Group Agency, Interference and Domination: Renewed Normative Grounds for Collective Rights

Éliot Litalien

Department of Philosophy

McGill University, Montreal, Quebec

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Abstract

The main attempts to justify collective rights for cultural or national minorities that are available in the literature, among them those of liberal multiculturalists such as Kymlicka and Patten, have failed to coherently do so. In this dissertation, I offer a new justification for such collective rights, a justification that is built on normative grounds wholly different from those of liberal multiculturalism.

In Chapter 1, I explain the arguments that lay at the foundations Kymlicka's and Patten's multiculturalist theories and argue that they fail in important and, at least in the multiculturalist framework, insurmountable ways. Most problematically, neither Kymlicka's nor Patten's approach can adequately address the claims made by some of the cultural or national groups that are, purportedly, the subjects of their theories. Moreover, I argue that both authors problematically ground their respective approach in the notion of culture and of its value.

In Chapter 2, I put in place the first pieces of an argument for collective rights for cultural or national minorities that avoid those drawbacks. I argue that some groups qualify as agents because they satisfy the criteria of agency set by the "standard conception of agency." To explain how it is so, I offer a functionalist account of group agency according to which certain groups can realize states of affairs that function as (or play the role of) intentions in the explanation of the group's actions.

I turn in Chapter 3 to normative questions and make two central claims. The first, a conceptual claim, is that certain groups, because they are agents, can be subject to interference and domination. The second, a normative claim, is that the interference or domination that happens at the collective level is a significant moral problem because it will have adverse consequences on a group's members' agency. I conclude by arguing that we therefore have good reason to protect group agents from interference and domination.

Finally, in Chapter 4, I come back to political philosophy and bring the argument home, as it were.

Through the example of Indigenous peoples in Canada, I show how cultural or national groups can qualify as agents and how they can be, as group agents, in a situation of domination, in addition to being often interfered with. It is by building on that concrete case that I argue that what group agents like Indigenous peoples—namely, and more generally, cultural or national groups—need to be adequately protected against interference and domination are (genuinely) collective legal rights to self-determination.

Résumé

Les principales tentatives de justification des droits collectifs pour les minorités culturelles ou nationales disponibles dans la littérature, parmi lesquelles on peut compter les théories multiculturalistes libérales comme celle de Kymlicka ou Patten, échouent à atteindre de façon cohérente leur objectif. Dans cette thèse, je développe ainsi une nouvelle justification pour de tels droits collectifs, une justification qui se bâtit sur des fondements normatifs distinct de ceux proposés par le multiculturalisme libéral.

Dans le premier chapitre, je passe en revue les arguments sur lesquels se fondent les théories multiculturalistes de Kymlicka et Patten et je soutiens qu'ils présentent d'importants et, à tout le moins dans le cadre théorique multiculturaliste, insurmontables problèmes. D'abord, ni l'approche de Kymlicka ni celle de Patten ne peut traiter adéquatement les demandes de certains groupes culturels ou nationaux qui sont pourtant supposés être les principaux sujets de leurs théories. De plus, je soutiens que ceux deux auteurs fondent de manière problématique leur approche respective sur la notion de culture et sur sa valeur.

Dans le second chapitre, je mets en place les premières pièces d'un argument pour des droits collectifs pour les minorités culturelles ou nationales qui évitent ces inconvénients. Je soutiens que certains groupes se qualifient en tant qu'agent parce qu'ils satisfont les critères de l'agentivité mis en place par la « conception standard de l'agentivité ». Pour expliquer comment, j'offre une explication fonctionnaliste de l'agentivité collective selon laquelle certains groupes peuvent réaliser des états de fait qui fonctionnent comme des (ou jouent le rôle des) intentions dans l'explication des actions du groupe.

Au troisième chapitre, je me tourne vers des questions normatives et avance deux points principaux. Le premier, un point conceptuel, est que certains groupes, parce qu'ils sont des agents,

peuvent être sujets à de l'interférence et de la domination. Le second, un point normatif, est que l'interférence et la domination qui peuvent avoir lieu à l'échelle collective constituent un problème moral significatif parce qu'elles ont des conséquences sur l'agentivité des membres d'un agent collectif. Je conclus en suggérant que nous avons donc de bonnes raisons de protéger les agents collectifs contre l'interférence et la domination.

Finalement, dans le quatrième chapitre, je reviens à la philosophie politique et boucle l'argument. Avec l'exemple des peuples autochtones au Canada, je montre comment des groupes culturels ou nationaux peuvent se qualifier en tant qu'agents et comment ils peuvent se retrouver, en tant qu'agents collectifs, dans des situations de domination ou rencontrer de l'interférence. C'est en construisant sur ce cas concret que je soutiens que ce dont les agents collectifs comme les peuples autochtones—à savoir, les groupes culturels ou nationaux—ont besoin pour être adéquatement protégés contre l'interférence et la domination sont des droits légaux à l'auto-détermination qui sont véritablement collectifs.

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While it is not, strictly speaking, a person—it is undeniably an agent, though—I have to start by recognizing the support of the Fonds de recherche du Québec—Société et Culture (FRQSC) who funded a part of my stay at McGill University.

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Introduction

0.1 The central issue

Liberal democratic societies have as one of their guiding principles respect for individuals and are, consequently, individual-rights-focused regimes. That is evident in the United States where courts very deliberately and publicly take on themselves to guard against infringement on individual rights. Still, the same, although to varying degrees, can be remarked about the liberal democratic regimes of other countries, many of which have adopted Bill-of-Rights-like legislation. The last forty years have seen this focus on individual rights criticized and challenged by seemingly reasonable demands from different *groups* or *collective entities*[1] to be recognized as legitimate sources of moral claims and to, accordingly, be allowed some degree of self-determination or autonomy. Most prominent amongst those groups are cultural and national minorities, such as Indigenous peoples in Canada or the United States, Catalans, Scots or Acadians (at least in Canada).[2]

In response to those claims, many liberal philosophers have recognized that the members of certain groups, because they form minorities whose culture is (to varying degrees) distinct from that of the majority group, face obstacles that members of the majority do not. At the most general level, we can note that it will likely be much more difficult for a member of such a minority group to live according to her own (culturally-informed) conception of the good than it will for a member of the majority culture. That is of course because the majority's culture will tend to receive much more support from the state and other public institutions, both material and expressive or symbolic, than

[1] In the course of the dissertation, I use *collective* and *group*, as adjectives, interchangeably. As such, collective agency and group agency, say, mean the same thing.

[2] This is not to say that those groups have not been making those demands for more than thirty years. In fact, most of them have been fighting for their autonomy for a very long time. It is rather that those demands have been *reframed*, in the last forty years, as challenges to the almost hegemonic liberal political philosophy and to the individual-rights-focused policies it inspired and justifies. My goal here is really not to offer a history of the relation between liberalism as a philosophy or as a policy agenda and minority claims. For a short version of such a history, see Kymlicka (1995, ch. 4).

minority cultures will. This can easily be observed for some of the groups that I already mentioned above. Acadians in the Canadian Maritimes, for instance, will have much more difficulty to receive services in (Acadian) French, their *own* language, than Anglophones from the Maritimes will have to receive services in English.[3] For many Indigenous peoples, living according to their own conception of the good will be rendered very difficult by many forms of regulation or legislation that limit the sovereign control they can exercise on their ancestral land and territory, but which do not affect members of the majority culture—at least not in any meaningful way. Many liberal philosophers, then, have recognized that such disadvantages constitute what we could label "cultural" injustices.[4] Not all liberal theorists, though, have followed the lead of culture-sensitive liberals.

Actually, we can break down liberal responses to "cultural" injustices into four broad categories. First, nonculturalist liberals deny that culture has particular significance for justice and that any injustices that are the result of cultural (or national) belonging can be ironed out through non-culture-specific liberal policies.[5] Others, such as Tamir (1993; 1999) or Kukathas (1992; 2003), affirm the special significance of cultural belonging, but still argue that no collective rights are needed in order to protect cultural minorities.[6] The differences between those two approaches are subtle and mostly have to do with how they treat the notion of culture or cultural belonging. What they share is much

[3] A few quick comments on this point seem warranted. First, one must note that most Acadians speak English, often as their first language. Also, New Brunswick, the province with the largest Acadian population in Canada, is (the only) officially bilingual. That is to say that Acadians can receive (most) governmental services in French if they wish so. Finally, I said that Acadians' *own* language is Acadian French, but it would probably be more accurate to say that, for most communities, it is a *form* of Acadian French. In New Brunswick, for instance, the Acadians' traditional language is Chiac, a form of Acadian French that incorporates elements of English.

[4] I do not know if he counts as a liberal philosopher, but Taylor has been quite influential in this movement toward a form of culture-sensitive liberalism. See his "Politics of Recognition", originally published in 1992 and reprinted as Taylor (1994). See also Kymlicka (1989), which is another early plea for a more culturally sensitive liberal philosophy.

[5] Barry (2001), for instance, is one such liberal.

[6] I have to recognize that this is a very broad brushstroke that does not do justice to the subtleties of and the difference between a view like Tamir's and one like Kukathas'. Moreover, the distinction between Tamir's liberal nationalism and Kymlicka's liberal multiculturalism might not be self-evident. Since I do not really have space to spend more time on those questions, though, I will simply flag that my characterization of Tamir and Kukathas as liberals who recognize the importance of cultural belonging but who think that some uniform individual rights are sufficient flattens out important theoretical questions.

more important: proponents of both those approaches argue that *uniform individual* rights are sufficient to deal with (cultural) diversity in pluralist societies. A third approach, liberal multiculturalism, argues against that conclusion. Kymlicka (1995) and Patten (2014), who offer the two most systematic attempts at developing liberal theories of minority rights in the multiculturalist framework, argue that because of the special role culture plays in our lives the "basic liberal package"[7] needs to be supplemented by "group-differentiated rights"[8] for members of cultural or national minorities. Therefore, they deny that "classic" individual rights suffice to redress injustices that spring from national or cultural belonging. They rather argue that we need special "minority rights." For liberal multiculturalists, the relevant rights still have *individuals* as subjects: they are meant to protect individuals. This contrasts with the final kind of response to "cultural" injustices, namely that we need *genuine* collective rights—that is, rights whose subjects are groups and not individuals—in order to redress or prevent such injustices.[9]

In what follows, I will not engage with the first two kinds of approaches. I take it that liberal multiculturalists and other proponents of "the politics of recognition" have adequately showed, even if they have not convincingly resolved all of the difficulties raised by their liberal opponents, that nonculturalists like Barry or liberal "nationalists" like Tamir are wrong to deny that minority cultures need "special" or "minority rights." My focus will mostly be on liberal multiculturalism, then. I share important intuitions with both Kymlicka and Patten. Maybe most importantly, I share their guiding belief that the claims to self-determination made by some cultural or national minorities, such as Indigenous peoples, should be taken seriously. As it is Kymlicka's and Patten's, that is the *starting point* of the argument developed in this dissertation. However, Kymlicka's and Patten's liberal multiculturalist theories present problems that appear to be, at least in the framework they propose,

[7] That is Patten's (2014) term.
[8] That is Kymlicka's (1995) term.
[9] Proponents of such an approach are much less common. One can think of Seymour (2008; 2017) here.

insurmountable.

First, even if it is true or, at least, plausible, that the individual rights approach promoted by multiculturalists efficiently address the claims made by most cultural groups—such as those created by immigration, by fostering the integration of the members of those groups in the "host" society while recognizing, to some extent, a right to difference—it is harder to see, contrary to what Kymlicka (1995) or Patten (2014) argue, how the liberal framework of individual rights can similarly address the demands of groups which are not asking for integration, but which are rather claiming rights to self-determination. One could argue, for instance, that Canadian multiculturalism has notably failed to deal with the demands of the First Nations and other Indigenous peoples, and with, even if less dramatically, the self-determination claims of the Québécois.

Second, multiculturalist approaches seem to dubiously put emphasis on the value of culture (or of one's culture) for either individual autonomy or individual identity. While one has to acknowledge that culture or cultural belonging plays an important role in people's identity and capacity for autonomy, it is also hard to see what is so special about it that we should design institutions or mechanisms to protect, often against individual-rights claims. As Benhabib (2002, 2) notes, "[*c*]*ulture* has become a ubiquitous synonym for *identity*." But, although it may be said to be more pervasive, one's cultural belonging is not the only value that informs one's identity and one's capacity for autonomy. To that extent, multiculturalists' emphasis on the notion of culture seems ill-founded or, at least, highly debatable. That being said, I think that multiculturalists' goals, which are commendable, could better be achieved if the emphasis on the special value of culture or cultural belonging was forsaken.

I argue here that to overcome these two main problems,[10] one needs to make two important shifts in how one responds to "cultural" injustices. The first of these shifts is to aim at justifying *genuine* collective rights and not only, as multiculturalists have argued, individual "group-differentiated rights."

[10] To which I come back in Chapter 1.

Only in that way will one be able to adequately address the claims made by groups that do not seek to be integrated in a larger or "host" society but who rather seek self-determination. The second shift is to abandon the notion of culture and its value as a moving part in the *normative* argument for collective rights. It is why I propose that we should rather try to highlight the interference and domination that those groups experience: doing so helps to circumvent the problems encountered by an approach that focuses on culture. And it offers more effective tools to address the claims to recognition and self-determination of many national and cultural minorities.

This dissertation's main purpose, then, is to develop, in the face of some shortcomings of the multiculturalist approaches, new normative grounds for the recognition of collective rights for certain cultural and national minorities. The central argument of that project proceeds in three main steps. First, I argue that certain groups can qualify as agents because they meet the criteria set by the standard conception of agency—which conceives of agency as a capacity for intentional action. Then, I contend that because certain groups are agents, they can endure constraints to their agency, such as interference and domination. Finally, I conclude that if one's goal is to enable people's agency, which is something that seems quite valuable, then the recognition of collective rights, at least for national or cultural minorities that qualify as agents, is a necessary condition for the effective protection and fostering of the agency of the individuals who constitute these groups. In other words, the central argument of this dissertation is that certain national or cultural minorities—Indigenous communities, for instance—are *owed* collective rights to self-determination in order to protect their agency and, in final analysis, the agency of their individual members.

0.2 Political philosophy, normative ethics and social ontology

It should be clear from what I just said that the central issue with which this dissertation deals is one in political philosophy: collective rights for cultural or national minorities. Indeed, my objective

is to develop new normative grounds for the justification of such rights that do not lead to the problems multiculturalism has been led into. If the starting point and the end point of the dissertation are both anchored in political philosophy, the body of the dissertation deals with issues that are, in some sense, orthogonal to political philosophy. My objective here is not, contrary to what Kymlicka and Patten have been doing over the past twenty years, to develop a fully-fledged theory of cultural or minority rights. Rather, my goal is—maybe more simply—to offer an argument for the legitimacy of collective rights for certain groups, an argument which, again, does not fall prey to the same objections that Kymlicka's or Patten's do. I take the conclusion of that argument to be the central contribution of this dissertation. In order to get there, though, I use resources from distinct, even if clearly connected, philosophical disciplines.

As I said above, the argument is about *collective agents* being, in some way, mistreated. The argument that I develop, then, is grounded in considerations about *social ontology*. I argue that certain groups can qualify as agents because they satisfy the criteria for agency put forward by what we can call the "standard conception of agency." If that is the case, I argue that it is because certain groups, because of the way they are structured or of how their members interact with one another and with agents outside of the group, can realize states (of affairs) that can *function* as *intentions*, just like certain (mental) states of individual agents function as intentions. In other words, a certain group can realize a state that plays the right causal *role* in the explanation of that group's action. I offer, then, a *functionalist* explanation of group agency. While I am not the first to suggest that a functionalist explanation of group agency might be a or the most promising avenue,[11] I think that the functionalist view of group agency that I put forward in this dissertation is a serious contribution to the literature on group agency. Indeed, I believe to offer a more distinct and sustained defense of functionalism than those authors who have endorsed, sometime tepidly, functionalism.

[11] See Copp (2006), Isaacs (2011), List and Pettit (2011), Tuomela (2013) and Epstein (2015).

