

Are there Collective Human Rights?

MICHAEL FREEMAN*

The Problem of Collective Rights in Political Theory

The doctrine of human rights affirms two fundamental principles of Western liberalism. The first is that the human individual is the most fundamental moral unit. The second is that all human individuals are morally equal. These two principles express a commitment to egalitarian individualism. Yet the doctrine belongs to an international discourse which also affirms two collectivist principles. The first is that states are the primary agents of international relations. The second is that states represent nations. Liberal theory and international law reconcile the claims of individuals and states by affirming that states are obliged to respect the human rights of individuals. The status of nations is less clear. The common Article 1 of the two international human-rights covenants of 1966 declares that all *peoples* have the right to self-determination. This proposition has generally been interpreted to mean that the populations of colonial territories have the right to form nation-states. It has, however, also been cited to express the aspirations of various national and ethnic minorities, and of indigenous peoples. The logical and practical relations between these collective claims and individual human rights is uncertain.

The problem inheres in liberal-democratic theory. The classical liberal theory of Locke held that every individual equally had a set of natural rights, and that government was legitimate only if it was based on the consent of the governed and protected the fundamental rights of all. In such political communities the majority had the right to bind the rest.¹ Thus Locke derived from the premises of equal and individual rights conclusions about collective rights of majorities.

In the republican democratic tradition associated with Rousseau sovereignty is placed not in the majority but in the general will. Rousseau maintained that this will was indivisible. If it was to prevail, there must be no partial associations in the state.² Locke and Rousseau both located the problem of political authority in the relation between the individual and the state. Minorities in Locke's theory and partial associations in Rousseau's had no role in legitimate government. This approach to the problem of political authority was introduced into world-historical politics when the French Revolution proclaimed individual rights and the sovereignty of the nation, while manifesting its hostility towards minorities and partial associations.

* I should like to thank other contributors to this volume, especially David Beetham and Allan Rosas, for their helpful comments on an earlier version of this paper, and Will Kymlicka for stimulating exchanges of views on this subject and for references to Canadian sources.

¹ J. Locke, *The Second Treatise of Government* (Cambridge, Cambridge University Press, 1970), para. 95.

² J. J. Rousseau, *The Social Contract* (London, Dent, 1966), Book II, chs 2 and 3.

Classical liberalism normally took the culturally homogeneous nation-state for granted. The republicanism of Rousseau and the French Revolution was explicit about the need for a civil religion.³ John Stuart Mill held that free institutions required a united public opinion and were 'next to impossible' in a country made up of different nationalities.⁴ John Rawls has continued the tradition of nation-state liberal individualism.⁵ Lord Acton, by contrast, argued that the association of the state with the nation violated the 'rights of nationality' by subordinating all nationalities not associated with the state.⁶

The principles of equal individual rights and majority rule have provided the theoretical basis of liberal-democratic nation-states. The concept of a ruling majority, however, implies that of a subordinate minority. Liberal-democratic theory treats such minorities as sets of outvoted individuals. Their situation is legitimate because their individual rights are guaranteed, because these rights give them the opportunity to become part of the majority from time to time, and because it is the outcome of the rules of the democratic game. In this system there is majority rule, but no minority problem.

The construction of modern nation-states has, however, been accomplished partly by the domination and attempted assimilation of traditional communities. Many contemporary nation-states also contain minorities produced by immigration. Modern societies therefore include collectivities bound by common values that may be distinct from those of the majority. Such collectivities may form permanent minorities whose interests are persistently neglected by the majority. The state and the cultural majority may form a hegemonic bloc. Many social groups—for example, women, gays and the disabled—may be structurally disadvantaged in liberal democracies, and may require special rights in order to achieve equal citizenship. These rights might be collective (for example, quotas in the political representation of women) but the claims of these groups can generally be met by implementation of the individual right to be free from arbitrary discrimination and appropriate measures of positive discrimination. Because ethnic groups have common comprehensive cultures and national groups a sense of political distinctiveness, they raise special problems for nation-state political cultures based on the principle of majority rule. The doctrine of equal and universal rights may support the hegemony of the majority culture over various subordinated cultures.⁷

The problem of collective rights, therefore, arises in two ways. It arises firstly because the concept of individual human rights has been introduced into an international discourse committed to various forms of collectivism. It arises secondly because liberal-democratic theory and practice have traditionally concerned themselves with the relation between individual rights and the collective rights of nation-states. It is a mistake to believe that liberal democracy has favoured the individual over the collective. Rather, it has given

³ Rousseau, *The Social Contract*, Book IV, ch. 8.

⁴ J. S. Mill, *Considerations on Representative Government* (London, Dent, 1910), pp. 361–2.

⁵ J. Rawls, 'The law of peoples' in S. Shute and S. Hurley (eds), *On Human Rights: The Oxford Amnesty Lectures 1993* (New York, Basic, 1993), pp. 41–82.

⁶ Lord Acton, *Essays in the Liberal Interpretation of History: Selected Papers* (Chicago, University of Chicago Press, 1967), p. 157.

⁷ V. Van Dyke, *Human Rights, Ethnicity, and Discrimination* (Westport CN, Greenwood, 1985), pp. 7–8, 59–60, 145–6, 220.

the individual a special status within a particular collectivity, the nation-state. It is precisely collectivities systematically unrepresented by states that are anomalies in liberal-democratic theory. Do such groups have moral (as distinct from positive, legal) rights? If they do, how are these rights logically related to individual human rights?

