threats to this dignity are sufficient to ground human rights claims about groups. I have argued that group rights make sense in the same rights decisions as individual rights. Though we must recognise that, as whenever we recognise a party's claim to something, there is a danger that the claim will infringe upon another's, group rights claims can be considered, and weighed against others, in liberals' considerations of the moral weights of things.

Competing Interests

The author declares that they have no competing interests.

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Notes

¹ It will often be possible to suggest that group rights are simply reducible to elements of a conception of liberalism that does not require group rights, particularly rights individualism. Later, we will see that group rights are not, in fact, reducible to individual rights.

² McDonald has 'communities' in mind as other 'fundamental units'. Later, we will be able to narrow down the kind of group that ought to have group rights.

³ It does not seem to be unreasonable to consider ourselves pluralists in this sense, given that our intuitions suggest that both matter and can be shown to matter independently.

⁴ Group rights – though in these cases, both individual and group rights are at stake. Later, we will be able to distinguish more clearly between the two.

⁵ We will consider this example in more detail later, in order to clearly mark the distinction between individual and group rights.

⁶ We will make the distinction between cases like these later by making use of the 'standard threat to human dignity' condition.

⁷ We might also include such threats as Young's conception of the oppression of groups, including 'exploitation', 'marginalisation', 'powerlessness', 'cultural imperialism' and 'random violence' (Young 2003: 226).

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