The two most important steps in the argument I develop here, however, can be situated at the intersection of social ontology and *normative ethics*. As I said above, I argue that, on the one hand, group agents, because they are *agents*, can be subject to interference and domination and that, on the other hand, we care about the agency of those individuals that constitute group agents, we should also protect group agents against interference and domination. What I am thus interested in are the *normative ethical* implications of a certain view in *social ontology*, namely, the view that certain groups qualify as agents. The first implication is of a *conceptual* nature: if certain groups qualify as agents, it entails that their agency can be affected in ways that are similar to how individuals' agency can be affected. More precisely, I argue that interference and domination, which work at the individual level by thwarting individuals' capacity for intentional action, can also thwart collective agents' agency. The second implication is of a *normative* nature: the interference and domination to which group agents are subject matters, morally speaking, because it also negatively affects the agency of the individual members of those groups. Accordingly, my (intermediary) normative conclusion is that if we care about the agency of individuals, as we clearly do, then we have a *pro tanto* obligation to protect group agents against interference and domination in order to protect the agency of their individual members. I take these two claims, the *conceptual* and the *normative* claims here identified, to be original and, hopefully, important contributions at the intersection of social ontology and normative ethics.

While my end point here is clearly anchored in political philosophy—it is, after all, about collective rights for cultural or national minorities—I have to note that this dissertation and the argument it develops can be seen as part of a larger project that inquires, more generally, about the normative implications of group agency. In other words, I focus here on *one* possible such implication, an implication about a certain kind of group agent, but the argument I develop is likely to apply to other group agents that are not cultural or national minorities. But the larger project is also, to put it slightly differently, about whether we have obligations toward groups and, if so, why. As such, that we are

obliged in a certain way toward group agents because of (more fundamental) obligations we have toward the individual agents that compose those groups is, I think, *one* possible way to approach that question. We might, indeed, have other kinds of obligations toward groups and the explanations for those obligations might be wholly different from the one that I offer here about collective rights for cultural or national groups. I come back briefly to this larger project in the conclusion, but it is only to flag more questions that I do not address in this dissertation. For now, all I want to point out is that the argument that I develop in this dissertation is a first contribution to that research project and an exploration of how questions about obligations toward group agents can relate to questions in political philosophy. In any case, one can note that that general research project is quite distinctive because most authors who have been interested in the normative implications of group agency have, up to now, focused on the moral *responsibility* we might assign to groups or group agents.[12] I am rather interested in the *obligations* we might have towards groups or group agents.

Now that I have highlighted the main contributions of this dissertation, and before moving on, I want to note two further points that I will make along the way. First, the argument that I develop involves the acceptance of *normative individualism* but the rejection of *methodological individualism*. For my purpose, I will accept here normative individualism—that is, the view that all value springs, ultimately, from individuals. If I do so, it is because I want to take on board the normative assumptions that most liberals, and multiculturalists such as Kymlicka and Patten in particular, start from. My objective is to show that there is an argument for genuine collective rights that do not rely on the rejection of normative individualism and that is, as such, compatible with the kind of individual rights (or, more generally, obligations toward individuals) that liberalism reasonably justifies. I do not know, however, that normative individualism is the correct or true view. That is simply not a question that will concern me here.

[12] See, for instance, Isaacs (2011), List and Pettit (2011) or, more recently, Collins (2019).

Accepting normative individualism does not entail the acceptance of *methodological* individualism. While I do not offer, in the course of the dissertation, a discreet argument against methodological individualism (or *for* methodological collectivism), one can take my overarching argument, if correct, to disprove methodological individualism—that is, the view according to which all (good, we might presume) explanations of social phenomena (and individual phenomena, for that matter) are explanations that are formulated in terms of "dispositions, beliefs, resources and inter-relations of individuals" (Elster 1985, 5). If that is so, it is because all it takes to disprove methodological individualism is to show that there are explanations of social phenomena, good explanations at that, which are not to be formulated in terms of "dispositions, beliefs, resources and inter-relations of individuals." My argument relies on the idea that we cannot do away with references to *social objects or (other) social phenomena* in explaining certain social phenomena and, as it turns out, certain of our moral obligations.[13] Indeed, I argue that references to (genuine) collective agency is required to understand certain injustices and, as such, what we owe to each other—group agents included. If that is correct, it seems like *methodological* individualism is not warranted. I will not come back explicitly to that point in the chapters to follow.

Finally, I want to note that what I say below about both interference and domination is, at least to some extent, quite original. I suggest that, on the one hand, interference and domination work by affecting negatively the agency of their subjects. While I think that is an idea what many authors who have written on interference and domination have implicitly conveyed, I bring it to the front and show how interference and domination are both connected to agency. That is a *conceptual* point. I also suggest, on the other hand, that the *wrong-making feature* of both interference and domination is, this should be no surprise, that they affect negatively the agency of their subjects. In other words, I argue

[13] One can quite possibly recast that by saying that moral obligations or, more generally, morality are social phenomena. That sounds right, but it also gets us on a different terrain on which I do not wish to engage, that of metaethics.

that if we see interference and domination as wrong, it is because it thwarts or reduces one's agency. That, of course, entails that we see some value in our own agency. In any case, that is a *normative* claim. While the two claims are clearly working together—the normative claim is effectively a consequence of the conceptual one—they are separate claims. This distinction will come in handy in Chapter 3. In any case, I take those two claims to be, even if secondary, quite interesting contributions in their own rights.

0.3 Overview

In the previous two sections, I have highlighted the central and secondary issues that I deal with in this dissertation. I also discussed each of the main elements of my overarching argument. Here is how the dissertation is structured.

In Chapter 1, I come back to liberal multiculturalist theories of my main interlocutors, Kymlicka and Patten, and explain in more detail in what ways they are deficient. In order to do so, I start by explaining why it would be a mistake to not take the claims to self-determination made by certain groups, such as Indigenous peoples, to be, on their face, morally appropriate. I then lay out the main arguments advanced by Kymlicka for what he calls "group-differentiated right," the Argument from Autonomy and the Argument from Equality, and raise a few objections to Kymlicka's view. I then turn to an explanation of Patten's own view to see if it fares better than Kymlicka's. I argue, of course, that it does not, first because, just like Kymlicka's approach, Patten's Argument from Neutrality cannot justify the kind of rights that are claimed by groups that seek to be self-determining and, second, because it cannot coherently justify cultural rights while respecting its own guiding principle of neutrality. Lastly, after having briefly discussed other attempts at justifying genuinely collective rights for cultural or national minorities, I argue that all of the available views make problematic use of the notion of culture and of its presumed value.

In Chapter 2, I put in place the first pieces of my own argument for collective rights for cultural and national minorities. After having briefly explained what the "standard conception of agency" consists in, I explain and dispel a couple arguments that agency "individualists" have put forward to try to show why, even if we sometimes talk about groups as if they were agents, groups cannot satisfy the criteria of agency set by the standard conception. I then argue that certain groups can indeed satisfy the criteria set by the standard conception of agency because, as I said above, they can realize states of affairs that *function* as (or play the role of) *intentions* in the explanation of the group's actions. In other words, I offer a functionalist explanation of group agency, an explanation according to which groups can literally display agency, just like individual human beings can display agency. Finally, I distinguish between two kinds of group agents, organizations and goal-oriented collectives, and I explain how they realize intentions in different manners—that is, how they realize different kinds of states of affairs that nonetheless both function as intentions.

With these first pieces of the argument in place, I turn in Chapter 3 to normative questions and make two central claims. First, I argue that certain groups, because they are *agents*, can be subject to interference and domination. That is a *conceptual* claim, but it leads to my second, *normative* claim: that the interference or domination that happens at the collective level is a significant moral problem because it will have adverse consequences on a group's members' agency. I therefore argue, in this third chapter, that paying attention to interference and domination at the collective level can thus help uncover injustices that would otherwise be difficult to see and explain. Along the way, though, I make two further, even if secondary, claims (which are also highlighted in the previous section). I argue, on the one hand, that interference and domination work by thwarting, although in different ways, one's agency. I further contend that we should understand interference and domination as being wrong *because* they thwart one's agency. That also serves to highlight that we care, morally speaking, about our own agency and it allows me to conclude that if the interference or domination that happens at

the collective level *has adverse consequences for a group's members' agency*, as it does, such interference or domination constitutes a significant moral problem.

In the final chapter, Chapter 4, I come back to political philosophy and bring the argument home, as it were. I expand on the normative argument made in the previous chapter by showing how the interference and domination collective agents are subject to can have normative import in political philosophy. In a nutshell, the argument is that collective agents that are subject to or vulnerable to (undue) interference and domination, at least if that interference and domination affects their individual members' agency, should be protected against such wrongs by *collective* rights of some sort, that is, rights whose subjects are collective agents as such, just like individuals are protected against interference and domination by *individual* rights. To make the argument more vivid and concrete, though, I start by developing a real-world example based on the case of Indigenous peoples in Canada. I show how Indigenous peoples qualify as agents and how they are, as people, in a situation of domination, in addition to being often actually interfered with. It is by building on that concrete case that I argue that what group agents like Indigenous peoples—namely, and more generally, cultural or national groups—need to be adequately protected against interference and domination are (genuinely) collective legal rights to self-determination.

That is how I develop, in the following chapters, an argument for collective rights to self-determination starting from considerations about social ontology. As I argue in the Conclusion, that argument—which we can call the Argument from Collective Agency to distinguish it from Kymlicka's Argument from Autonomy and Patten's Argument from Neutrality—avoids the drawbacks of multiculturalist theories while staying true to normative individualism.

Chapter 1

Liberalism and Collective Rights

1.1 Introduction

In the Introduction, I wrote that the thesis defended in this dissertation can be seen as part of a larger inquiry about what could be owed to group agents. However, the focus of the dissertation is much narrower. The question I am exploring is whether conceiving of *certain* groups as group agents, such as cultural or national communities, can help us accommodate their claims to self-determination. The thesis is that conceiving of those groups as group agents can provide new normative grounds for the justification of (genuine) collective rights to self-determination. The motivation for this focus lies, first and foremost, in the (empirical) observation that cultural or national *minorities*, such as Indigenous peoples all over the world, often do not enjoy, *because* of their minority position, access to certain goods or kinds of goods to which majority populations have access. This, I would argue, constitutes an injustice. Of course, I am not alone in identifying this injustice. Since the 1980s, that question of "cultural" inequalities or injustices has occupied a prominent position in (liberal) political philosophy. Many have developed arguments showing why such "cultural" inequalities constitute injustices that liberalism should prevent and, consequently, theories of "cultural" or "minority rights."

Why then try to provide new normative grounds for the justification of collective rights? That is the question this first chapter tries to answer. The short version is that none of the available liberal theories of collective rights are particularly convincing or philosophically satisfactory. That is not to say that they get nothing right. On the contrary, I share many intuitions and positions with those theorists. Nonetheless, the liberal approaches to collective rights that have been developed up to now all have important shortcomings. This dissertation aims to avoid the theoretical (and practical) weaknesses of prominent approaches to collective rights for cultural or national minorities.

Accordingly, the main object of this first chapter is to survey the liberal theories of minority or

collective rights and flag their main shortcomings. In section 1.2, I examine the two most systematic multiculturalist approaches, those of Will Kymlicka (1995) and Alan Patten (2014). While both theories present specific problems, I argue in section 1.3 that liberal multiculturalism's main weakness is that it cannot address the claims to self-determination made by the groups that they are purportedly concerned with. That is at least in part because they fall short of justifying genuine collective rights. In section 1.4, I address another liberal approach that is designed to justify genuine collective rights (not only group-differentiated *individual* rights), that of Michel Seymour (2008; 2017). Finally, in section 1.5, I identify a weakness with all of those approaches: that they put dubious emphasis on the notion of culture and its value.

1.2 Liberal multiculturalism

1.2.1 Kymlicka's approach

Kymlicka's *Multicultural Citizenship* (1995) offers the first systematic treatment of cultural or minority rights in liberal political philosophy. It is the most influential and indeed has sparked what could be described as a whole new strand of liberalism. Kymlicka develops two central arguments to defend the idea that certain cultural and national minorities should be recognized "group-differentiated rights." I will call these the Autonomy Argument and the Equality Argument.[1] For Kymlicka, the value at the center of liberalism is individual autonomy. A liberal theory, then, even one that aims at justifying collective rights, should first and foremost defend individual autonomy. The Autonomy Argument's purpose is to show how cultural belonging is connected with individual autonomy. As Kymlicka (1995, 76) specifies, though,

> [t]he [relevant] sort of culture […] is a *societal* culture—that is, a culture that provides its members with meaningful ways of life across a full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language.

[1] The Equality Argument is actually Kymlicka's (1995) own label.

This distinction between a "societal culture" and other forms of "culture"—such as the cultural belonging that comes with participating in the Montreal independent music scene or a chess players association—makes sense considering why Kymlicka is interested in culture. Culture is important *because it provides a context of choice* that is an essential condition for autonomy. Indeed, Kymlicka writes that

> freedom[2] involves making choices amongst various options, and our societal culture not only provides these options but also makes them meaningful to us. […] Cultures are valuable, not in and of themselves, but because it is only through having access to a societal culture that people have access to a range of meaningful options.

Sure, other forms of cultures—say, again, the Montreal independent music scene's culture—provide choices as to how one can live one's life. But only *societal* cultures can provide a *range* of options that are meaningful to us. It seems, then, that if we want to enable individuals' autonomy, which requires the capacity to make meaningful choices, we have to make sure that individuals have access to a societal culture.

The Autonomy Argument, by itself, does not justify collective rights for those groups—e.g., national groups—that realize a societal culture. That is where the Equality Argument comes in. It proceeds from the observation that mainstream or majority societal cultures fare much better than minority ones. Indeed, *because* of their minority position, minority societal cultures struggle to provide their members with the goods that majority societal cultures have no problem providing. The main reason is that in a multinational state, where there is likely a majority societal culture and at least one minority culture, the state will tend to favour the cultural needs of the majority societal culture. For

[2] In passages like this one, Kymlicka writes about freedom and its connection to choices, but it should be clear that his fundamental concern is with autonomy. Freedom is valuable, but that is because it allows people to choose a conception of the good or a life plan for themselves (Kymlicka 1995, 80). It's just that Kymlicka does not explicitly distinguish between freedom and autonomy. He, rather, runs the two notions together See, e.g., this passage (1995, 75): "The basic principles of liberalism, of course, are principles of individual freedom. Liberals can only endorse minority rights in so far as they are consistent with respect for the freedom or autonomy of individuals." Of course, nothing I say below hinges on the distinction between those two notions.

instance, public services will be offered only in the majority's language, or public policies will disadvantage members of a given minority societal culture because of their "different" practices. This disadvantage will also tend to be compounded by the fact that members of the majority societal culture will likely hold much of the economic and political power. As Kymlicka (1995, 109) puts it,

> [s]ome groups are unfairly disadvantaged in the cultural market-place, and political recognition and support rectify this disadvantage. […] The viability of [national minorities'] societal cultures may be undermined by economic and political decisions made by the majority. They could be outbid or outvoted on resources and policies that are crucial to the survival of their societal cultures. The members of majority cultures do not face this problem.

It is that inequality that justifies the recognition of collective rights to national (or cultural) minorities, because, "[g]iven the importance of cultural membership, this is a significant inequality which, if not addressed, becomes a serious injustice" (Kymlicka 1995, 109). Collective rights will redress or prevent this injustice by eliminating the disadvantage or inequality just described "by alleviating the vulnerability of minority cultures to majority decisions" (Kymlicka 1995, 109). As such, collective rights are understood by Kymlicka as tools to rectify an inequality. The Equality Argument relies on the conclusion of the Autonomy Argument, because the reason we need to pay attention to such cultural inequalities is the role societal cultures play for individuals' autonomy. If we want to protect and enable individuals' autonomy equally, which of course is what liberalism stands for, we should make sure that the societal cultures individuals belong to can equally perform the role they are meant to. That is why group-specific rights for minority cultures are needed.

While Kymlicka's argument justifies the recognition of group-specific rights that would be seen as unwarranted or unnecessary by other liberals, those rights are not *collective* rights strictly speaking. They are what Kymlicka calls "group-differentiated rights." While he suggests that it is of no importance who or what is, nominally, the subject of those group-differentiated rights, it is nonetheless clear that Kymlicka thinks that, ultimately, it is the *members* of national or cultural minorities that are group-differentiated *moral* rights-bearers. The basic idea behind Kymlicka's view is "that justice between

groups requires that the *members* of different groups be accorded different rights" (Kymlicka 1995, 47; my emphasis). But, as we have just seen, justice between groups is itself required out of concern for *individual* autonomy. Kymlicka therefore subscribes to normative individualism—that is, the idea that individuals are ultimately what matters, morally speaking. His normative individualism leads him to discard the idea that genuine *collective* rights—that is, rights whose bearers are collectives—might be needed in order to satisfy the obligations we might have towards *individuals*. For him, whether a group-differentiated legal right should be exercised by individuals or a collective will most likely be a matter of "administrative convenience" (Kymlicka 1995, 46). While I too subscribe to normative individualism, an important theme in the dissertation is that we need genuine collective rights to protect individuals. In Chapters 2 through 4, I develop a positive argument for that thesis. There are nevertheless a few independent reasons why Kymlicka's approach is unsatisfactory and, therefore, why a new defense of "collective" rights for national or cultural minorities is needed.