Collective Rights in International Politics and Law

The protection of minority rights by treaty has been practised for centuries. Such protection has been exceptional, however, since international law has normally recognized the sovereign power of states: it was, indeed, sovereign states that made treaties to protect minorities. The most extensive system of minority-rights protection was that of the League of Nations. This system recognized collective rights of various kinds (for example, equal rights for individual members of minority collectivities, special rights for minority collectivities and collective rights to cultural autonomy) and thereby weakened the dogma of state sovereignty in favour of human-rights concerns. It was, however, neither universal in principle nor effective in practice, and it vanished with the League.⁸

After the Second World War the UN adopted its Universal Declaration of Human Rights. Almost every right in this declaration is expressed as an individual right (for example, Article 3 states that 'everyone' has 'the right to life, liberty and security of person'). The Declaration does, however, have some collectivist features. Individuals have rights to participate in collective practices (Articles 20 and 27); families have the right to protection by society and the State (Article 16); parents have the right to choose the kind of education that shall be given to their children (Article 26); the 'will of the people' is the basis of the authority of government (Article 21); everyone is entitled to a social and international order in which the rights set out in the Declaration can be fully realized (Article 28); and all rights are subject to such limitations as are determined by law to meet 'the just requirements of morality, public order and the general welfare in a democratic society' (Article 29).

Attempts were made to include an article on minority rights. The Representative of the USSR said that minority rights were 'fundamental human rights'. The Representative of the USA opposed the inclusion of a minority-rights article, stating that the best solution of the problem of minorities was to encourage respect for human rights. There was therefore a conceptual disagreement as to whether minority rights were human rights or whether human rights did not include minority rights but were the means to solve minority problems. The Universal Declaration does not mention minorities. The UN Human Rights Commission did establish a Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, but the theoretical and practical relations between the prevention of discrimination and the protection of minorities has remained unclear.⁹ The most important minority-rights provision of international law, Article 27 of the International Covenant on Civil and Political Rights, declares that *persons*

⁸ P. Thornberry, *International Law and the Rights of Minorities* (Oxford, Clarendon, 1991), Part I.

⁹ Thornberry, *International Law*, Part III.

belonging to certain minorities shall not be denied the right, *in community with others*, to participate in the culture of their group. Some commentators have argued that Article 27 bears a collectivist interpretation, but the extent to which it does, if any, is uncertain.¹⁰

The different policies of the League and the UN towards minority rights can be explained to a considerable extent by their different beliefs about the implications of minority rights for the stability of nation-states and of the international order. The League believed that its minority-rights regime would contribute to peace as well as to justice. UN state élites have considered minority rights to be threats to national unity, territorial state integrity, peace and economic development.¹¹ In the face of increasingly insistent minority demands and violent ethnic conflicts, however, cautious changes have taken place. Article 1 of the UN Declaration on Minority Rights of December 1992, for example, imposes on states the obligation to protect the existence and identity of minorities.¹²

A number of so-called peoples' rights have also been introduced into international law. There is an African Charter on Human and Peoples' Rights. Article 25 of the International Covenant on Economic, Social, and Cultural Rights recognizes 'the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources'. Other people's rights include those to self-determination, international peace, economic, social and cultural development, and a satisfactory environment.¹³ The conceptual character of these rights is unclear and their relation to individual human rights uncertain.

Towards a Theory of Individual and Collective Rights

The concepts of individual rights and collective rights have a similar history and a similar general theoretical rationale. Individuals and collectivities have been oppressed throughout history and in the modern period protection has been sought in the form of institutionalized rights. Collective rights as such are not controversial: associations and corporations clearly can have moral and legal rights and duties. However, some human-rights theorists have insisted that only individuals can have *human* rights. Others have argued for collective human rights. To analyse this disagreement, we need to consider the nature and justification of human rights.

I propose to defend a conception of collective human rights. In order to show that these collective rights *are* human rights, I shall argue that some collective rights have the same nature and justification as well-established human rights. To this end I shall argue that a particular conception of rights – the 'interest' conception – must and can be defended against some plausible criticisms. I shall then argue that the interest conception of *human* rights must and can be defended against communitarian and relativist objections. I shall conclude by presenting the argument for collective human rights, while

¹⁰ P. Thornberry, 'International and European standards on minority rights' in H. Miall (ed.), *Minority Rights in Europe: the Scope for a Transnational Regime* (London, Pinter, 1994), p. 15.

¹¹ Thornberry, *International Law*, pp. 47–8, 122, 129, 136–7, 202, 206.

¹² A. Phillips and A. Rosas (eds), *The UN Minority Rights Declaration* (Turku, Åbo, 1993), p. 124.

¹³ J. Crawford (ed.), *The Rights of Peoples* (Oxford, Clarendon, 1988).

identifying some problems raised by the attempt to reconcile individual and collective human rights.

The Nature of Rights

It is generally agreed that rights are constituted by norms that govern relations between those who have rights and those who have duties arising from those rights. These norms impose constraints on the actions of the duty-bearers.¹⁴ There are said to be two competing views of how these relations should be analysed. The *interest* conception of rights is said to hold that the *grounds* of rights are the *interests* of the rights-holders, whereas the *choice* conception maintains that a right *exists* when the necessary and sufficient condition of imposing or relaxing the constraint on the duty-bearer is the right-holder's choice to this effect.¹⁵ The two conceptions are, however, not necessarily mutually incompatible, for the interest conception emphasizes the *justification* of rights-constituting norms, whereas the choice conception is concerned with the *identification* of such norms. Thus, an *interest* of A may *justify* attributing to A the right to *x*, and we may *know* that A *has* the right to *x* because the correlative duty of B may be enforced or waived by the *choice* of A. The two conceptions may nevertheless have different and even mutually incompatible implications.

The concept of human rights appears to presuppose the interest conception. Article 3 of the Universal Declaration, for example, states that everyone has 'the right to life, liberty and security of person'. The *justification* of such rights surely relies on our intuition that everyone normally has a legitimate *interest* in life, liberty and security.

Steiner has, however, argued that the interest conception of rights should be rejected in favour of the choice conception. His principal argument is that, since interests can conflict, the interest conception entails conflicts of rights. If rights conflict, so do their correlative duties. And if duty-bearers have conflicting duties, they cannot carry out all their duties. Those duties that they cannot carry out cannot really be duties. So their correlative rights cannot really be rights. The interest theory of rights is therefore incoherent, he concludes.¹⁶

Interests certainly can conflict and the interest conception of rights entails that rights can conflict. But conflicting rights do not entail impossible duties. Conflicting rights entail duties to balance rights. A government that discharges its duty to protect the right to privacy by limiting the right to freedom of speech is not violating its duty to respect the right to freedom of speech but fulfilling its duty to balance these rights. The problem of balancing conflicting rights may not have a determinate rational solution, but this does not mean that particular solutions are necessarily unreasonable. Steiner's critique of the interest conception is therefore not persuasive, for it rests on the rational unacceptability of indeterminacy. Conflicts of rights, with their consequent indeterminacy, are, however, stubborn facts of human-rights politics. Steiner's attempt to sacrifice the interest conception for the sake of

¹⁴ H. Steiner, *An Essay on Rights* (Oxford, Blackwell, 1994), pp. 56–7.

¹⁵ Steiner, *An Essay on Rights*, pp. 56–8, 61, 73.

¹⁶ Steiner, *An Essay on Rights*, pp. 80–1, 92.

complete logical coherence is to accord priority to logic over (moral and political) experience.

The interest conception of rights has been systematized by Raz. He suggests that A has a right to *x* only if the *interest* A has in having *x* is a *sufficient reason* for imposing a duty on B. Conceptions of interests are determined by *ultimate values*. Thus, rights are dependent on ultimate values, which, Raz allows, are contested. Although those with different values may agree on certain rights, nevertheless rights claims will remain vulnerable to disagreement deriving from conflicting ultimate values.¹⁷ Despite this weakness, however, Raz's analysis is useful in several ways. Firstly, in grounding rights in *interests*, it captures a central feature of the concept of natural or human rights in the classical tradition from Locke to the UN. Secondly, it provides a systematic framework for relating ultimate values, interests, rights and duties. Thirdly, by providing this framework, it makes possible a systematic analysis of the relation between individual and collective rights. *Since value-based interests ground rights, the conceptual relations between individual and collective rights depend on the kinds of values and interests that may ground the putative rights.*

Raz's account thus allows for the derivation of both individual and collective rights from fundamental interests. Individuals, he argues, have an interest in living in communities. Communities can have collective interests, such as the interest in self-determination. There is, however, no *individual* right to collective self-determination, because the realization of collective self-determination imposes far-reaching constraints on the actions of others: the interests of no individual are sufficient reasons for imposing such heavy burdens on others. But nations can have such rights. Raz suggests two reasons why nations and other collectivities may have rights that are not reducible to individual rights. The first is that only the interests of collectivities are of sufficient *weight* to justify the imposition of the correlative duties. The second is that some interests are interests in *collective goods*—such as the interest in collective self-determination—and only collectivities may be the holders of rights to collective goods.¹⁸ Moreover, there is no general rule giving either individual rights or collective goods priority in cases of conflict.¹⁹ Raz thus does not recognize that individual human rights have the special status in relation to collective goods that they are given in international law; and he leaves individual rights more vulnerable to violation by governments claiming to promote the common good than is permitted by human rights considerations.

Raz's analysis is useful in identifying interests as the grounds of rights and in giving a coherent account of the conceptual relation between individual and collective rights. He fails to give a plausible account of *human* rights, however, because he gives no sort of priority to individual rights over collective goods and because he grounds rights in contestable values. Thus, Raz is too 'communitarian' and too 'relativist' to provide theoretical support for the idea of universal human rights.

¹⁷ J. Raz, *The Morality of Freedom* (Oxford, Clarendon, 1986), pp. 166, 180–1.

¹⁸ Raz, *The Morality of Freedom*, pp. 174, 190, 194, 207–9, 288–9.

¹⁹ Raz, *The Morality of Freedom*, pp. 216, 250–7, 308–13.

Universal Human Rights

Human rights are universal: *everyone* has, for example, the right to life, liberty and security. Raz derives rights from interests and values and thereby leaves the universality of human rights in question. Gewirth, in contrast, derives *universal* human rights from what he claims to be a universal feature of morality. All moralities, he holds, impose duties on individuals, and thereby require *actions*. Because 'ought' implies 'can', duties presuppose *rights* to the generic requirements of action: freedom and well-being. There are therefore universal human rights to freedom and well-being.²⁰

Gewirth can recognize collective rights but collective rights are necessarily derivative from individual human rights. This attempt to derive the priority of individual human rights logically from a supposedly universal conception of morality attempts to prove too much. Those moralities that do not recognize individual rights but only duties to the collective good are not logically incoherent. Even if they must logically recognize that each individual has the right to the freedom and well-being necessary to do his or her duty, they are not *logically* required to recognize the priority of individual human rights over the collective good. Gewirth attempts to establish the universality of human rights and the priority of individual rights by claiming that a liberal conception of agency is implicit in all moralities. This claim is implausible.