In section 1.4, after having discussed Patten's multiculturalist approach, I come back to what I take to be the main problem with Kymlicka's and, actually, Patten's treatment of collective rights. For now, I will mention a problem that might be specific to Kymlicka's argument and which also provides a good segue into the discussion of Patten's own approach. As many authors have noted, including Patten (1999),[3] there is a problem with Kymlicka's move from the Autonomy Argument to the justification of protections for specific cultural or national minorities. Here is Patten (2014, 6) on the question:

> It may well be true that, in some sense, people rely on culture for a context of choice. But it does not follow that the culture they rely on has to be *their* culture if that means the culture in which they were brought up and with which they identify. Since people can (and regularly do) assimilate into new cultures, the autonomy argument does not, on its own, provide a special reason why any particular culture ought to be recognized and accommodated.

It thus seems that the Autonomy Argument, even when complemented with the Equality Argument,

[3] See also Waldron (1992), Margalit and Halbertal (1994), Tomasi (1995), and Forst (1997).

does not really support the protection of minority cultures that multiculturalism is supposed to justify. Indeed, it is quite compatible with either letting (minority) cultures phase out or even, possibly, with some form of assimilationist policies, as long as people are offered access to *some* societal culture. Kymlicka's Autonomy Argument, which is supposed to establish why cultural belonging matters, cannot yield the expected results, because protections for cultural or national minorities are not the only path to securing a robust societal culture (and conditions for autonomy) for every individual.

1.2.2 Patten's approach

Patten (2014) has recently proposed a restatement of liberal multiculturalism that does not rely on the Autonomy Argument proposed by Kymlicka. Rather, Patten starts from the intuition that lies under Kymlicka's Equality Argument, that is, that there is something unfair in favouring, through state policies, (a) certain culture(s) over others. Instead of trying to connect that intuition with the value of autonomy, Patten argues that it is the liberal requirement of *neutrality* that yields a justification for "minority cultural rights."

Patten (2014, 27) summarizes his own argument in the following way:

> The core case I develop in favor of strong cultural rights revolves around two main claims. The first holds that the liberal state has a responsibility to be neutral toward the various conceptions of the good that its citizens affirm. The second claims that, in certain domains, the only way for the state to discharge its responsibility of neutrality is by extending and protecting specific minority cultural rights. […] In a range of situations, a state that is neutral toward culture is not one that takes no notice of culture, or disentangles itself from culture, but is one that extends equal recognition to each culture.

To make sense of those two claims, Patten proposes a new understanding of neutrality as "neutrality of treatment," which he distinguishes from "neutrality of effect"—or, neutrality of outcome—and "neutrality of justification," which is about the way policies are justified. Neutrality of treatment concerns the way individuals and groups are treated by the state. Patten contends that different groups, say, can be *treated* non-neutrally—that is, unequally—even if the justification for the policy that guides

their treatment is *justified* in a neutral manner. But he further argues that the neutrality commended by liberalism does not require that the *outcome* of a given policy be the same for different groups. What matters is that the state *treat* different conceptions of the good neutrally. And "[t]he state treats two or more conceptions of the good neutrally […] when it is equally accommodating of those different conceptions" (Patten 2014, 27).

Of course, the claim that it is neutrality of treatment that justifies *cultural* rights needs to rely on a certain conception of culture and of its value for the individuals that participate to it. As we have just seen, Kymlicka's notion of *societal* culture and his explanation of its value as a necessary enabling condition for individual autonomy will not do. Patten elaborates his own conception of culture, which he dubs "culture as a social lineage." According to this "social lineage" account, "[c]ulture […] is what people share when they have shared subjection to a common formative context. A division of the world, or of particular societies, into distinct cultures is a recognition that distinct processes of socialization operate on different groups of people" (Patten 2014, 39). According to Patten, this account of culture avoids the potential charge of cultural essentialism. It is from that understanding of what cultures are that Patten develops his argument for strong cultural rights.

The argument is that "in a central range of cases, fairness requires a form of 'equal recognition' between majority and minority cultures, which entails a set of strong cultural rights" (Patten 2014, 72). For Patten, then, liberal *justice* requires that minority cultures be accommodated by the state. He distinguishes between procedural and substantive accounts of cultural justice. Substantive accounts of cultural justice derive their requirements, including minority rights, from what cultures are taken to be and from the value they are ascribed (Patten 2014, 153). As such, they focus on the *outcomes* for (particular) cultures and their requirements are meant to ensure that the certain outcomes obtain. Patten finds that conception of cultural justice unacceptable—it justifies "too much" including

possibly minority rights or policies that are incompatible with the other requirements of liberal justice.[4] He favours a proceduralist account, that is, an account that focuses on the justice of the background conditions against which cultural groups "strive for the enjoyment and success of their cultures" (Patten 2014, 152) rather than on the "justice-making features of [a given cultural] outcome itself" (Patten 2014, 185). Those background conditions will be considered just only if they satisfy the neutrality of treatment condition. Minority cultural rights, then, will be justified in cases where failure to recognize them would entail treating members of a given minority group in a procedurally unjust manner—that is, in a nonneutral manner.

Patten's multiculturalist theory has some advantages over Kymlicka's. For one thing, it avoids the counterintuitive conclusion that there is a difference in legitimacy between the efforts of cultural minorities and those of majorities when it comes to the affirmation and protection of their cultural practices. Indeed, for Patten, all cultural groups are, in principle, cultural rights-holders. It is just that, in practice, we do not need to recognize special cultural rights to cultural groups that are already advantaged. However, his theory still presents many difficulties. I will limit myself to mentioning one here. I come back, in the next section, to one important problem it shares with Kymlicka's multiculturalism.

As is noted by Weinstock (2016), the fact that Patten's argument for minority (cultural) rights relies on a theory of culture (as social lineage) is in tension with his goal of developing a fully *procedural* account of (cultural) justice, even if his theory of culture effectively evades the charge of essentialism. That is because of his explanation for why cultures or cultural goods are *normatively* important. According to Patten (2014, 157), certain "identity-related" value preferences or beliefs are about

[4] He writes that "[f]or the full proceduralist, there is a cut-off point determined by an independent standard of fairness beyond which further assistance, accommodation, and recognition for declining cultures is not mandated by justice" (Patten 2014, 153). The main problem with substantive accounts, then, is that they cannot establish or justify such a cut-off point.

cultural goods. To be "identity-related," a preference or belief about value has to satisfy two conditions: (1) it has to be tightly connected to one's conception of the good and (2) it has to matter to one in some "special way" (Patten 2014, 158). In other words, culture should be considered as having some primacy over other preferences or beliefs about value. That is quite clearly in tension with Patten's claim to propose a procedural account of (cultural) justice. As Weinstock (2016, 281) writes,

> one can well imagine an individual whose conception of the good life is far less tied to culture than is the case for the kinds of agents whose profile is being assumed in Patten's argument. So while the view of culture that ties it as tightly as Patten's view does to "identity" and to one's "conception of the good life" is plausible, it is contestable, and thus falls foul of neutralist strictures.

Patten "ends up smuggling in a substantive conception of culture" and of the good, "through the back door" (Weinstock 2016, 281). According to Patten, the state is to pay special attention to those culture-related preferences and beliefs about value. But is that not favouring a certain conception of the good—namely, one that gives special significance to cultural belonging—over others? It seems, then, that Patten's attempt at justifying "strong" cultural rights fails by his own standard.[5]

1.3 Claims to self-determination: heeding minority voices

The central problem with both Kymlicka's and Patten's approaches, however, is that they fail to address many of the claims of the "national minorities" that are their putative subjects. It is not just that the multicultural policies springing from liberal multiculturalist political philosophy have failed to address those claims. Rather, it is that some features of Kymlicka's and Patten's theories put them at odds with certain claims of those national minorities. This is true of many different national minorities,

[5] Weinstock (2016) also notes that it is not particularly clear what role Patten's account of culture as "social lineage" really plays in his normative argument. It might actually be an "idle wheel." I quite agree and I will add that what seems to actually play an important normative role is this notion of "identity-related" preference or belief about value. But if that is the "active ingredient" here, it is unclear why limit one's focus to culture-related identity-related preferences and beliefs about value.

but it is most striking in the case of Indigenous peoples.

As I said before, my stance from the outset is to take seriously the claims made by many cultural or national minorities that they are morally justified in asking for collective (rights to) self-determination. The criticism that I am developing here—which is that liberal multiculturalism is not equipped to address the claims of those groups, such as Indigenous peoples, who do not seek integration into the mainstream society but rather seek a robust form of self-determination—is in fact based on that premise. One might think, however, that this line of criticism begs the following question: are the claims for robust self-determination made by those groups justifiable in the first place, especially within the broadly liberal framework that Kymlicka and Patten both espouse?

1.3.1 Multiculturalism's "translation strategy"

There is no denying that, at least when compared with nonculturalist liberals, Kymlicka and Patten attempt to address the claims made by such groups as Indigenous peoples. Both authors adopt, when it comes to those claims that seem to go beyond the requirements of the "standard liberal package," what might be termed a "translation strategy."[6] It should be apparent from the brief exposition of Kymlicka's and Patten's central arguments in section 1.2 that their strategy is to translate claims made by cultural or national minorities into terms that fit with the normative underpinnings of liberalism. On their account, some of the claims made by groups such as Indigenous peoples will thus fail to qualify as normatively legitimate because they do not fit with some of liberalism's normative commitments. And the claims that do pass this "test" will likely end up being formulated in ways or in terms that these groups might not recognize.

Kymlicka's multiculturalism offers Indigenous peoples (and other "national minorities") rights to cultural protection. Of course, such rights can be cashed out in terms of "self-government rights,"

[6] That is Daniel Weinstock's term.

but, as Kymlicka explains, those rights are (only) meant to "*devolve* powers to smaller political units, so that a national minority cannot be outvoted or outbid by the majority on decisions that are of particular importance to their culture" (Kymlicka 1995, 37–38; my emphasis). In other words, those rights are meant to integrate national minorities into the larger political community in a way that does not disadvantage them in their access to important cultural goods—which are, of course, necessary for individual autonomy. This is not however what Indigenous peoples (and other "national minorities") seek. They do not seek to be integrated, even if on an equal cultural footing, with the larger political community. On the contrary, they claim rights to *self-determination*. Indigenous peoples are not claiming rights to the rectification of some cultural disadvantage, rights that would be justified only as long as there "actually is a disadvantage with respect to cultural membership" (Kymlicka 1995, 109–10). They are claiming rights that recognize their status as politically sovereign peoples (Turner 2000).

Patten's approach to the justification of "minority rights" follows a similar logic. The rights Patten's approach justifies are only those rights that fit with his liberal egalitarian theory of distributive justice. Or, as Patten himself recognizes, those that satisfy some "independent standard of fairness." That should not be a surprise since Patten is quite clear that the state's obligation to treat different cultures (and their members) neutrally is a *pro tanto* obligation.[7] Taken on its own, I do not think that that conclusion is problematic.[8] It means, however, that the "minority rights" that could be derived from Patten's multiculturalist theory are always defeasible by other societal concerns. Of course, Patten argues that those societal concerns have to be, in order to defeat claims to "equal recognition," quite weighty. But in practice, on Patten's approach, the state can claim, against some minorities'

[7] See, among many such clear statements, this passage: "*if* a state engages in some form of recognition, and it is granted that neutrality is a pro tanto requirement of justice, then equal recognition should be regarded as a pro tanto requirement of justice" (Patten 2014, 171). Or, about a specific kind of claim, this passage: "There is no right to language preservation, but there is a strong, pro tanto claim for equal recognition, a claim that can be considered a right in the absence of defeating countervailing considerations" (Patten 2014, 188).

[8] I would personally be comfortable with claiming that all obligations are *pro tanto*.

claims to "equal recognition," that some societal concern, which might not be recognized as such by those minorities, should override their claims to "equal recognition" and to some "minority rights." While Patten is not clear on what such societal concerns might be, one might think that economic development might be such a concern.[9] That concern, however, might not be compatible with many cultural or national minorities' claims to self-determination. On that front, then, Patten's theory does not fare better than Kymlicka's.

Kymlicka's multiculturalism—and we can say the same thing about Patten's—allows for the recognition of certain ends for Indigenous peoples, but not others. The only "recognizable" ends are those that fit with Kymlicka's liberal egalitarian theory of distributive justice. But this fails to acknowledge the actual claims Indigenous peoples are making. In other words, Kymlicka's multiculturalism does not "heed the voices"[10] of Indigenous peoples. Since Kymlicka's multiculturalist theory is (purportedly) designed with the case of Indigenous peoples (among others) in mind—in *Multicultural Citizenship*, Indigenous peoples indeed come up quite often—it is somewhat strange that it fails to appropriately address, even in the abstract, the claims they are actually making.[11] But the "translation strategy" put forward by Kymlicka and Patten does not only lead to this somewhat strange outcome. It is also, and more importantly, morally problematic.

1.3.2 Silencing and distorting minority voices

As many authors have indeed argued, multiculturalism's incapacity to "heed" Indigenous voices—

[9] In any case it has clearly been one "societal concern" that has been often weighed against the claims of minority cultural of national groups. Such cases abound in, say, Canadian history.

[10] That is a reference to Alfred (1995) and not a quote from Turner.

[11] I would be remiss not to mention, if only in passing, another argument made by Indigenous authors. Many people, including Turner (2000; 2006), have made a historic-legal argument about Indigenous sovereignty. The gist of it is that the source of Indigenous peoples' rights to self-determination and self-government is to be found within their own practices, laws or constitutions and not in those of the settler-colonial states that now encase them. As such, Indigenous peoples have "inherent sovereignty" and an "inherent right of self-government" (Borrows 1992). See also Borrows (2002; 2016). One further problem with multiculturalism, then, is that it does not take seriously this inherent sovereignty of Indigenous peoples.

and other minority voices—actually *makes it a tool of oppression*. There are different lines of argument to support that claim.[12] For my purposes here, I will limit myself to arguing, following what Allard-Tremblay (2019) says about the rationalist tradition in political theory, that the imposition of the liberal normative assumptions to the evaluation of the claims made by minority cultural or national groups is a form of cultural imperialism that constitutes and results in (epistemic) injustices. That is because the multiculturalists' "translation strategy" *silences* and *distorts* Indigenous voices—as well as other minority voices.

Liberal multiculturalism silences Indigenous voices by refusing to recognize as valid, from the beginning, claims that are not formulated in the multiculturalist discourse. Indigenous voices "are discounted as defective and inferior" (Allard-Tremblay 2019, 9) from the get go. That is not to say that the silencing of Indigenous voices entails that Indigenous people cannot speak their mind. Rather, the problem is that *even if* Indigenous people are allowed to put forward (or utter) their own claims, formulated in their own terms, those claims will be ignored or even derided as not satisfying some normative or epistemic standards that are set by non-Indigenous people. We should note that if some claim that one puts forward is ignored or even derided, this probably does not, on its own, constitute an injustice. But it clearly becomes an unjust form of *silencing* when, because of asymmetric relations of power, the claims put forward by some people are systematically ignored or discounted. That is, an injustice occurs when it is systematically the case that (some of) the claims made by people in less powerful positions are not *taken up* by their (intended) interlocutors.[13] While I think this happens to minority voices in general, Indigenous voices are particularly affected by that phenomenon. Indeed, as Linda Tuhiwai Smith writes,

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[12] For instance, Alfred (2005), Turner (2006), Coulthard (2014), and Tully (1995; 2008, chs. 7 and 8) all claim that liberal multiculturalism is oppressive because multiculturalism relies on a conception of state sovereignty that reinforces the structures of colonial domination between the settler state and Indigenous people(s).

[13] This view of silencing has been much discussed in the context of feminist theorizing. See, for instance, Maitra (2009) and Kukla (2014).