Donnelly defends universal individual human rights but rejects the concept of collective human rights. He holds that one has human rights because one is a human being. Only individual persons are human beings, so that only individuals can have human rights. In the area defined by human rights the individual has *prima facie* priority over social interests. Yet he acknowledges that individuals must be members of social groups if they are to lead worthy lives. Individuals, therefore, have duties to society and society has correlative rights. Societies may legitimately constrain the exercise of many human rights, and should balance individual rights with individual duties. But it does not follow that society or any other social group has human rights, in his view.²¹

Donnelly's position leads him to make some inconsistent judgments. On the one hand he admits that the exercise of human rights may sometimes destroy groups. In such cases, human rights should ordinarily be given priority. It is morally preferable that groups disappear as a consequence of the exercise of the human rights of their members than that they should be protected by enforcement of group membership.²² On the other hand, some societies do not recognize human rights, but protect many of the interests that are protected by human rights. The introduction of human rights into such societies might diminish the prospects for a dignified life. In such situations Donnelly accords priority to the collective good.²³

Donnelly therefore allows the collective good to 'trump' individual human rights in some normal and some extraordinary situations, and yet would protect individual human rights even at the expense of *group survival*. Because

²⁰ A. Gewirth, *Reason and Morality* (Chicago, University of Chicago Press, 1978) and *Human Rights: Essays on Justification and Applications* (Chicago, University of Chicago Press, 1982).

²¹ J. Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, Cornell University Press, 1989), pp. 1, 9, 16, 19–21, 57–8, 68–9, 90, 143–5.

²² Donnelly, *Universal Human Rights*, pp. 58–9, 70, 151–2.

²³ Donnelly, *Universal Human Rights*, pp. 59, 67, 151–3.

he lacks a coherent theory of individual and collective rights, he arbitrarily rejects the concept of *collective human rights* while according considerable weight to *the collective social good*. The concept of collective human rights, he believes, is especially dangerous when it is proposed as a *prerequisite* for other human rights.²⁴ But it cannot plausibly be denied that there are collective preconditions for the protection of individual human rights, and that, while collective rights may be dangerous for individual human rights, it may be important to recognize collective human rights as the preconditions for other human rights.

Donnelly and Gewirth both attempt to escape the implicit relativism of Raz's conception of rights. Donnelly, however, fails to maintain consistently the priority of individual human rights over the collective good, or to acknowledge that, whatever their dangers, some collective human rights are a precondition for individual ones. Gewirth for his part consistently treats collective rights as derivative from individual human rights, but does so only by implausibly claiming that a liberal conception of agency is presupposed by all moralities. The inadequacy of both positions highlights the need for a coherent account and an effective reconciliation of individual and collective human rights. We must now see whether this is possible.

Collective Human Rights

Van Dyke maintains that doctrines that recognize only individual rights are not universally relevant to contemporary political problems. Many societies are characterized by radical cultural heterogeneity and can function only on the basis of collective rights. States have collective rights. Sub-state collectivities may rightly become states and they do not acquire moral rights only when they become states.²⁵ Liberal theory accords collective rights to nation-states but not to nations without states. However, nation-states have rights because they protect interests. Collectivities within nation-states have rights for the same reason, he concludes.²⁶

Equally, we could argue, collective rights may be necessary to protect individual rights. The individualistic, egalitarian form of democracy in ethnically plural societies may lead to the violation of the human rights of members of minority collectivities.²⁷ The targets of many of the worst human-rights violations since 1945 have been ethnic groups as such.²⁸ These violations are often conceived by the perpetrators and perceived by the victims in collective terms. Victim-groups often plausibly believe that such collective problems require collective solutions. Since the problem consists of attacks on groups, the solution requires the defence of groups. Since the injustice is

²⁴ Donnelly, *Universal Human Rights*, pp. 146–7.

²⁵ V. Van Dyke, 'The individual, the state and ethnic communities in political theory', *World Politics*, 29 (1976–77), 343–369, pp. 355, 357, 364, 367; Van Dyke, *Human Rights, Ethnicity, and Discrimination*, pp. 195, 207–8; Van Dyke, 'Collective entities and moral rights: problems in liberal-democratic thought', *Journal of Politics*, 44 (1982), 21–40, p. 25.

²⁶ Van Dyke, *Human Rights, Ethnicity, and Discrimination*, pp. 119, 207.

²⁷ Van Dyke, *Human Rights, Ethnicity, and Discrimination*, pp. 14–6, 129, 205, 206, 219, 222–3; 'Collective entities and moral rights', p. 24.

²⁸ T. R. Gurr and J. R. Scarritt, 'Minorities at risk: a global survey', *Human Rights Quarterly*, 11 (1989), 380.

promoted by hostile attitudes towards groups, the solution requires the promotion of the dignity of groups.²⁹ This argument locates the human-rights problematic not only in individual–state relations but also in the relations among groups and in state–group relations.

If collectivities have rights, they surely have the right to exist. General Assembly Resolution 96 (I) declared genocide to be ‘a denial of the right of existence of entire human groups’. The UN Genocide Convention is intended to protect groups from physical destruction. However, if groups have the right to exist, they surely have the right to be protected from economic and cultural destruction.³⁰ Yet cultural groups have no right to state support if their decline is the outcome only of a set of free choices. Whether they have a right to protection from the results of previous assimilationist policies is not certain.³¹ Rights of such groups to state aid are certainly subject to the condition that protection of their culture does not violate important rights of others.³²

If we look at actual practice, we can see a widespread recognition of collective rights, as well as the difficulties which they pose. States often adopt policies, such as affirmative action or positive discrimination, to provide special advantages to members of groups that have suffered from historic injustice. Such policies accord priority to the collective rights of favoured groups over individual rights to equality of opportunity of those who are not members of these groups.³³ These are collective-rights policies of which only some individual members of the favoured collectivities are the beneficiaries. They have generally been accepted as permitted, if not required by human-rights principles.

The interests of collectivities may justify special representation in government, even though this violates the principle of individual equality of citizenship. The constitutions of many ethnically divided societies provide for proportional ethnic representation. These are designed to protect the individual human rights of members of minority groups, to protect collective interests of such groups, and to maintain peace.³⁴ Similar collective rights are recognized where constitutions provide for political devolution to sub-state regions in which national minorities are regional majorities.³⁵ A dilemma arises when a community that has a plausible rights-claim to self-government to protect some important rights of its members has political traditions which

²⁹ R. Kuptana, ‘The universality of human rights and indigenous peoples: new approaches for the next millennium’, Rights and Humanity Roundtable, *Strengthening Commitment to the Universality of Human Rights* (Amman, Jordan, April 1993), pp. 4, 10.

³⁰ Van Dyke, *Human Rights, Ethnicity, and Discrimination*, pp. 20, 84, 130; V. Van Dyke, ‘Justice as fairness: for groups?’, *American Political Science Review*, 69 (1975), 607–614, p. 609.

³¹ Thornberry, *International Law*, Part II, pp. 176–7; ‘The UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities: background, analysis and observations’, in Phillips and Rosas (eds), *The UN Minority Rights Declaration*, pp. 22–3; D. Sanders, ‘Collective rights’, *Human Rights Quarterly*, 13 (1991), 370; Van Dyke, *Human Rights, Ethnicity, and Discrimination*, pp. 80–1.

³² Sanders, ‘Collective rights’, p. 378; J. Waldron, ‘Minority cultures and the cosmopolitan alternative’, *University of Michigan Journal of Law Reform*, 35 (1992), 751–93.

³³ Van Dyke, *Human Rights, Ethnicity, and Discrimination*, pp. 134–6, 153–4, 157–8.

³⁴ Van Dyke, *Human Rights, Ethnicity, and Discrimination*, pp. 10–1, 14–5, 26–8, 55–6, 76–7, 96–7, 101, 125–6, 139.

³⁵ V. Van Dyke, ‘Human rights and the rights of groups’, *American Journal of Political Science*, 18 (1974), pp. 730, 734–5.

violate some other human rights, including the equal right to political participation.³⁶

Recent proposals for the recognition of peoples' rights to development, peace, a satisfactory environment, etc., are undoubtedly aimed at protecting important human interests, but they also raise several conceptual problems: the subjects of the rights are uncertain; potential conflicts between peoples' rights and individual human rights are not addressed; and the holders and the nature of the correlative duties are unclear. The formulation of these rights may have the merit of drawing attention to the structural dimensions of human-rights violations, but it is conceptually unsatisfactory and potentially dangerous insofar as it encourages states to violate individual human rights in the name of people's rights.³⁷

The problems raised by some collective rights-claims, however, do not refute the case for the recognition of the concept of collective human rights. Van Dyke argues that liberal democracies in fact recognize collective rights and they are right to do so because collective rights may be necessary to protect individual rights and collective interests, and to maintain peace among groups. He calls for a balance between individual and collective rights, but his empirical and pragmatic approach to rights leaves the supporting theory unclear. Can we identify any principle(s) to help determine how this balance should be struck?

Raz suggested that the most fundamental human interest is in the quality of life. One important element in the quality of life is well-being, which refers to the goodness of a life *from the point of view of the person living it*.³⁸ Kymlicka argues similarly that the value of human lives derives not only from their conformity to external standards of the good but also from the beliefs of the individuals who lead them that they are good. Communities are necessary to good individual lives, but individuals must have some autonomy from the communities of which they are members to choose specific forms of good life.³⁹

Individuals *have* autonomy (i.e., the capacity to choose) because community cultures are not fixed and homogeneous, and there are often internal differences over their interpretation. Individuals *should have* autonomy (i.e., the right to choose) because communities can be oppressive. Communities are also often stratified. Individuals who are required to conform to the community are required to conform to the wills of those with the most power in the community. It is obviously question-begging to assume that this power is legitimate.⁴⁰

Individuals have a fundamental interest in leading good lives, and in those rights necessary to good lives, including the right to live in communities that support good lives. The rights of individuals should be limited by the duty to

³⁶ *Native Women's Assn of Canada v. Canada*, *Dominion Law Reports* (Fourth Series), 95 (1993), 106-27.

³⁷ Crawford, *The Rights of Peoples*.

³⁸ Raz, *The Morality of Freedom*, p. 289.

³⁹ W. Kymlicka, *Liberalism, Community and Culture* (Oxford, Clarendon, 1989), pp. 10-11; *Contemporary Political Philosophy: an Introduction* (Oxford, Clarendon, 1990), pp. 203-5, 207-9, 210-1; 'Liberalism, individualism, and minority rights' in A. C. Hutchinson and L. J. M. Green (eds), *Law and the Community: the End of Individualism?* (Toronto, Carswell, 1989), pp. 188-94, 197-8.