> Western culture constantly reaffirms the West's view of itself as the centre of legitimate knowledge, the arbiter of what counts as knowledge and the source of "civilized" knowledge. This form of knowledge is generally referred to as "universal" knowledge, available to all and not really "owned" by anyone. (Smith 2006, 96; quoted in Allard-Tremblay 2019, 9)

The liberal multiculturalist discourse posits itself, in line with the general position taken by "the West," as the "the arbiter of what counts as knowledge" about justice. By refusing to engage with some of the claims made by Indigenous peoples—specifically, those claims that have to do with robust self-determination—multiculturalists participate in the silencing of their voices. This constitutes a form of oppression—colonial oppression, when it comes to Indigenous people—and, as such, an injustice.[14]

The multiculturalists "translation strategy" also affects Indigenous voices in a slightly different way: it distorts them. According to Allard-Tremblay, the distortion of Indigenous voices happens in two different ways: "either when their voices are wrongly interpreted […] or when Indigenous peoples modify and frame their claims so as to move their […] interlocutors" (Allard-Tremblay 2019, 13). It should be evident that multiculturalist philosophers have a tendency to reinterpret claims made by Indigenous peoples in forms that fit better with the liberal framework. As Turner (2000; 2006) argues, this is quite evident when it comes to Indigenous peoples' claims about self-determination or sovereignty. He writes that multiculturalism's

> characterization of Aboriginal rights of governance does not require the participation of Aboriginal peoples in order to characterize the content of their 'special' rights. This is because Aboriginal rights of governance are justified within a theory of distributive justice that does not recognize the legitimacy of Aboriginal sovereignty. (Turner 2000, 146)[15]

As I said before, multiculturalists pay attention to Indigenous peoples' claims to self-determination. But they do not hear them on Indigenous peoples' terms. They reinterpret them through the lens of a certain theory of distributive justice, as Turner says, as "special" self-government rights—which are, as we have seen before, in no way robust.

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[14] Although not strictly equivalent, this is very similar to what Fricker (2007) call "testimonial injustice." See also Young (1989) who mentions that the "universalist" perspective endorsed by liberal theories of justice silence minority voices.
[15] Note that what Turner describes is both silencing and distorting. The two phenomena are clearly not exclusive.

This situation also forces Indigenous people, if they want to be heard, to strategically frame their claims in ways that are often not true to their worldviews.[16] Indigenous peoples have worldviews and, consequently, conceptions of the good that are sometimes radically different from those of non-Indigenous people. For instance, most Indigenous peoples hold that "[t]ribal territory is important because Earth is our Mother (and this is not a metaphor: it is real). The Earth cannot be separated from the actual being of Indians" (Little Bear 2000; quoted in Allard-Tremblay 2019, 13). In order to even be heard, however, Indigenous peoples have to "translate" their claims about the importance of tribal territory or ancestral land into either legalistic terms or those of liberal philosophers, a "translation" that distorts the meaning of their own beliefs and claims. Multiculturalism quite clearly participates in that form of distorting of minority voices too. As Allard-Tremblay again writes,

> The issue here is that this pragmatic distortion is also recommended by political theories of public reason that require public discourse to be guided by the ideal of mutually acceptable reasons. Yet, the rationalist Western worldview holds a hegemonic position in legal and political forums. As such, claims grounded in Indigenous holistic worldviews will not register; they have to be framed following terms that are acknowledged from within a rationalist discourse. (Allard-Tremblay 2019, 14)

Multiculturalists endorse a form of "public reason," which unavoidably makes their theoretical framework inhospitable to Indigenous voices. Again, in both those ways, multiculturalism participates in the distorting of Indigenous voices, which constitutes a form of oppression and, as such, of injustice.[17]

The silencing and distorting of minority voices are morally problematic. They are a burden unjustly imposed on people who are not part of the majority culture's epistemic (and normative) community. Liberal multiculturalists, by refusing to engage with minority groups on their own terms, perpetuate that kind of injustice.

[16] I come back to that point, although in a different framework, in Chapter 4.
[17] Although not strictly equivalent, the distortion of minority voices is similar to what Fricker (2007) call "hermeneutical injustice."

1.3.3 Internal restrictions and external protections

That multiculturalism, at least Kymlicka's, cannot take as morally relevant, on their own terms, the claims to (robust) self-determination made by certain minority groups, especially Indigenous peoples, should not be surprising. Indeed, Kymlicka's argument for multiculturalism cannot (coherently) justify some of the "self-government rights" that seem to be central to the protection of national minorities. That is why multiculturalism, at least Kymlicka's, will *unavoidably* distort Indigenous peoples' claim to self-determination. More specifically, the problem lies in Kymlicka's distinction between rights (or policies) establishing "external protections" against the culturally detrimental influence of outside agents and rights (or policies) establishing "internal restrictions" on the rights and freedoms of a group's individual members. Liberal multiculturalists should recognize, argues Kymlicka (1995, 35–44), the legitimacy of "external protections," for they allow minority groups to protect their societal cultures against the encroachment or the detrimental influence of the majority group's own culture. As such, "external protections" are about inter-group relations. "Internal restrictions," however, are about intra-group relations—that is, they are imposed by a group on its own members. Kymlicka argues that multiculturalists should reject "internal restrictions," for they are, ultimately, restrictions on individuals' autonomy. That is because "internal restrictions" reduce individuals' context of choice. As Seymour (2008; 2017) has argued, though, it is very difficult to imagine effective rights or policies that establish "external protections" that do not *also* establish "internal restrictions." In other words, "[a] regime of collective rights for a minority people within the state cannot avoid imposing some (reasonable) restrictions on the rights of individuals. External protections inevitably lead to internal restrictions, so the distinction between these two sorts of group rights becomes problematic" (Seymour 2017, 31). And to illustrate the point, Seymour (2017, 31–32) uses the example of language laws in Quebec:

> [They] simultaneously involve external protections and internal restrictions. They can be justified as a means of protecting French Quebeckers from the majority of anglophones living

> in North America, but at the same time, they force immigrants to send their children to French schools, they enforce a certain predominance of French on commercial signs, and they impose French as the language used at work (for companies with more than fifty employees). Of course, Kymlicka accepts Quebec's languages laws and rightly sees them as legitimate, but he tries to account for them only in terms of external protections, and this does not seem to be possible.

On the one hand, then, Kymlicka wants to recognize the legitimacy of policies (and the rights that make them possible) that *do* impose "internal restrictions," such as Quebec's language laws. On the other hand, he argues that "internal restrictions" are not acceptable because they reduce individuals' autonomy and, for that reason, seem to defeat the purpose of liberal multiculturalism itself. Something is clearly amiss.

Kymlicka does provide a sort of response to that criticism. He argues that "internal restrictions" that are instrumental for "external protections" are acceptable (Kymlicka 1995, 44). But that means, then, that the problem with "internal restrictions" is *not* that they reduce individuals' autonomy but that they reduce individuals' autonomy *for the wrong reasons*. Yet, he does recognize that in a majority context, many "internal restrictions" that are not the by-product of "external protections" are put in place for a variety of apparently legitimate reasons. Individual freedom is continually restrained at the societal level in majority contexts. This might seem trivial, but laws about medically assisted dying, for instance, are generally viewed on the liberal framework as legitimate. And yet, they constrain individual freedom or autonomy. The same goes for, say, official language(s) laws. It seems inconsistent to just say without further argument that in a minority context, such "internal restrictions" will not be legitimate just because their purpose is culture- or identity-based. Moreover, one of Kymlicka's (1995, 44) central claims against such "internal restrictions" is that "[t]here is," among national minorities, "little enthusiasm for what we might call 'pure' internal restrictions." This again ignores the actual claims of many national minorities, such as Indigenous peoples: that they should be recognized (or actually have) rights to *self-determination*.

1.4 Liberalism and genuine collective rights

It turns out that neither Kymlicka's nor Patten's multiculturalist theories are equipped to address the claims to self-determination that many cultural or national groups put forward. One central reason might be that neither Kymlicka nor Patten seek to justify *collective* rights—that is, rights whose subjects are collective entities as such. Rather, they aim to justify rights to cultural accommodation whose ultimate bearers are the individual members of cultural or national groups. Yet, proper self-determination for cultural or national minorities might require the protection offered by genuinely collective rights.

Multiculturalists like Kymlicka or Patten are not the only ones to have tried to offer a defense of rights for cultural or national minorities that would be compatible with a liberal regime of individual rights.[18] Indeed, some have developed arguments for genuinely collective rights. To my knowledge, the only fully-fledged attempts come from Seymour (2008; 2017), who has proposed two slightly different arguments for collective rights. Seymour argues that his own theory can coherently justify robust collective rights to self-determination because, contrary to at least Kymlicka's theory, it can justify *internal restrictions*. As such, it might very well be the case that Seymour's approach does a better job at addressing the claims of groups, such as Indigenous peoples, that seek robust self-determination. I find that claim quite plausible, but I will not comment further on it here. I will rather briefly discuss the two *arguments* for collective rights put forward by Seymour.

The first argument, developed in Seymour (2008), is that national groups or *peoples* have a right to be protected *qua* groups *because of their contribution to the value of cultural diversity*. In other words, Seymour argues that cultural diversity, just like *bio*diversity, is an important intrinsic (and impersonal) value. Respect for that value entails a general obligation to respect peoples *qua* peoples, because peoples are

[18] I noted before that, for the purpose of this dissertation, I am to ignore liberals who argue against "minority rights." I should also note, though that there are other participants to this general debate that I am to ignore, namely, communitarians.

expressions of cultural diversity, which in turn is what explains that peoples have a collective moral right to self-determination. Furthermore, that moral right should be institutionalized through the recognition of some more specific collective *legal* rights to self-determination.

The problem with this argument should already be apparent: it requires that we accept that (1) cultural diversity has intrinsic *moral* value and, even more problematically, that (2) its moral significance is such that it can ground the claim that peoples—that is, national minorities—are *independent* sources of valid moral claims—that is, that their moral claims have standing independently from the moral claims of their individual members. Both (1) and (2) are difficult to accept. Most people might be convinced that cultural diversity is of some intrinsic value. However, it is implausible that that intrinsic value is of the moral kind—just like it seems implausible that the intrinsic value we can find in biodiversity is of the moral kind. Even if most people were to accept (1), I fail to understand how one might think that claims based on the value of cultural diversity would outweigh claims based on other, widely recognized, intrinsic moral values. In effect, Seymour's argument asks us to accept that the moral claims peoples might have, which are based on the value of cultural diversity could outweigh the valid claims that *individuals* might have based on considerations of, say, well-being, agency, fairness, justice, etc. Seymour might reply that the objection reveals a blind attachment to normative individualism. While that might be true, I suggest that the burden of proof lies with those who would argue that *cultural diversity* carries any moral weight.

Instead of relying on the (dubious) normative pull of the value of cultural diversity, Seymour (2017) argues that the central value motivating his approach is that of political stability. Seymour follows Rawls in arguing that political stability has important moral value and indeed is the fundamental aim of liberalism (Rawls 2002; 2005). Respect for cultural diversity is essential to achieve political stability. Respect for cultural diversity entails a general obligation to respect peoples *qua* peoples, because peoples are expressions of cultural diversity. And that is what explains that peoples

have a collective moral right to self-determination. As we saw, the general structure of Seymour's new theory is similar to the one he proposed earlier. The main change here is what he identifies as the main value grounding the argument.

The first difficulty for the argument is the claim that political stability has important moral value, indeed, the *structuring* value. Of course, Seymour is not claiming that political stability is intrinsically valuable[19] and its value is certainly much less controversial than that of cultural diversity. Nonetheless, since political stability seems to have no intrinsic value, it is difficult to understand why it should be recognized as the *fundamental* aim of liberalism or, for that matter, any political philosophy. Should we not, instead, recognize as our fundamental aim that which political stability is meant to promote—such as, say, fairness or individual autonomy? In any case, Seymour's argument presents a second important difficulty. One of the main moves in the argument is the claim that respect for cultural diversity is *essential* for political stability. That strikes me as implausible. Although it might be that effective and full respect for cultural diversity is a *sufficient* condition for political stability to obtain, it is much more difficult to accept that it is *necessary*. It is quite easy to imagine how political stability could be achieved in a world where there was *no* cultural diversity at all. A culturally homogenous society would offer less chances of (political) conflict between citizens that would disagree about their conceptions of the good. The claim that cultural diversity is essential for political stability, which is the crux of Seymour's argument, seems farfetched. For these reasons, I find neither of Seymour's argument for collective rights for cultural or national minorities satisfactory.

1.5 What's so special about culture?

[19] Seymour (2017) argues that his approach is not committed to normative individualism. I have note, though, that I think identifying political stability as an important value is not incompatible with normative individualism. In fact, I think the best explanation we might have for the value of political stability has to do with the effects it has *for* individuals. In any case, as I argue somewhat indirectly in the next chapters, I do not think the problem lies in normative individualism.

Up to now, I have tried to show that none of the important and systematic attempts at justifying collective rights for cultural or national minorities are satisfactory for reasons that are, for the most part, specific to the arguments developed by each of the authors discussed. Before moving on to my own positive approach to the justification of such collective rights, which I do starting in Chapter 2, I want to note a last problem that is common to all of the theories mentioned. That problem springs from the fact that they all give an important normative role to the notion of culture.[20]

While one has to acknowledge that culture or cultural belonging plays an important role in people's identity and capacity for autonomy,[21] as multiculturalists have argued, it is also hard to see what is so special about it that we should design institutions or mechanisms to protect it, often against individual-rights claims. As Benhabib (2002, 2) notes, "[*c*]*ulture* has become a ubiquitous synonym for *identity*." But, although culture may be said to be more pervasive than other sources of value, one's cultural belonging is not the only value that informs one's identity and one's capacity for autonomy.

The argument put forward by multiculturalists is that one's national belonging or one's societal culture is something like a primary good. However, as Buchanan (1998) as argued,[22] it is quite plausible, if not actually often the case, that individuals do not take their national belonging or their societal culture to be a primary good. Individuals in general indeed take many different kinds of attachments to be of particular importance to their identity—in Patten's terminology, many different sources of "identity-related" goods—and they do not necessarily take their attachment to their societal culture (or national group) to be of special importance among those other affiliations. Some individuals might even see their national belonging as in no way related to their identity. It seems wrong, then, to base an argument for the recognition of collective rights for cultural or national minorities on the

[20] If we follow Weinstock (2016), that might not be true of Patten. But Patten himself certainly thinks it is.
[21] Charles Taylor's work, among others, offers a strong defence of that idea. See, among other pieces, Taylor (1985) and Taylor (1994).
[22] See also Barry (2001), Benhabib (2002) or Philips (2007) for similar arguments.

assumption that societal affiliation is of special importance to people's lives and identities, as Kymlicka and Patten do.

The problem is slightly different for Seymour's approach. Since he (purportedly) rejects normative individualism, his arguments do not rely on the assumption that what gives value to cultural or national belonging is that individuals value it in a special way. The problem with Seymour's 2008 argument is, however, quite apparent: he dubiously assigns *moral* value to cultural diversity and, by extension, to culture(s) as such. But I already argued against that position. Seymour's 2017 argument still dubiously puts emphasis on the value of culture, though. It is just that this time, the value of culture is instrumental to the achievement of political stability. Therefore, even if Seymour does not share the normative individualism that explains, according to multiculturalists, the *special* value of culture, he buys into the idea that, in the world of value, there is something so *peculiar* about culture that it must be of special normative significance. Yet, that conclusion does not seem particularly plausible.

1.6 Conclusion

In this chapter, I argued that none of the available systematic (liberal) theories of collective rights are satisfactory. More specifically, the chapter develops two central arguments. First, (1) I argued that the liberal multiculturalist approaches are not adequately equipped to address the claims for robust self-determination made by paradigmatic cultural or national minorities, such as Indigenous peoples. In making that argument, I also contended that one should take seriously, at least more seriously than liberal multiculturalists do, the claims made by those cultural or national minorities. Second, (2) I argued that all of the main views put dubious emphasis on the notion of culture and its value.