⁴⁰ Kymlicka, *Liberalism, Community and Culture*, pp. 89, 95; *Contemporary Political Philosophy*, pp. 223-4, 228.

support communities of this kind. Kymlicka argues that communities and their cultures should be protected only for the sake of individuals, but cultures should be protected when such protection is necessary to maintain the basic rights of individuals, and that the protection of group cultures may be inconsistent with an absolute individual right to equal citizenship.⁴¹ Where a set of individuals requires a *particular culture* for its chosen way of life, it has a right to have it protected against certain actions of outsiders. The exercise of certain rights may enable a majority to destroy the culture, and thereby the opportunity for a good life of a minority. Since individual rights are justified by their contribution to good lives, there is here a conflict of rights, and rights that are helpful but not necessary to good lives should yield to rights that are necessary.⁴² Some restriction of the individual rights of insiders may also be justified to prevent actions that would undermine communities which are necessary for autonomous choices. What makes this justification of community restriction of individual rights liberal is that its purpose is to protect a rights-supporting community.⁴³

The Problem of Toleration

Kymlicka proposes a liberal theory of collective rights. It is liberal because it assumes that individuals have an interest in autonomy. It recognizes collective rights because it holds that such rights may be necessary conditions of individual autonomy. The theory is attractive because it provides a clearer and more coherent solution than any rival to the problem of reconciling collective and individual human rights. The collective rights that Kymlicka defends are human rights because they are grounded in the same *individual* human interest in self-determination that grounds individual human rights.

The liberal theory of collective rights has, however, been criticized for endorsing cultural imperialism and thereby violating the liberal principle of toleration. Liberal societies have been historically imperialistic, and those who are still fighting the results of liberal imperialism sometimes characterize the vocabulary of human rights as an alien discourse. Subject peoples, it is said, are forced to use the master's conceptual weapons to combat the master's domination. Indigenous peoples, for example, appeal to the discourse of human rights, but only because the terms of discourse are themselves set by liberal hegemony. From the point of view of the oppressed, oppression can be adequately characterized only in terms of their own cultures. The discourse of individual rights subverts collectivist cultures. Liberal societies may be 'tolerant', but dominant liberalism sets the terms of toleration. The discourses of liberal rights and those of non-liberal communities are incommensurable, and thus the imposition of the former is part of the liberal imperialist project.⁴⁴

⁴¹ Kymlicka, *Liberalism, Community and Culture*, pp. 24, 64–6, 78, 80, 82, 162–3, 165–6, 175, 177–8, 231, 254; 'Liberalism, individualism, and minority rights', pp. 193–4, 196–8, 200, 202.

⁴² Kymlicka, *Liberalism, Community and Culture*, p. 226.

⁴³ Kymlicka, *Liberalism, Community and Culture*, pp. 151, 169–71, 189, 200, 239–40, 242; *Contemporary Political Philosophy*, p. 232.

⁴⁴ B. Parekh, 'Decolonizing liberalism' in A. Shtromas (ed.), *The End of 'Isms?* (Oxford, Blackwell, 1994), pp. 85–103; M. E. Turpel, 'Aboriginal peoples and the Canadian Charter: interpretive monopolies, cultural differences', *Canadian Human Rights Yearbook*, 6 (1989–90), 3–45.

This argument is too strong. It treats pre-colonial cultures as authentic and considers appeals to human rights as distortions imposed by liberal hegemony. In fact imperialism produces various responses in traditional communities, and it is arbitrary to treat only the most conservative as authentic. The liberal theory of collective human rights may be 'alien' to traditionalists, but it may be well suited to protect the collective interests of communities and the fundamental interests of individuals under contemporary conditions. The appeal to the value of cultural difference that supports the critique of imperialism can also support the defence of individual rights against oppressive communities.

The anti-liberal critique of collective human rights is not, therefore, a plausible solution to the problem of defending collective and individual interests. Kymlicka's liberal theory of collective rights has, however, also been criticized on the ground that its conception of the good life is too narrow. Some individuals, it is said, may have a conception of the good that requires them to conform to the norms of communities that do not value autonomy. Liberalism promotes an adversarial and competitive culture and it is not irrational to prefer one that is co-operative and solidaristic. Kymlicka requires communities to respect individual autonomy. On this view liberal societies are justified in imposing their values on communities that have chosen other values.⁴⁵ Kukathas, in contrast, argues that liberals should tolerate communities that do not value autonomy, provided that they recognize a right of exit and certain basic human rights.⁴⁶

There are two important issues here. The first concerns the right of exit. Individuals have the right to leave communities that they find oppressive. The community certainly has a correlative duty not to use force to prevent an individual from leaving. It is less clear whether the community may use social pressure to the same end. There is no general solution to this problem, since social pressure can vary from allowable friendly persuasion to intolerably oppressive sanctions. The right of exit may also be nullified by the denial of the information and skills that are necessary to make such a choice. Communitarians are likely to emphasize the right of the community to socialize its members into its values.⁴⁷ Liberals may well hold that education for autonomy is necessary for an effective right to exit.⁴⁸ Liberal theory generates a dilemma because it endorses collective and individual rights here that may be mutually incompatible.

The second issue is that of liberal imperialism. This charge is overstated in two ways. Firstly, the term 'imperialism' implies the self-interested use of overwhelming power, which is not typical of human-rights enforcement. Secondly, supporters of human rights normally seek to defend the weak against the strong. The charge of unjust domination can therefore be turned back by liberals against illiberal communitarians.

⁴⁵ J. Chaplin, 'How much cultural and religious pluralism can liberalism tolerate?' in J. Horton (ed.), *Liberalism, Multiculturalism and Toleration* (Basingstoke, Macmillan, 1993), pp. 39–46.

⁴⁶ C. Kukathas, 'Are there any cultural rights?', *Political Theory*, 20 (1992), 105–39, pp. 113, 114, 116, 120, 122, 124, 128.

⁴⁷ C. Kukathas, 'Cultural rights again: a rejoinder to Kymlicka', *Political Theory*, 20 (1992), 674–80, pp. 677–8.

⁴⁸ D. Fitzmaurice, 'Liberal neutrality, traditional minorities and education' in Horton, *Liberalism, Multiculturalism and Toleration*, pp. 67–8.

It is now commonly suggested that the liberal principle of toleration requires that conflicts between liberals and illiberal communities should be settled by dialogue.⁴⁹ However, dialogue is an inadequate solution for two reasons. The first is that it begs the question of the right to participate in the dialogue. The second is that, if the community perpetrates serious violations of the rights of its members, the liberal state should enforce those rights. Anti-imperialist values cannot plausibly be advanced to defend tyrannical communities. Most liberals value individual autonomy and cultural pluralism. Individuals may, however, choose illiberal cultures. The liberal state may intervene in illiberal communities for the sake of individual rights or tolerate a partly illiberal pluralism in order to keep the peace between different communal conceptions of the good.⁵⁰

Liberals from Locke to the UN have held that respect for rights is conducive to peace.⁵¹ Kymlicka, however, objects to the argument that minority rights should be recognized for the sake of peace on the ground that it sacrifices the requirements of justice to those of power and would give the fewest rights to the weakest minorities, who need rights most.⁵² It is surely right to distinguish between what is required by power and what by justice. However, peace, too, has a moral value, which derives in part from the fact that human rights are better protected in peace than in war. The dilemma is that giving priority to peace can be a thugs' charter, while giving priority to justice can be utopian. There are, however, empirical grounds for believing that well-judged collective-rights policies are conducive to peace.⁵³

The question of collective human rights therefore leads to the familiar problem of toleration in liberal theory. The problem arises because some, though not all, versions of liberalism are committed to a pluralism of values that may conflict with each other.⁵⁴ In particular, liberals may be committed to some degree of toleration of communities that do not respect autonomy and human rights. Contemporary liberal theory has not found a coherent resolution of the dilemma of choosing between liberal imperialism and illiberal collaborationism.⁵⁵ Raz's value of individual well-being suggests that toleration should be extended to some forms of life in which autonomy is not valued and human rights are imperfectly recognized. This is a liberal principle of toleration because it holds the fundamental interests of individuals to be ultimate values. But the same values suggest that autonomy and individual human rights are normally of the first importance and that liberals should have

⁴⁹ Parekh, 'Decolonizing liberalism', p. 103; W. Kymlicka, 'The rights of minority cultures: reply to Kukathas', *Political Theory*, 20 (1992), pp. 143, 145. Kymlicka's position on the enforcement of the liberal rights of individuals in illiberal minority communities is ambiguous. At times he favours judicial enforcement of individual rights, for example to protect women against discrimination: 'Liberalism, individualism, and minority rights', pp. 187–8.

⁵⁰ Kukathas, 'Are there are cultural rights?', pp. 112, 117–8; 'Cultural rights again', p. 680.

⁵¹ Locke, *Second Treatise*, para. 224; Thornberry, 'The UN Declaration', pp. 25–6, 36–7; Phillips and Rosas, *The UN Minority Rights Declaration*, p. 123.

⁵² Kymlicka, *Liberalism, Community and Culture*, pp. 215–6.

⁵³ T. R. Gurr, *Minorities at Risk: a Global View of Ethnopolitical Conflicts* (Washington DC, United States Institute of Peace Press, 1993).

⁵⁴ G. Crowder, 'Pluralism and liberalism', *Political Studies*, 42 (1994), 293–305; I. Berlin and B. Williams, 'Pluralism and liberalism: a reply', *Political Studies*, 42 (1994), 306–9.

⁵⁵ For a strikingly incoherent attempt to resolve this dilemma by a leading liberal philosopher, see Rawls, 'The law of peoples'.

the courage to be intolerant of disregard of these values except when such disregard is necessary to individual well-being.

Conclusions

Collective human rights are rights the bearers of which are collectivities, which are not reducible to, but are consistent with individual human rights, and the basic justification of which is the same as the basic justification of individual human rights. Some human-rights theorists argue either that there are no collective human rights or that there are collective human rights but all such rights are derivative from individual human rights. I have argued that there are non-derivative collective human rights which are justified by the grounding value of the interest that individuals have in the quality of their own lives.

Dworkin has proposed that the ground of those individual rights that should 'trump' ordinary claims of the common good is the right to equal concern and respect.⁵⁶ I have argued elsewhere that this is the most plausible ground for the theory of human rights.⁵⁷ I wish now to suggest that the right to equal concern and respect is itself grounded on the interest every individual has in the quality of his or her own life. We have seen that the doctrine of human rights and the associated liberal value of autonomy have been criticized on the ground that they fail to recognize that individuals can lead worthy lives in societies which do not recognize the claims of human rights and which do not value autonomy.⁵⁸ However, such defences of heteronomous forms of life appeal to principles of concern and respect for persons and of the interest that individuals have in the quality of their lives which are similar to those that form the bases both of individual and collective human rights. The principles that support individual and collective human rights, therefore, make plausible moral claims both in societies that value autonomy and in those that do not, and consequently have considerable cross-cultural force.

The conditions under which, and the forms in which collective human rights should be recognized are, nevertheless, contingent. This is because the conditions under which the recognition of collective rights is necessary to protect individuals are contingent. For example, the interests of individual members of dominant ethnic groups may be adequately protected by their individual human rights. By contrast, the interests of indigenous peoples or of immigrant minorities and those of their individual members may require the protection of collective rights, such as the right to collective cultural goods. The contingency of collective rights does not, however, distinguish them sharply from individual human rights. For, on my account, rights protect value-based interests from threats, and the interests to be protected and the threats from which they are to be protected must be at least in part subject to contingency. The right to privacy is a good example of an individual human right, the precise formulation of which should vary in different circumstances.