In the rest of this dissertation, my objective is to develop an argument—not a theory—for collective rights for cultural or national minorities that avoids those problems. My goal, then, is to justify, without relying on culture as a *normative* notion, *genuine* collective rights and, thus, address the

claims made by minority groups that do not seek to integrate a larger political community, but which rather seek self-determination. I agree with multiculturalists, however, that normative individualism is warranted and, while I propose new normative grounds for the justification of collective rights, the collective rights thus justified need to be compatible with individual rights.[23] That is why the argument I propose in the next few chapters is based in the idea that a failure to recognize collective rights to certain groups, and the focus here is of course on cultural and national minorities, threatens *individual agency*. To see why, though, we need to understand how an individual's agency might be linked with that of a *group agent*. That is what I start discussing in the next chapter.

[23] Which is not to say that they should not conflict. We take many *individual* rights to be compatible with one another even if they might, in practice, conflict. The same goes for conflicts between collective and individual rights.

Chapter 2

Collective Agency

2.1 Introduction

In this chapter, I start to develop the argument for collective rights to self-determination. I set up that argument by showing why and how groups can qualify as group agents. The contention is that certain groups satisfy the conditions for agency on what we can identify as the "standard conception of agency." The structure of the chapter is as follows. In section 2.2, I briefly explain the standard conception of agency. In section 2.3, I identify and dispel a few important arguments that purport to show that intentionality and, therefore, agency cannot be ascribed to groups. I then turn, in section 2.4, to how groups can exhibit intentionality and agency. I develop a general *functionalist* argument to show that groups can satisfy the conditions of agency set by the standard conception. I do not argue that groups can have intentional states in the same way individuals (most likely) have intentional states—that is, as *brain* states. But nothing about the standard conception of agency requires that one have a brain in order to have agency. Finally, in section 2.5, I distinguish between two kinds of group agents, organizations and goal-oriented collectives,[1] which differ in the way their intentional structure relates to the intentions of their individual members. The central claim of this chapter, then, is that we can make sense of collective agency using a functionalist framework.

2.2 The standard conception of agency

What it is to be an agent seems quite obvious: an agent is someone, or maybe something, who *acts*. To understand what that means, we need to get clear on what it means for someone to *act* as opposed to, say, have things happen to them. The standard explanation is that one acts when one's doing is

[1] As I note again below, that is Isaacs' (2011) terminology.

appropriately related to an *intention* that they have. One exercises or displays agency when one performs *intentional* actions. The hallmark of agency is therefore the performance of intentional actions. What it is, then, to be an agent is to be an entity that is *capable* of exercising agency. And being capable of exercising agency means having the capacity for intentional action. According to the standard conception of agency, an entity is an agent insofar as it is capable of having intentions that explain the agent's actions in causal terms. This means that an entity will be an agent only if it has the appropriate functional organization: only if an entity is organized in such a way that its having certain intentional states functions in the appropriate way, that is, as an appropriate cause of certain events (behavior, bodily movements, etc.).[2]

Note that this does not mean that to be an agent an entity *actually* has to act in that way, to exercise its agency. Some of the things I do do not count as actions in that sense and there could be moments in my life where none of the things I do count as actions in that sense. If I yawn, for example, or if I take a sip of my coffee in an automatic manner while reading a paper, I am most certainly doing something. But I am maybe not acting, at least not in the sense of exhibiting agency.[3] That does not mean that sometimes I am not an agent; it just means that sometimes I do not exercise my agency. Moreover, I can have intentions that do not lead to actions because, say, the right circumstances for action never presented themselves. Then again, that does not mean that I am not an agent. In fact, I still am an agent because an agent is an entity that is *capable* of acting in that way.

2.3 Agency individualism

In the previous section, I argued, with the proponents of the standard conception of agency, that

[2] See Schlosser (2011, 2015). I take it that, although they all have different takes on the details of the account, Anscombe (1957), Davidson (2001), Goldman (1970), Brand (1984), Bratman (1987, 2007, 2018), Dretske (1988), Bishop (1989), Mele (1992, 2003, 2017) and Enç (2003) are all proponents of this standard conception of agency.

[3] This kind of things we do unintentionally could probably be casually described as "involuntary actions." But it must be clear that we should not think they are actions in the relevant sense.

agency is a capacity for intentional action. There is a sense in which ascribing agency—understood in the manner just described—to collective entities is done and understood intuitively. As Copp (2006, 195) notes, when we say, for instance, that in the context of the Falklands War Britain planned the attack of and sank the Argentine cruiser *General Belgrano*, we most generally mean that literally, that is, "as ascribing to Britain the action of intentionally sinking something, the same kind of action we would ascribe to Margaret Thatcher in saying that she intentionally sank her dinghy." Obviously, Britain is not, contrary to Thatcher, an individual agent. These assertions about collective entities *acting intentionally* are quite common; we hear or read some of them every day. And, most plausibly, we tend to understand them literally. When we hear, for instance, that a university implemented a new policy regarding vaping on campus, we most plausibly understand that the institution, as a collective entity, intentionally planned, adopted and publicized (and will enforce, if necessary) rules or regulations about the spreading practice of vaping. The fact that in practice we tend to understand such propositions about collective entities acting intentionally does not constitute, however, a conclusive argument for the existence of group agents.

Many authors actually contend that collectives or groups are not capable of acting *intentionally*. I shall call them agency individualists, following Copp (2006). In general, they agree that propositions like "Britain (intentionally) sank the *Belgrano*" or "a university (intentionally) implemented a new policy regarding vaping on its campus" are meaningful, but they deny that they are to be understood literally or that they are strictly speaking true. When we use these sentences, we indeed say something that is intelligible. But this is not because we understand those sentences as implying that Britain or a university acted intentionally or are capable of acting intentionally.[4] According to agency individualists, when we use such propositions in our everyday language, we are only *metaphorically* asserting that

[4] Copp (2006, 195) points out that an agency individualist could alternatively maintain that those propositions are strictly speaking true, but that their being true does not commit us to the further proposition that Britain or a university is an agent (that is capable of acting intentionally). I have to say that I am not certain that this view would be plausible.

collective entities are capable of intentional action. What we actually mean is different, most likely that some relevant individual agents intentionally acted in such a way that caused the *Belgrano* to be sunk or a new policy to be implemented on a campus. But since these individual agents acted in their roles in an organization—the British state or a university—we can accept propositions about the actions of the collective entities as metaphorically meaningful.

Simply saying that such propositions cannot be taken literally and should rather be taken metaphorically, however, is no more of an argument than the intuitive view about the agency of collective entities I previously mentioned. There are two central arguments offered by agency individualists to support the view that collective entities are not agents: (1) an argument that has to do with the action-theoretic implications of—or what is implied by action theory—the notion of agency and (2) an argument about the kind of explanation of social phenomena one should (or can) develop.[5] I will call them the Action-Theoretic Argument and the Methodological Argument, respectively.

First, the Action-Theoretic Argument tries to highlight conditions of agency that cannot be met by collective entities. Recall that being an agent standardly requires being *capable* of *intentional* action. Most agency individualists however deny that collective entities are capable of acting *intentionally*. Collective entities cannot have intentions which are mental states or, as Copp (2006, 197) puts it, "states of mind," because *they do not have minds*. Miller offers a good example of such an agency individualist position: he assumes that "there is a strong presumption against the ascription of mental states, such as intentions and beliefs, let alone full-blown moral agency, to institutions and organisations," because recognizing that collective entities can have intentional states implies the most "bizarre" position that collective entities can have "self-conscious minds" (2001, 165–166).[6] As Isaacs

[5] Copp (2006, 200–207) mentions that two other arguments can also be found to undermine the plausibility of collective agency: a semantic argument and an argument about simplicity in social theory. Both explanations seem to me quite specious. In any case, Copp shows very well that those two arguments fail to prove that we cannot (or should not) ascribe agency to collective entities.

[6] See also Miller (2002) and Miller and Makela (2005) for similar arguments against collective intentions and collective

(2011, 37) puts it, "Miller claims that intentions must exist in the heads of agents," but that, since collective entities do not have heads, they cannot have intentions or intentional states (of mind). Hence, they cannot be agents in the sense defined previously.

A second argument, the Methodological Argument, is put forward by agency individualists: an argument about what kind of explanation or description can and should be given of social or collective phenomena. This is an argument from methodological individualism. Methodological individualists maintain that social phenomena must be *explained* by the way they relate or have been caused *by the actions of individuals*. Watkins (1957, 106), for example, takes methodological individualism to be a prescription for explanation that states that the "rock-bottom explanations" of social phenomena (and individual phenomena, for that matter) are explanations that are formulated in terms of "dispositions, beliefs, resources and inter-relations of individuals." Elster (1985, 5), another methodological individualist, explains that he subscribes to "the doctrine that all social phenomena—their structure and their change—are in principle[7] explicable in ways that only involve individuals—their properties, their goals, their beliefs and their actions." Methodological individualists certainly recognize that social or collective phenomena are something that we can observe. The implementation of a new policy on a university campus is not something that can be adequately characterized as an individual phenomenon or as a phenomenon that has *an* individual as its cause. Rather, it is something done by a collective. If we want to explain or describe a social or collective phenomenon, however, we can adequately do so only by reducing every reference to social phenomena or collective entities to individuals' actions.

This line of argument is apparent in the work of agency individualists like Bratman, who writes that his approach is "broadly individualistic in spirit" (1999b, 129) because it explains collective acts

agency. An similar early defense of agency individualism can also be found in Quinton (1975).

[7] Elster qualify the claim by this "in principle" because he wants to note that we might not have, at the moment, the explanatory tools to produce explanations for all phenomena in such a way.

or activities in terms of the *joint* activity and the *shared* intentions of individuals—where joint activities are things done (constitutively) with other individuals and where shared intentions are intentions that individuals (about joint activities, most meaningfully) have in common.[8] While he thus recognizes that we indeed act collectively (in a way that is different from the way we act individually), he maintains that the explanation that we can and should give for our acting collectively has strictly to do with individuals' actions and intentions. More specifically, Bratman (1999b) argues that an appropriate *explanation* of the actions and intentions of groups is one that reduces those collective phenomena to attitudes of *individuals* and their interrelations. For that reason, it would not make much sense to talk about those phenomena as really being of a collective level or nature.[9] Tellingly, Bratman thus writes about *shared* intentions (of individuals) rather than *collective* intentions.

The Methodological Argument is connected with the Action-Theoretic Argument because while it sounds like a line of argument that has to do with methodology—what kind of *explanation* can and should we give for a certain phenomenon or a class of phenomena—it actually relies on an *ontological commitment* to individualism.[10] In other words, the argument according to which good explanations of collective phenomena[11] can only be "reductivist" explanations (methodological individualism) relies on the idea that the only entities that have ontological substance are individuals (ontological individualism). For methodological individualists and for authors like Bratman, every "rock-bottom" explanation of social phenomena has to rely on predicates about individuals because human beings, that is, individuals, are the only moving parts in the social world, meaning that they are the only entities that have causal powers.[12] To support that view, though, one has most plausibly to rely on the kind

[8] See also Bratman (2014).
[9] The same kind of argument is also present in Miller (2001; 2002; and 2006) and (Miller and Makela 2005).
[10] One can note that most of the debate between methodological individualists and methodological holists or collectivists seems to actually be a debate about ontology. For an argument in favor of methodological holism that makes this same mistake, see (List and Pettit 2011, 44). And for a brief discussion of this confusion, see Hodgson (2007).
[11] Or, for that matter, of individual phenomena.
[12] Then again, that does not deny the fact that we can talk about collective entities. But they are abstract or fictitious entities

of action-theoretic reasons developed in the first argument about intentionality and the meaning of agency: one has to develop some story about why individual human beings are the only moving parts or agents in the social world. And, most plausibly, that would have to do with the fact that individuals are the only entities to possess intentionality because they are the only entities that have minds that can contain intentions (which are *mental states*). So, to some extent, the truth of the conclusion of the first (ontological) argument seems to be assumed by that second line of argument about the kind of explanation that can and should be given of collective phenomena. If we want to produce *good* explanations for social phenomena or acts that are seemingly those of collective entities, we should do so in terms of individuals' actions and intentions because they *are* the only agents, the only entities with causal power (Hodgson 2007; Heath 2015).

Certain collective entities, however, can (and do) indeed qualify as collective agents—that is, as entities capable of intentional action. One central assumption of the agency individualist position seems to be that to qualify as an intentional agent, an entity has to be *ontologically* similar to a *human* agent. Individualists indeed seem to believe that collective entities cannot be agents because they cannot have the same kind of intentions as human beings or because they do not have the same intentional structure as human beings. That is, that they cannot have intentions that are *formed* and that *operate* as those of individual human beings.[13] While this is most probably true, it is a mistake to disqualify collective entities as potential agents on that basis. For collective entities can be said to have intentions (and intentional structures), albeit those intentions certainly do not count as *mental* states or states of *mind*. In the rest of this chapter, then, I explain how certain collective entities can qualify as (intentional) agents and in what sense they have intentions and intentional structures.

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and, as such, have no traction (causal power) in the world.

[13] One can note that individual human beings' intentional structure is in no way a settled matter.

2.4 Functionalism and collective agency

As agency individualists are quick to point out, collectives do not have "phenomenal consciousness"[14] and, therefore, cannot have, in Searle's terms[15], "subjective states of awareness or sentience." To put it otherwise, one could say that collective entities have no qualia. As I just said, though, it is a mistake to move from that quite likely correct observation to the conclusion that collective entities cannot satisfy the intentionality condition set by the standard conception of agency. It might be the case that collectives can have "'immediately accessible' intentional states, or intentional states to which they have the kind of access needed for reasoning and deliberation" (Copp 2006, 200) that do not require phenomenal consciousness. In other words, it might be the case that collective entities can instantiate intentional states in ways that are slightly different from individual agents.

One can find, in the literature, different explanations of how groups can instantiate intentional states, and intentions more specifically, that are not reducible to individuals' intentional states. Many suggest, for instance, that a group will count as an agent if it instantiates or implements a *decision-making procedure* that yields, or at least *can* conceptually yield, verdicts that cannot be explained by aggregating the relevant intentional states of the individual members of the group.[16] Others rather suggest that the instantiation of some specific form of *coordination* is sufficient for collective intentionality and, therefore, agency to be present.[17] However, neither of those explanations tell us, by themselves, *why* the instantiation of a certain kind of decision-making procedure or of a specific form of coordination *counts* as instantiating intentions of the kind that individual agents' mental states—most plausibly—instantiate. Another kind of explanation is required for that.

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[14] This is Copp's expression (2006).
[15] See Searle (1990, 635).
[16] There are important differences between those authors, but I take French (1979), Rovane (1998), List and Pettit (2011) and, more recently, Collins (2019) to all defend a version of that view. I come back to List and Pettit's and French's positions in section 2.5.
[17] I take Tuomela (2013) and Gilbert (2013) to hold a view of that sort. I have to say, though, that I am not clear on whether Gilbert really defends *collective* agency as opposed to an individualistic view that would be closer to Bratman's (2014). I come back to aspects of Tuomela's position in section 2.5.

2.4.1 General notes on functionalism and group agency

The kind of explanation that best fit the bill is a (role) *functionalist* account of collective agency and intentionality. This kind of approach has been around for decades in the philosophy of mind.[18] It is also a very fruitful approach to social ontology, for it offers tools to understand and explain the intuition that seem to underlie our use of the ordinary language about groups, an intuition that agency individualists argue we cannot make sense of, that is, that collective agents *exist*. That is the view that I defend in the rest of this chapter. I am not the first to suggest that functionalism provides a satisfactory explanation of why certain non-individual (and, quite likely, non-mental) states can count as intentional states. Strangely enough, though, there seems to be no explicit and distinct defense of functionalism about group agency in the literature. Authors who mention that they endorse functionalism about group agency mostly do so in passing and rarely defend the view in any detail. Copp (2006), List and Pettit (2011), Isaacs (2011), Tuomela (2013) and Epstein (2015) all have developed, at least in some respect, functionalist accounts of group agency.[19] I find none of those accounts satisfying, however.

I have important disagreement with both List and Pettit (2011) and Tuomela (2013). In List and Pettit's case, I would argue, in a nutshell, that they adopt a form of functionalism that is too narrow or restrictive, which has important consequences in terms of what count as a group agent and what count as a group's intentional actions. Moreover, it is not clear that they actually or wholeheartedly endorse functionalism. They write that they "gestur[e] towards a functionalist account of mind in analyzing intentional states—beliefs and desires—in terms of the roles they play in directing the agent

[18] See Levin (2013) for an overview of the different strands of functionalism in philosophy of mind.
[19] To that list, one could also add Huebner (2014). I will not, though, because Huebner, at least in that book, is not really interested in group agency. He rather focuses on what he calls macrocognition. Nevertheless, the gap between a functionalist theory of macrocognition and collective mentality to a functionalist account of collective *agency* is not very wide.

and guiding action" (List and Pettit 2011, 171), but they never really defend the view. As such, they have also been read as endorsing a slightly different view, namely, interpretivism.[20] That is surprising considering the quite strong functionalist account Pettit adopted in the past concerning individual agents.[21] In any case, I come back in section 2.5 to more substantial disagreements I have with their approach to group agency.

As for Tuomela, he actually seems to me lukewarm about functionalism. He writes, for instance, that

> a group organized for action is regarded as an agent from a conceptual and justificatory point of view, although in the causal realm it exists only as a functional social system capable of producing uniform action through its members' intentional action. A group agent in the sense of this book is not an intrinsically intentional agent with raw feels and qualia, as contrasted with ordinary embodied human agents. (Tuomela 2013, 3)

Although I agree with Tuomela that group agents do not have "raw feels and qualia" and that they are not ontologically separate from their individual members, I also think that functionalism allows us to uphold that groups can *literally* be agents and that group agent *literally* exist. In other words, I disagree with Tuomela about the meaning of functionalism: he thinks it allows to explain how it makes sense to do *as if* groups could have intentions—which sounds to me as view that would be better labeled as fictionalism—whereas I believe that it helps us see how groups can *literally* have intentions.

Copp (2006), Isaacs (2011) and Epstein (2015) all, as far as I can tell, endorse explicitly a genuine form of functionalism as an approach to the ontology of group agents. However, they all provide *elements* of a defense of functionalism. Copp (2006) provides an interesting argument in favour of functionalism, but his central aim is not to defend the view. Isaacs (2011) relies on functionalism to develop her view of collective agency and collective responsibility but does not offer a particularly developed defense of the view and mostly states that we can understand group intentionality in a

[20] See, for instance, Strohmaier (2019).
[21] See Jackson and Pettit (1990) and Pettit (1993).

functionalist manner. As for Epstein (2015), his theory of sociality and group agency latches on functionalist intuitions and explanations, but he stops short of providing a sustained defense of (or even argument for) functionalism as such. I should be clear here that I have no disagreement, at least as far as functionalism is concerned, with Copp, Isaacs or Epstein.[22] In fact, I rely explicitly on both Copp (2006) and Isaacs (2011) in what follows. What I take myself to be doing in the rest of this chapter, then, is building on those authors' insights by defending, in quite explicit terms, a functionalist account of group agency. I thus see this chapter as making a contribution to the literature on social ontology, even if a modest one, by contributing to the growing literature defending functionalism about group agency.

Before moving on, it seems appropriate to say a bit more about another seemingly promising view that I just mentioned. Tollefsen (2015) defends a view that she calls, after a view that can be attributed to Davidson (1984) and Dennett (1987), *interpretivism*. (As I said before, it might be the case that List and Pettit also endorse a form of that view. I think the position they put forward is actually quite ambiguous and will, therefore, stay agnostic on this point.) In a nutshell, interpretivism is the view according to which some entity will count as an agent insofar as it is appropriate to apprehend it from the "intentional stance." That is, insofar as it makes sense, in order to understand its behaviour, to attribute to it intentions and to think that it acts for reasons. It shares a lot with functionalism. For one thing, it does not entail a specific account of how intentional states are to be realized. Intentional states are, according to both functionalism and interpretivism, "black boxes." There are two related reasons, neither of which, though, amount to a "knockdown" argument, why it seems that we should favour functionalism over interpretivism.[23]

First, while functionalism about (collective) agency adheres to the multiple realizability thesis about

[22] I have disagreements with Isaacs on other matters, though. See section 2.5.2.
[23] For an argument that might be of that sort, see Strohmaier (2019).

agency and, for that reason, takes intentional states to be black boxes of sorts, it allows for more discrimination and precision as to what will count as intentional states (and agents). Indeed, a problem for interpretivism is that it might be too permissive and lead to an "overgeneration" of agential entities.[24] That is because for interpretivism all it takes for something to count as an agent is for us to be able to apprehend its behaviour as responding to some reason. On that view, though, a robot vacuum cleaner, say, might very well count as an agent because we can make sense of its behaviour by seeing it as doing what it does for a reason—say, because the floor needs cleaning. The same goes for, for instance, sea cucumbers. Functionalism can escape that worry because it can specify what will make a certain state for a certain entity function as a given kind of intentional state. (That is, in fact, what I do in section 2.5.)

Second, if one tries to build into interpretivism a capacity for the specification of "boundaries" for what can count as a given intentional state, then the difference between interpretivism and functionalism becomes immaterial. That seem to point to the fact that interpretivism is just a somewhat loose version of functionalism, one that emphasizes slightly different central concepts. Interpretivism, I would say, is reasons-centric, whereas functionalism is (intentional-)states-centric. According to functionalism, it is in some sense true that an agent will be an entity that we can understand as responding to reasons and that that will, in general, be determined by observing its behaviour. However, according to functionalism, that is not the end of the story because we can further ask whether or not that entity *does indeed* respond to reasons or merely appears to do so, like a robot vacuum cleaner or, maybe, a sea cucumber. Functionalism, then, focuses on whether we can explain how a given entity can have a given (intentional) state, which would explain why we are correct (or not) in thinking that that entity's behaviour is responding to reasons. As such, it seems that

[24] On this, see again Strohmaier (2019).

functionalism explains more than interpretivism.[25]

There is much more than we could say about this, but I will take those two reasons to be sufficient to favour functionalism. In the rest of this section, I do two things. First, I make a few comments about how the functionalist account works and why it is helpful. Then, I explain how it not only applies to the intentional structure of a collective agent as a whole, but also to the intentional states that are part of the intentional structure.

2.4.2 A functionalist account of collective intentional states

According to functionalism, if we can say that collective entities are agents, it is because we can identify collective intentions that have a *function* in collective actions, intentions that do not necessitate that the agent be capable of phenomenal consciousness or, to put it in another way, capable of consciously experiencing its having an intention. In an organization, for example, corporate internal decision structures create such intentions: no one is "phenomenally conscious" of having such an intention, but it nonetheless plays a functional role in the organization's decisions and actions. In other words, it is not a necessary metaphysical condition of having an intention that it be experienced as a mental state (phenomenally) by an agent. Rather, *the functional role provides the necessary and sufficient conditions of the existence of an intention*. As Isaacs (2011, 37; my emphasis) argues, instead of conceiving intentional states as states of mind, we can conceive of them, at least as far as collective intentions are concerned, "as *state[s] of affairs*, identifiable in part by their functional roles. As long as they function at the collective level of action in the same way that individual intentions function at the level of individual action, then we may think of them as intentions." And their function, as per the standard conception of agency (and action), is to lead (or play some form of causal role) in the agent's action.

[25] This kind of question goes back to the debate between behaviourists, such as Ryle (2009), and everyone else. See also the (possibly ongoing) debate between Dennett and Searle, maybe most interestingly argued in the pages of the *New York Review of Books*.

Agency individualists seem to hold a certain picture of what makes something an intentional state: they seem to think that it depends on its internal constitution. They would maintain, for instance, that what makes something a belief that *p* is a mental state or state of mind constituted in a certain way and (most plausibly) realised by a certain discreet physical state (of the brain, neurons, etc.). Although it appears intuitive, this picture give rise to different problems. Among other things, one could note that it seems overly "chauvinistic" since it appears to preclude the possibility for creatures or entities constituted differently than human beings of having intentional states and agency. Indeed, under such a picture, it would not be possible to say of creatures or entities that behave in a way that we could only interpret as intentional but are physically different from human beings that they are intentional agents or that they, strictly speaking, act. Of course, a sci-fi example would here be appropriate: the heptapods (extraterrestrial entities) in Denis Villeneuve's film *Arrival* could not be said to act (intentionally) or to be agents. Which, of course, would make the movie unintelligible. Similarly, under that picture, it makes no sense to say that collective entities or groups can have intentions and intentional states: they are not suitably constituted, that is, they are not individual human beings.

A functionalist account such as the one sketched earlier, however, avoids such a problem and further helps to make sense of our ordinary language and the intuition about group agency underlying it. According to functionalism, what makes something an intentional state depends on the function or the role it plays in the intentional structure[26] of which it is part. In other words, an intentional state is described or defined by its causal relations to stimuli, behavior and other intentional states.[27] Something will be a belief that it is raining under the functionalist picture not because of the internal constitution of that thing—because of some discreet physical state (of the brain) that makes it the case that it is a belief that it is raining—but because it plays a certain role in the intentional structure (or

[26] In the case of human beings, we could say cognitive system instead of intentional structure.
[27] Here again, in the case of an individual human being we could be more precise: we could say sensory stimulations instead of stimuli and *mental* states instead of the broader term intentional states.

cognitive system) of the creature that has the belief: because it has certain causal relations with other intentional states, stimuli and behavior. To be more precise, we could say that something is a belief that it is raining if it is causally related to, say, observation of water falling down outside, to a desire (intentional state) to stay dry, and to belief-that-it-is-raining behavior. Similarly, something will be an intention because of the causal role it plays in an intentional structure: something will be an intention just in case it stands in a certain causal relation to certain mental states (probably most importantly a certain belief/desire pair), if it produces certain behaviors and if it responds to certain stimuli.

The required causal relations are, however, context dependent. For instance, belief-that-it-is-raining behavior will vary depending on relevant stimuli (the intensity of the observed water falling down, for instance) and other intentional states, such as the entity's desires—one could indeed enjoy and desire to walk under the rain. That is to say that the required causal relations are interdependent in the intentional structure. But functionalism also implies multiple realizability: since it does not rely on something's internal constitution but rather on the role it plays in a system to define that thing, it may very well be that differently internally constituted things are the same thing because they play the same role in a cognitive system or, more broadly, in an intentional structure. Pain, for instance, could very well be realized differently—that is, by different physical states—at the physical level in differently constituted entities. It could be the case that for human beings pain is realized by "C-fiber" stimulation, for instance, while it is realized by a different physical process in another entity. What is important, on the functionalist account, is that both instances of pain have the same higher-level "role" properties: that they stand in the same causal relations to the other relevant elements of the intentional structure of which it is part. On the functionalist account, then, for something to be an intentional state of a certain kind is thus for it to have a relational property.

One further, and most interesting, feature of functionalism is that it makes it logically possible for non-physical states to play the relevant roles in a given intentional structure as to be or to realize

intentional states. That is because descriptions of intentional states (or mental states) relying solely on the causal relations of that state with stimuli, other intentional states and behavior are "topic-neutral," that is, they do not (explicitly) reference properties that are specific to the internal constitution of the concerned state and thus impose "no logical restrictions on the nature [or kind] of the items that satisfy the descriptions" (Levin 2013).[28] Of course, most functionalists have also argued that, when it comes to human beings, the items satisfying the descriptions are physical states, like specific *neural* states.[29] But, again, it means that for other creatures or entities, it could be the case that the items satisfying the descriptions are *different* physical states or no physical states at all. What is important is that if the concerned items or states are holding the same role function, we can then say that the entities having those states are *literally* in the same intentional state, whether or not this intentional state is realized in the exact same way in all concerned entities. The extraterrestrial creatures in Villeneuve's *Arrival*, then, can be said to have, *literally*, the intention of communicating with the movie's human protagonists, even if it is pretty clear that they do not have the same physical make-up as human beings and that they (most plausibly) cannot have their intentional states realized by the same physical processes as humans (say, certain neural states).

Furthermore, all of this means that we can also conceive of non-individual entities as *literally* having intentional states. Certain groups, composed of individual human beings, can have intentional states. This is not because they can have, as a group, *mental* states. Rather, it is because there can be *states of affairs* in the group's constitution and relations that hold the same *functional roles* that certain physical states hold for individual human beings. Some collective entities display genuine agency, then, because they are literally capable of having intentions. More precisely, we can say that they have intentions

[28] See also Smart (1959) who equates being "topic-neutral" to being "quasi-logical" (in the same sense that we say that words like "and" or "or," for instance, serve a strictly logical purpose).

[29] Which means, as Levin (2013) notes, that "functionalism can stand as a materialistic alternative to the Psycho-Physical Identity Thesis, which holds that each type of mental state is identical with a particular type of *neural* state." Recent defenses of such a functionalist alternative to the Psycho-Physical Identity Thesis are, among others, Hill (1991) and Polger (2011).

because they can realize—and this seems to be what the intuition underlying our use of the ordinary language captures—states of affairs that play the right functional role according to the standard conception of agency: they can realize states of affairs that play the functional role of intentions in the causal explanation of action. Those states of affairs are just not physical (or neural, or brain) states of affairs. Then again, that is no problem on the functionalist account.

One could object, though, that even if it looks like I am right that at a superficial level of analysis we could be led to conclude that collective entities realize states of affairs that hold the right functional (causal) relation to a group's "actions," those states of affairs are not literally intentions because it cannot be the case that they hold the right functional relations to other intentional states that are required for something to count as an intention. More precisely, one could say that collective entities cannot have intentions because they cannot have beliefs and desires.[30] Here again, a functionalist account elucidates how collective entities can have beliefs and desires. Indeed, collective entities can realize certain states of affairs that hold the right sort of functional relations so as to have the properties of a belief or a desire.[31] It's just that, again, those states of affairs will not be physical states realized in an individual's brain. How exactly are beliefs realized in collective entities is certainly not a settled matter and it will depend on the kind of group concerned. Generally speaking, however, the most promising approach to answer this question, although functionalism is of course compatible with other perspectives, would be to consider group belief as the collective acceptance of some proposition. Gilbert (1987, 1989) and Tuomela (1992, 2013) have both developed analyses of group belief using that "collective acceptance" approach. Tuomela (1992, 295–296) argues that group

> G *believes* that p in the social and normative circumstances C if and only if in C there are operative members A_1, …, A_m of G in respective positions P_l, …, P_m such that: (1) the agents A_1, …, A_m, when they are performing their social tasks in their positions P_1, …, P_m and due to

[30] According to Donald Davidson's classic account (see Davidson 1963), an intention is causally related to a belief/desire pair. But Davidson's approach to intention has been contested by a lot of people in the last fifty years. See, for instance, Bratman (1999a) or Thompson (2008).

[31] I will continue to talk only about beliefs, but the same for of argument also applies to desires.

> exercising the relevant authority system of G, (intensionally) jointly accept that p, and because of this exercise of authority system, they ought to continue to accept and positionally believe it; (2) there is a mutual belief among the operative members A_1, …, A_m to the effect that (1); (3) because of (1), the (full-fledged and adequately informed) nonoperative members of G tend tacitly to accept – or at least ought to accept – p, as members of G; and (4) there is a mutual belief in G to the effect that (3).

Tuomela's analysis offers an explanation for how, exactly, a certain state of affairs in a group (G) can function as a belief and is thus, according to my functionalist account, literally a group belief. G's internal organization will lead to the formation of certain shared beliefs in relation the to the group's purpose or *raison d'être*. In turn, G's internal organization will lead to certain of those shared beliefs to be (tacitly or not) accepted by the relevant members of G as the belief of G. Once this is the case, there is a certain state of affairs in the group—that is, the fact that a certain belief that p has been collectively accepted as that of G—that hold the functional role of a belief at the collective level: it leads the group to adopt belief-that-p behavior, it is causally related to other intentional states of G (like the intention to behave in a certain way, but also to other beliefs of G) and it cause G to react a certain way to external stimuli (to adopt a certain behavior if, for instance, G's environment was to change) or is causally related to some stimuli (like certain events being observed by the relevant members of G or certain information being acquired by G). And just as beliefs impose certain epistemic and practical constraints at the individual level, collective belief will impose constraints on the group's epistemic and practical possibilities and on the (relevant) attitudes of the group's individual members.

The analysis of group intentional states must certainly be pushed further. The specifics of the items satisfying the description of something as a belief will vary depending on the type of group with which one is concerned. Hierarchical organizations will not realize beliefs in the same way as non-hierarchical clubs or groups of friends. And it may be the case that certain entities we consider as groups cannot realize beliefs because, say, their members are not adequately related. The same can be said about intentions and, therefore, agency. Not all groups qualify as agents, because not all groups

can have "items" that realize the higher-level "role" properties of intentions. Moreover, one can note that certain groups are probably capable of having beliefs without being able to form intentions. That could be because, for instance, certain groups have collectively accepted beliefs but no desire relevant to their purpose. In any case, the important thing to note is that functionalism allows for that: it allows for desires, beliefs and intentions to be multiply realized.