Yet collective human rights have important features that distinguish them from individual human rights. Social collectivities are highly complex, and the

⁵⁶ R. Dworkin, *Taking Rights Seriously* (London, Duckworth, 1977), p. xii.

⁵⁷ M. Freeman, 'The philosophical foundations of human rights', *Human Rights Quarterly*, 16 (1994), 491–514.

⁵⁸ Kukathas, 'Are there any cultural rights?'; Parekh, 'Decolonizing liberalism', p. 101; Turpel, 'Aboriginal peoples and the Canadian Charter', p. 36, footnote 77.

interrelations among collectivities, and between collectivities and individuals, are consequently also very complex. The practice of proclaiming lists of individual rights has been criticized for its insensitivity to the fine grain of social and political life. The project of drafting declarations of collective rights, on which the international community is now embarked, has great potential for conceptual confusion and political danger. The implication of this is not that the concept of collective human rights should be rejected, but that the conceptual and practical relations between collective and individual human rights should be made as clear as possible.

The most difficult problem raised by the concept of collective human rights is how to reconcile the recognition of such rights with individual human rights and other individual human interests, such as the interest in autonomy. Collectivities can violate individual human rights.⁵⁹ The recognition of a 'right to identity' that is now associated with minority rights in international relations may be well-intentioned, but is potentially dangerous.⁶⁰ For individuals to lead good lives in a complex world, a set of rights more sensitive than the crude 'right of exit' from oppressive groups is required.⁶¹

This problem is related to another, which is the difficulty of identifying the subject of collective rights. Membership of groups can be fluid and uncertain. International law has experienced great difficulty in defining 'minorities'.⁶² Collective identities can be manipulated and/or coercively imposed, and they can form the basis of unjust demands. Liberal individualism has often been characterized as egoistic and collectivism as altruistic. This is quite mistaken, for individualism can emphasize responsibility as well as rights and collectivism can be ruthlessly selfish.⁶³ Recognition of collective rights may fix collective identities too rigidly and thus oppressively.⁶⁴ Identity formation is a complex process, usually involving the interactions of different collectivities and individuals. Communities and cultures are not static, so that the interplay of identity, difference and rights should not be arbitrarily terminated for the sake of some hegemonic interpretation of community.

Collective human rights are, however, not reducible to individual human rights. The right to collective self-determination is not reducible to any set of individual human rights, though it may be *dependent on* and *necessary for* such rights.⁶⁵ Liberal individualism has traditionally failed to recognize its own

⁵⁹ T. Isaac, 'Individual versus collective rights: aboriginal people and the significance of *Thomas v. Norris*', *Manitoba Law Journal*, 21 (1992), 618–30; S. Poulter, 'Ethnic minority customs, English law and human rights', *International and Comparative Law Quarterly*, 36 (1987), 589–615; Native Women's Association of Canada, Press Statement, *Native Women, The Charter and the Right to Self Government* (Ottawa, 9 May 1992).

⁶⁰ Thornberry, 'The UN Declaration', pp. 19, 38; Phillips and Rosas, *The UN Minority Rights Declaration*, pp. 124–5.

⁶¹ Waldron, 'Minority cultures'.

⁶² Gurr, *Minorities At Risk*, pp. 10–3; Thornberry, 'The UN Declaration', p. 33.

⁶³ G. Hofstede, 'Foreword', in U. Kim *et al.* (eds), *Individualism and Collectivism: Theory, Method, and Applications* (Thousand Oaks CA, Sage, 1994), p. xiii.

⁶⁴ A. Phillips, 'Democracy and difference: some problems for feminist theory', *Political Quarterly*, 63 (1992), pp. 85, 87; R. G. Wirsing, 'Dimensions of minority protection' in R. G. Wirsing (ed.), *Protection of Ethnic Minorities: Comparative Perspectives* (New York, Pergamon, 1981), pp. 7–8.

⁶⁵ Julia Tao has suggested that the right to freedom of the press is a collective right that is not reducible to a set of individual rights: personal communication, 22 September 1994. A similar idea is expressed in Raz, *The Morality of Freedom*.

dependence on the assumption that nation-states have collective rights. This lacuna in liberal-democratic theory is manifested by the problematic status of indigenous peoples, who are *nations without states*, and who have been variously conceptualized by liberal states as alien peoples, as minorities with special rights, and as aggregates of individuals, but rarely with respect for either their collective values or the rights of their individual members. The egalitarianism of both the liberal and republican theories of democracy has also encouraged the neglect or even the oppression of *intra-national minority communities*. These problems have now been recognized in international relations, but international law has so far failed to produce a coherent account of individual and collective rights.

Collective human rights are necessary in some situations for justice and peace. There is, however, a tension between these two objectives of collective-rights policy because the desire for peace may encourage capitulation to collective demands that are unjust. This problem is, however, only one kind of manifestation of the general problem that power is often unjust. This problem lies at the heart of all politics. The theoretical concept of collective human rights cannot solve the practical problems posed by unjust collectivities. It can, however, solve an important problem of political theory, and this may have beneficial practical consequences. Recognition of collective human rights and the reconciliation of collective with individual human rights blur the distinction between individualist and collectivist conceptions of rights. This does not abolish all disagreements of value and policy between individualists and collectivists, but it does create a 'third space' in which supporters of these two kinds of value-system can engage in dialogue, and recognizes the value of both individual autonomy and collective solidarity. The concept of collective human rights, therefore, helps to reconcile the values of liberal universalism and cultural pluralism, and thereby provides a theoretical framework for practical policies that might reconcile justice and peace.