Before moving on, a last comment about the ontological thickness of the approach proposed here is required. I suggest here that collective agents do indeed *exist*. Yet, I take my approach to be "ontology-light." I am not postulating the existence of a separate set of entities that can intend and act on their own. And I am certainly not suggesting that collective agents pertain to a different ontological realm than individual agents. There is no ontological boundary between individuals and collectives. In fact, collective agents are *constituted* by individual agents.[32] While collective intentions and actions are not reducible to individual intentions and actions—for the reasons explained earlier—they are nonetheless dependent[33] on individual intentions and actions. They are thus related even though they can be classified as being of ontologically different kinds. But, the question of whether or not collectives really have causal powers that are autonomous leaves me indifferent. Actually, we don't need to address that question, which would imply an ontology-heavy approach, to conclude that collectives have agency. It is sufficient to acknowledge that some states of affairs that cannot be explained without reference to collective phenomena and their relations with individuals' intentions are themselves the best explanations of a collective's actions. Of course, that implies ontological assumptions, but those are, as I noted before, ontological assumptions that are simply sufficient to ground agency for collectives. At least for collectives that satisfy the conditions to be considered as

[32] I will not try to resolve that question here, but it might be the case that collective agents (or their properties) *supervene* on individual agents (or their properties). That is what is suggested by List and Pettit (2011). I don't know that that is correct. One could also maybe think that the appropriate ontological relation here is one of *grounding*: facts about collective agents are *grounded* in facts about individual agents. Again, I don't know that that is correct.
[33] This is not to suggest that the appropriate relation is one of *ontological dependence* in the strict sense.

either an organization or a goal-oriented collective.

2.5 Collective agents

There are different types of collective entities that potentially qualify as agents on the basis that they display (collective) intentions. Following Isaacs (2011), we can classify any group or collective into three types: organizations, goal-oriented collectives and aggregates. But only collective entities of the first two types qualify as intentional agents, for only those collectives can have intentions.

2.5.1 Organizations

Organizations, such as commercial corporations or governmental institutions, are the most obvious and easy to defend candidates for intentional agency. One approach is to argue against the agency individualists' claim that groups cannot have intentions *because they have no minds*. This is List and Pettit's (2011) strategy: they argue that corporate entities display intentionality and have a "mind of their own."[34] While this formula might not be meant literally, List and Pettit indeed show that groups can be considered as "intentional subjects" in a way similar to individuals when they "collectivize reason" and display "rational unity" in the way they take decisions and act. List and Pettit do so by analyzing what they call the "discursive dilemma."[35] This analysis is supposed to show that groups that do not collectivize reason through their decision-making procedures and instead use procedures that aggregate individual reason will produce decisions that are, at least over time, inconsistent and apparently irrational.[36] Conversely, if a group collectivizes reason, it would have display collective rationality by producing outputs that are collectively consistent.

[34] See Pettit (2003), List (2006) and List and Pettit (2011).
[35] There is no space (or need) here to explain in detail the nature of the "discursive dilemma." For more on that, see List and Pettit (2011, 43–46).
[36] For an example, see what List and Pettit (2011, 43–46) about the court that individualizes reason.

For List and Pettit (2011), only groups or collectives that display such collective rationality, because of corporate internal decision structures that collectivize reason, are "intentional subjects" in a way that is similar to individual intentional subjects but that is not reducible to individual agency. An intentional subject will not simply collectivize reason once in a while; it will display robust collective rationality or, as Pettit said elsewhere (2003), "rational unity" among its intentional states. A group will thus be an agent (or an intentional subject) if it forms judgements and intentions that are coherent with judgements and intentions it formed in the past and if it forms intentions that are appropriate in the pursuit of its goals or purposes. This is why collective agents can be seen as having a "mind of their own": as long as they display robust collective rationality, they function as agents in a way that is similar to individual agents. For List and Pettit, individuals are agents insofar as they satisfy certain standards of rationality and among those standards, "[a]chieving consistency is of special importance" (List and Pettit 2011, 24–25). Their presumption here is that individual agents (most of the time) achieve consistency by adjusting their motivational and representational attitudes so that they are coherent with one another. In other words, we could say that individuals are agents because they are capable of some form of reasoning unity. The group that collectivizes reason (and that displays "rational unity" through time) displays the same kind of "reasoning behaviour": it adjusts its attitudes so that its judgements or actions cohere with one another. A group that "individualizes reason," and hence does not show "rational unity" through time, does not display the kind of consistency (individual) agents are expected to display. List and Pettit believe that only groups that have adequate corporate structures, that is, corporate structures that result in robust collective rationality, will be agents in the relevant sense.

It seems, however, to be too stringent a requirement for groups to display robust collective rationality or "rational unity" to count as agents. It is a mistake to establish such a sharp division between groups that count as agents because they have "rational unity" and groups that do not, for

two reasons. First, it would actually be a mistake to not consider collectives that fail to satisfy the "rational unity" requirement has agents because it seems that it would foreclose the possibility of holding those collectives responsible for their "irrational" decisions and actions (Copp 2006). For instance, a political party whose platform is incoherent should be blamed (or it should be meaningful to blame it), as a collective, for not achieving rational decisions or actions. And if we think that members of the party cannot be separately considered individually responsible for the decision it reached as far as the platform is concerned, it is plausible that "ordinary normative views commit us to construing collectives as intentional agents. […] More generally, it seems that it would be appropriate to criticize a purposive group if it fails to achieve a rational unity in pursuing its purpose" (Copp 2006, 214). This seems to indicate that, in our usual practices, we ascribe agency to collectives that do not satisfy the "rational unity" requirement.

A second reason to think that List and Pettit are mistaken in their approach to collective agency is that the rational unity requirement does not even seem to be a requirement for *individual* agency. Actually, it is very hard to see how it could be. Human individual agents certainly often display rationality when exercising agency, but it is not the case that their intentional states (and judgements) form a sort of rational unity. The literature on how we form irrational beliefs and intentions is very abundant,[37] but even the most casual examples can show that "rational unity" is not something that individual agents (always) really achieve. For instance, many people form the goal to lose weight and, in a consistent and rational manner, thus form the intention to cease to eat dessert in order to decrease their fat and carbohydrate consumption. But when many of these people are offered a rich and sugary dessert, they will form the intention to eat the said dessert (without forsaking their goal and their intention to cease to eat dessert). That does not satisfy the "rational unity" requirement. Nonetheless, I think that we want to be able to say that those people, when accepting and eating the dessert, were

[37] See, for instance, Cherniak (1990), Harman (1986) and Stanovich (1999; 2009).

acting intentionally, that is, acting as agents. And, obviously, we want to be able to maintain that those people are, on the whole, agents.[38] More generally, individual agents may have conflicting intentional states and may use irrational (or non-rational) decision making processes. Again, that does not seem to mean that individuals should not be considered agents. If normally functioning human individuals, who are clearly the model of the standard conception of agency, do not satisfy the "rational unity" requirement, it is hard to see why collectives should count as agents only when they satisfy this requirement.

List and Pettit's conclusion thus seems to be that organizations (or, as they say, corporate entities), such as courts, *can be* agents. While I agree with that general idea, I also think, for the aforementioned reasons, they set the bar too high. Organizations such as courts are not only *potential* agents or do not only *potentially* display intentionality; they *are* displaying intentionality and agency even when they do not satisfy List and Pettit's collective rationality conditions. And to support that idea, there is no need to argue that organizations have, in the same fashion as individuals, "minds of their own."

Following Peter French (1979), I think organizations are easy to defend candidates for intentional moral agency because we can identify corporate internal decision structures that highlight *intentional* structures that are not reducible to the intentions of the individual agents that are part of the organization. There is genuine collective agency not because the organization acts in a way that is ontologically independent from its individual members' actions, but because the individual members' intentions, which are at the source of their own actions, are not constitutive of the organization's intentions. As French (1979, 213) puts it,

> the CID [corporate internal decision] Structure […] provides the grounds […] for such an

[38] List and Pettit present a descriptive account of agency: an agent is a system that meets a certain set of "basic conditions." While I here focus on their characterization of collective agents, my argument is that those conditions that have to do with rationality are in general too stringent. However, I would have no problem with adopting their standards of agency as a normative model. I certainly agree that agents, individual or collective, *should* try to be consistent and rational. People who would prefer to reduce their fat and carbohydrate consumption would *ideally* not form the intention to eat rich and sugary desserts when they are offered to them. But on a descriptive level, I would not hold that individuals that are inconsistent or irrational in that manner *are not* agents.

> attribution of corporate intentionality. Simply, when the corporate act is consistent with, an instantiation or an implementation of established corporate policy, then it is proper to describe it as having been done for corporate reasons, as having been caused by a corporate desire coupled with a corporate belief and so, in other words, as corporate intentional.[39]

The central point here is that actions of a corporate agent, that is, actions that are the result of decisions taken and implemented through corporate internal decision structures are genuinely corporate (or collectively) intentional because they do not necessarily correspond to any of the intentions of the individual agents that constitute the organization. The intentions of the organization can be understood independently from the intentions of its individual members and the latter can even be entirely irrelevant to the intentions of the organization. No individual member has to intend the action of the organization for it to be carried out. As Isaacs (2011, 29–30) puts it, "[i]t is even theoretically possible that an organization might intentionally pursue a course of action that is not the action that anyone in the organization structure intended that the organization pursue."[40] To some extent, the organization's intention can even go *against* the course of action that every individual member of the organization would have intended if she was taking a decision by herself. For organizations, therefore, there is a level of intentionality and, thus, a level of agency that is distinct from the individual level of agency of their individual members because the internal decision structures can generate intentions that are distinct from the intentions of its individual members. Importantly, on this view, contrary to what List and Pettit's view entails, organizations do not have to satisfy a sort of "rationality condition" in order to count as agents.[41]

Of course, that does not mean that the *actions* of the individual agents constituting the organization

[39] Isaacs (2011) quotes this same passage.
[40] Jeremy Waldron (1999, ch. 6) similarly argues, concerning legislative bodies, that their *acts* are not the reflection of the intentions of the individual members of the group. But Waldron concludes that they should not be taken to be the product of any intention; rather, they simply are the result of some decision-making process. Although I agree with the first part of Waldron's analysis, I rather side with Richard Ekins (2012) who argues that legislature are collective agents and that they thus form collective intentions (that are expressed in their legislative acts).
[41] Of course, an organization's CID structure might very well "collectivize reason" in List and Pettit's sense. But it does not need to in order to count as an agent.

are disconnected from the *actions* of the organization from which they are a part. Copp (1979; 2006) argues, and I agree with him, that we should understand collectives as performing "secondary" actions by virtue of the "primary" actions of individual agents. But for that relation to obtain between "primary" and "secondary" actions, the right relation has to exist between the individuals performing the "primary" actions and the relevant collective: the individuals have to be the authorized agents of the collective. In other words, the individual agents have to be in a position of "authority" such that their actions can be understood as actions performed "on the behalf of" the concerned collective. The actions of an organization are thus not (metaphysically) independent from the actions of its members, "because the actions of collectives are 'constituted' by relevant actions of relevant persons in the right kind of context" (Copp 2006, 205). This relation between relevant individual actions and the collective's actions is evident in the organizational context: individual members have roles that serve to identify which of their actions are relevant to constitute the "secondary" actions of the collective. A university principal and a campus security guard or the Prime Minister of Britain and a British artilleryman, to gloss on the examples used above, have different roles in their organization, roles that delineate the scope of actions they can perform "on behalf of" their organization. But that the actions of the collective are constituted by the relevant actions of its individual members does not mean, as I showed before by employing French's analysis, that the intentions of a collective necessarily reflect the intentions of its individual participants.

2.5.2 Goal-oriented collectives

But organizations, which have more or less formal structures of decision-making (French's CID Structures),[42] are not the only type of groups that display intentionality and that thus qualify as agents.

[42] Note that List and Pettit's account of corporate agency also focus on corporate internal decision structures. However, French does not add, for intentionality to obtain, a condition of rationality or "rational unity."

Following Isaacs (2011), that *goal-oriented collectives*, which do not possess formal structures of decision-making, are also agents in the appropriate sense. While organizations are structured and often hierarchical groups—such as states, courts, commercial corporations, or NGOs—goal-oriented collectives—such as a group of people making dinner together or a jazz quartet—most generally have no clear structure or, *a fortiori*, hierarchy. Contrary to organizations, then, the fact that they have intentions cannot be explained by the presence of a particular kind of corporate structure. In goal-oriented collectives, the roles of the different members are not as well-defined as in organizations, if they are defined at all. Still, goal-oriented collectives cannot be reduced to a simple mereological sum of individual agents. In coming together in the pursuit of a common or joint goal, goal-oriented collectives are capable of actions that are not within the reach of individual agents, mereological sums of individual agents or aggregates. In that sense, goal-oriented collectives seem to be more than the sum of their parts. Four jazz musicians, even if assembled, will not be able to create jazz music, as a group, if they simply exercise individual agency; if, for instance, they each play whatever comes to their mind with no attention to what others play. But this is not what a jazz quartet is. A jazz quartet is four musicians who play *together*, who create something that they wouldn't be able to do if they were playing all by themselves. While I can play jazz alone, I cannot play jazz as a band alone.

Another reason we should differentiate goal-oriented collectives from mereological sums is that, as is the case for organizations, they "have the capacity to withstand significant changes in membership without their identities being compromised" (Isaacs 2011, 35). If a bunch of friends and I decide to organize a dinner that we will all be cooking together and that at the last minute one of my friends decides to bring another friend of hers, the group will preserve its identity as a goal-oriented collective even if its membership has changed. Goal-oriented collectives thus seem to amount to more than the mere sum of their parts. They are not simple collections of individuals; they possess metaphysical

properties that a simple collection of individuals—a mereological sum—do not and cannot possess.[43]

Obviously, though, what I just said is not sufficient to show that goal-oriented collectives actually do display agency. Since I defined agency, following the standard conception, as a matter of being capable of intentionality, everything here hinges on whether or not goal-oriented collectives can possess intentions. Of course, my contention is that goal-oriented collectives effectively have intentional structures and intentions. If we accept, as I argued earlier, that intentions do not have to be conceived as *mental* states (or states of *mind*) and that they can instead be conceived as *states of affairs*, there is a way to understand goal-oriented collectives as displaying genuinely collective intentions even if they do not have the more or less formal structure organizations have. I agree with Isaacs, again, that we should understand

> collective intention as a state of affairs consisting of a complex of appropriately constrained individual intentions, the relationships between them and to the joint goal, and *the individuals' understanding of themselves as standing in relation to others as members of a group in pursuit of a joint goal*. Understood in this way, *the collective intention has independent standing that may, in some cases, constrain how individuals may legitimately participate in the collective activity*. (Isaacs 2011, 36; my emphasis)

With goal-oriented collectives, it is thus the way in which individual members' intentions are in relation with the joint goal and with the relevant intentions of the other individual members that create genuinely collective intentions. Contrary to what happens with the intentional structure of organizations, in a goal-oriented collective the collective's intentions necessarily are a function of its individual members' intentions.

For Isaacs (2011), the main difference between organizations and goal-oriented collectives lies in how a collective's intentions are linked to its members' intentions: she argues that in the case of a goal-oriented collective, its intentions are directly linked with the intentions of its individual members, while there would (necessarily) be a "sharp disconnect" between the two levels of intentions in the case of

[43] One can note that a mereological sum of individual agents will necessarily change in its identity if its members change. This is because mereological sums are nothing more than the sum of their parts. The set formed by myself, Arnold Schwarzenegger and a Chinese panda caregiver cannot be said to have an identity relation with the set formed by myself, Arnold Schwarzenegger and Vladimir Putin even if only one member of the first set has been replaced in the second set.

an organization. I believe Isaacs goes too far in arguing the latter point, because whether or not that "disconnection" is present will be a matter of the specific content of the relevant group-regarding intentions of the individual members of the collective. It is the case that, as French's (and others') analysis shows, an organization's intentions do not *necessarily* reflect the intentions of its individual members. As such, Isaacs is right in contending that there is a distinction to be made between organizations and goal-oriented collectives in the way their individual members' intentions relate to the collectives' intentions. I would argue, though, that the connection between the two levels of intentions it is more a matter of degree than an on-off property. In an organization, for an individual member to be said to contribute to a collective intention (and action), it is not necessary that that person's intentions be oriented toward the achievement of the collective's goal. As a retail clerk or a corporation's accountant, for instance, one can simply intend to do what one is told in order to get paid and still count, because of the role one has in a structured organization, as participating in the collective's action. (Then again, the retail clerk or accountant could also intend to further the corporation's goals or intentions.) In goal-oriented collectives, participants' intentions, for the individual to be said to contribute to a collective action, *have to* be oriented toward the achievement of the purpose of the collective. The participants' intentions must have an appropriate relation in regard to the purpose of the collective; their intention *must be*, in part, to participate in the achievement of the purpose of the group. This implies that the members of a goal-oriented collective must understand "themselves as standing in relation to others as members of a group in pursuit of a joint goal." Individual agents that are members of such a collective agent must intend, to some extent, to *play their part* in the pursuit of a joint goal, in the pursuit of what the collective intends to do. So there is an important link between individuals' intentions and the collective's intentions: the first "play an important *analytical role* in the intentions of the" group (Isaacs 2011, 40; my emphasis).

To put it another way, a goal-oriented collective will exist only if the members possess intentions

that have an appropriately collective content. To use Tuomela's (2013) terminology, the members of the collective must possess *we-mode intentions*, as opposed to *I-mode intentions*. Because the content of we-mode intentions has different satisfaction conditions than the content of I-mode intentions, only we-mode intentions can be said to have appropriately collective content. And because of that difference in content, the two intention modes "have different functional roles" and "entail different commitments and action recommendations" (Tuomela 2013, 70). As Tuomela (2013, 70) writes, an individual agent A will have an I-mode intention that P "if and only if A is privately committed to satisfying P (or participating in the satisfaction of P) and he intends to satisfy P (or participate in its satisfaction) at least in part for himself qua private person." In contrast, an individual agent A will have a we-mode intention that P if an only if A is part of a group that collectively accept[44] P as its intention and if A intends to participate in the satisfaction of the intention for the group (as opposed to for himself qua private person). The two modes of intention thus propose different conditions of satisfaction: for a we-mode intention to be satisfied, "it is necessarily the case as a conceptual or quasi-conceptual framework feature (based on the participants having constructed themselves as being intrinsic parts of the group) that none of us can satisfy it for herself only" (Tuomela 2013, 66). To that extent, I cannot intend to write this paper in the we-mode. But it is to be noted that a same intention can be had in the two different modes. A corporate accountant can intend, for instance, to do her job in the individualistic I-mode or in the collectivistic we-mode. Or, I can intend to participate to a pot-luck party either in the I-mode or the we-mode. It all depends on whether or not she and I are part of a group whose intention I foster by my intention and on whether or not I intend to participate in the satisfaction of the intention *for* the group.[45] What is different between organizations and goal-oriented

[44] What that implies can vary in function of the decision-making procedures of the group.
[45] One can also note that I-mode intentions can be shared: when I go to the theater to see a movie, chances are that I share the intention to do so with the other people who go see the same movie. That obviously does not make it a collective intention, however, for it is not a joint intention that I have with the other movie-goers.

collectives, then, is that for a goal-oriented collective to exist, it is necessary that members of the collective have we-mode intentions.

But that does not imply that a goal-oriented collective's intentions are reducible to its individual members' intentions. For it is not sufficient that individuals have a certain kind of intention for group intention and action to be possible. Other, external conditions have to be met. It is not sufficient, for instance, for my friends and I to simply *share* the intention to make dinner together—it is not sufficient that we all had the intention "I intend that we make dinner together." For collective intention to emerge, that is, for a collective state of affairs that as an intentional functional role to exist at the collective level, the (putative) participants in a goal-oriented collective (and their intentions) must stand in a certain kind of relation. The relation required for an individual intention to participate in that way to the state of affairs that constitute a collective intention has to do with the individual's acknowledgement of other participants' intentions. If I intend to play my part in the pursuit of a joint goal but do not take into account other participants' intentions, I arguably fail to have an effective collective content to my intention. If, for instance, I intend to play my part in a dinner some friends and I want to make together but I fail to take into account my friends' intentions about the time and place of the dinner—I intend, say, to have the dinner Monday night at my place and other participants intend to have it Friday at someone else's place—my intention does not have the appropriate relation to the collective's intention for it to count as a component of the collective's intention. For Isaacs (2011, 41), "the conditions for collective intention have, arguably, not been met—at least by me." But that also points to another requirement for collective intention and collective action in goal-oriented collectives: some degree of common knowledge. For a collective intention to arise, members of the collective must reach a minimal level of mutual understanding. In the dinner example, we cannot be said to intend to have a dinner as a group if there is no minimal mutual understanding of what that implies. We may disagree on exactly how the evening should go, but we at least have to agree, say, on

a general format—we have to have mutual understanding of whether it is a dinner we cook together or a potluck or any other format—and on a time and place for the event. In other words, I must not only take into account other participants' intentions, but they have to know, to some extent, that I know about their intentions and I have to know that they know about my intentions. Moreover, we have to note that taking into account other participants' relevant intentions implies that the collective's intention that they compose poses constraints on the collective content my intentions should have in order to have the appropriate relation with the collective's intention to count as one of its components. If I know about my friends' intention to have the dinner on Friday but that that does not lead me to change my intention to participate in *that* dinner on Monday, I have not genuinely taken into account my friends' intention and my own intention cannot count as a component of the dinner party's collective intention. On the contrary, if I recognize that the dinner party's intention is to have the dinner on Friday and that I accordingly change my intention to participate to that dinner—that is, if I recognize the constraining or binding aspect of the collective intention—my own intention to be a part of the dinner party has the right collective content and thus counts as a component of the collective intention.

What those conditions of collective intention suggest is that collective intentionality (and, therefore, the expression of collective agency) is a matter of degree. I can be more or less taking into account other participants' relevant intentions and the common knowledge condition can be more or less satisfied. Collectives, then, can be more or less cohesive, depending on the force of their collective intentions (Isaacs 2011, 41). We can see collectivity and the expression of collective agency as a continuum: some groups barely show collective intentionality while others are very cohesive and are consistently expressing their agency. Four jazz musicians casually "jamming" together may be viewed, for instance, as less cohesive and as having less robust intentions than an established jazz quartet. That may be recognizable in the kind of things they are able to achieve as a group.

Collectives can also present elements from different types of intentional structures.[46] A collective can display certain elements of an organizational or corporate intentional structure at the same time as it functions, in other aspects of its being, with goal-oriented-collective-like intentional structures. A national community, for instance, could be said to have state-like institutions that function as an organizational intentional structure while its cultural pursuits are determined more in the fashion of a goal-oriented collective's intention.

This example of the intentional structures of the collective agent that a national community can be also suggests something else about the nature of goal-oriented collectives: contrary to organizations, the goal or purpose that is at the source of the collective agency can be quite unspecific. To follow up on the national community example, a nation can have intentions about culture, for instance, even though the nation's members *disagree about what exactly their culture should be or look liked*. It is enough for them to participate in the pursuance of, say, the affirmation of their collective culture. I agree with Gilbert (2006, 140), then, who writes that "[i]t is possible for people to be jointly committed to espouse a certain goal as a body, for instance, without having mutually expressed their readiness to uphold *that particular goal* as a body." While disagreement is possible, however, remember that there has to be at least a minimal level of understanding and that collective intentions, by their constraining aspects, define what can count as an individual intention to participate to the pursuance of the collective's goal. So, to continue with the national culture example, some individual intentions with cultural content could fail to have a proper collective content (relating to a particular nation) if the cultural content is not shaped in the appropriate way by collective intentions about culture. Then again, that does not mean that disagreement is not possible, for disagreement is not a lack of recognition. Some people may judge a work written in slang as not very good culture (and thus disagree with the way one acts on one's intention to participate to a collective's pursuit of cultural goals) while still recognizing the

[46] Which I take to be an important difference between Isaacs' approach and my own.

contribution as a realization of the nation's culture (and thus recognizing the writer's intention as having the appropriate relation with other participants' and the collective's cultural intentions). This seems to indicate that agreement about the specific content of the goal is not required for a collective agent to form around that goal.

2.6 Conclusion

The work done in this chapter is mostly to set up the argument that I make in the next two chapters. As I said before, though, I see this chapter as making a contribution to the literature on social ontology, even if a modest one, by contributing to the growing literature defending functionalism about group agency. Indeed, in this chapter, I explained how functionalism can make sense of group agency and showed how intentions can be instantiated by groups of individual agents in two slightly different manners. In the next chapter, I turn to the normative implications of recognizing certain group as agents.

Chapter 3

The Threats to (Collective) Agency

3.1 Introduction

In the previous chapter, I argued that groups can qualify as agents. This provides the first step in my argument for collective rights. In this chapter, I provide the next step: groups can be subject to interference or domination and this is a significant moral problem—one could say a problem of justice. That argument can be unpacked into two central claims. The first, a *conceptual* claim, is that certain groups, because they are *agents*, can be subject to interference and domination. This highlights a symmetry between individual agents and group agents. They both can be subject to interference and domination because those two phenomena work by thwarting one's agency (section 3.3). However, as I note in section 3.4, there is an important asymmetry between individual agents and group agents. While we care about individuals' agency being thwarted as such, it is more difficult to see how the thwarting of collective agency could be, in itself, morally problematic. The second main claim of the chapter, a *normative* claim, is thus that the interference or domination that happens at the collective level is a significant moral problem because it will have adverse consequences for a group's members' agency. Paying attention to interference and domination at the collective level can thus help uncover injustices that would otherwise be difficult to see and explain. I defend those two central claims, which I take to constitute the main contribution of this chapter, in sections 3.5 and 3.6 respectively.

3.2 Agency, redux

In the previous chapter, I argued that groups can qualify as agents because they can satisfy the conditions set by the standard conception of agency. That is, they can display intentionality. The standard conception of agency is mostly interested in *describing* agency and its constituent parts. While its focus on *intentionality* is certainly warranted if one wants to understand what distinguishes genuine

actions, decisions or commitments from involuntary movements, mere impulses or unendorsed desires[1]—and, therefore, what distinguishes agents from non-agential entities—it also obscures something important about agency, that is, its normative significance. That is due to the level of analysis proposed: philosophy of action is mostly interested in getting clear on what the nature of actions is and how we can individuate them. (That should not be surprising.) And the conception of *agency* that the standard conception of action offers does a good enough job at elucidating the relation between the kind of entity someone or something is and the status of an event as an action. But it is not *precise* enough to make the normative issues of agency apparent. In other words, the account of agency offered by the standard conception is too coarse-grained.[2]

It is not that I think that the standard conception is wrong. Agency is, indeed, a capacity for intentional action. But a finer-grained understanding of agency would spell out what is required for having a capacity for intentional action. In a sense, this finer-grained analysis is already contained in the comments made above. A capacity for intentional action entails not only (1) a capacity for *forming* intentions (and other intentional states), but also (2) a capacity to *carry out* those intentions, to have an effect *in the world*. To be an agent, one not only has to be able to set *goals* for oneself and plan for their realization, but also to actually realize those goals through one's actions. This two-fold account of agency seems appropriate because it helps to pinpoint something that we all, as agents, genuinely value.[3] But before moving on to see how, a few comments are in order.

It may seem obvious that having a capacity for intentional action entails having a capacity for

[1] Although there is disagreement about that, Frankfurt's (1971) conception of personhood and agency is often understood as a development of the standard picture. There is no need to get into that debate in the present context, though.
[2] I have to recognize that in the last two decades, Bratman (2007, 2018) and Mele (2003, 2017) have proposed very fruitful developments on the standard conception of agency by offering accounts of how, more precisely, we deploy our agency in the world. Their approaches, though, do not capture exactly what I think should be included in an account of agency.
[3] Others have argued that the standard conception of agency was somewhat deficient in that it obscured or left aside the normative aspects of or normative questions related to agency. See, for instance, Taylor (1985). To some extent, I echo here those criticisms. However, contrary to Taylor, say, I try to offer a conception of agency that plays the normative role we want it to play while being as thin as possible.

forming intentions. The standard conception of agency does not make that plain, though. What philosophers of action have been mostly interested with is the (causal) relation between intentions and events. As such, the kinds of failure of agency that the proponents of the standard conception have classically been occupied with have to do with cases where the (potential) agent just lacks intentionality—as when one "does" something without intending it—or is mistaken about the world—as when one intends to do something but one's beliefs about the world, at least those relevant for the intended action, are false. As the debates about autonomy over the last four decades have made apparent, however, there are many ways in which the *process* of intention formation can be distorted, bypassed or, in extreme cases, halted altogether.[4] Just as there is a difference between getting a dollar *because* of actions that can be said to be my own—say, by *selling* something—and merely *happening upon* a dollar, there is a difference between *forming* an intention (or intentional states) and acquiring an intention through means that are not an expression of (my own) agency. We can think of many different situations where something like that happens: in cases of brainwashing, when one is under the influence of drugs or alcohol, when one suffers from pathological states involved in hallucinations, delusions or obsessive-compulsive disorder, etc. But in extreme, maybe improbable cases, my doing something could actually be the expression of someone else's agency—that is, be the *product* of someone else's agency.

Imagine that a malevolent being, M, finds a way to make other agents have some intentions of its choosing and "implants" in another agent A an intention to kill a further agent B. Imagine further that A then proceeds to kill B and does it *because it has the intention of doing so*. Now, on the standard conception that sounds like killing B was A's action. But recall that for the standard conception what it means for an action to be an agent's is for that agent to *initiate* the action. In the case just described,

[4] See, for instance, Frankfurt (1971), Meyers (1987), Govier (1993), Benson (1994), Superson (2005), Khader (2009; 2011), Cudd (2006; 2014), Killmister (2013a; 2013b), Mackenzie (2014) and (Stoljar 2014).

it seems plausible to describe the killing as, in fact, being *initiated* by M and, therefore, as M's action.[5] But that is not because A did not have the intention of killing B. Indeed, A had that intention *ex hypothesi*. What goes awry here, as far as agency is concerned, is that A's *capacity for forming intentions* is bypassed.[6] That is, A's intention is not the *product* of A's capacity to form intentions. To use a phrase that I use again below, A's killing B is not, then, an *expression* of A's agency. In such an extreme case, while we can explain A's action by reference to the appropriate kind of mental state for the action to be said to have been intentional, we still cannot understand A's action as an expression of A's agency. This, of course, is improbable. But to a lesser degree, this is what happens in cases of manipulation, coercion or, maybe, of intention formation in contexts of oppression.[7] Specifying that a capacity for intentional action entails a capacity for forming intentions makes clear that for an agent to be able to display agency through its doings, it has to be capable of not only *having* intentions, but of *forming* intentions that are, at least to some extent, its own.[8]

It may also seem obvious that a capacity for intentional action entails a capacity to *carry out* your intentions in the world. But again, the standard conception does not make that plain. Again, this is because it is mostly interested in determining what makes an event an action and how that relates to the agent's intentional states. However, an agent can form intentions without ever being able to actually *act* on those intentions. Think about this situation that many disabled persons might face on a daily basis. A person that moves around in a wheelchair might (quite reasonably) form the intention of accessing a certain building. If that building is not wheelchair accessible, however, that person will

[5] I do not want to suggest that it is not possible for an action to be both M's and A's. But that is just not what the case here used describes.

[6] Or maybe halted if M also were to make sure that A cannot form further intentions, which would be a good idea just to make sure that A does not form other intentions that would conflict with M's objective of killing B.

[7] Although the language used in that literature is not the same used here, I am here thinking of, for instance, the phenomenon of adaptive preferences. See, mainly, Elster (1983), Superson (2005), Cudd (2006) or Khader (2011).

[8] Frankfurt (1971), Watson (1975) or Bratman (1987; 2007; 2018), among others, can be seen as trying to specify what that means, exactly. I do not think it is necessary for me to say more about it, though. As I hope becomes clearer in the following, I think that there are many ways in which that can fail to obtain.

not be able to do as she intends. That is a case where one fails as an agent not because one does not have the proper intentional states or because one is mistaken, but because one's capacity to actually carry out one's intention in the world is impeded. In such circumstances, one's capacity is structurally stifled.[9] And that is a failure of agency that makes plain that a component capacity of agency is a capacity to carry out one's intentions highlights.

As I said before, the proposed account of agency is a finer-grained development of the standard conception of agency. In addition to being more useful in identifying failures of agency, it offers two advantages. First, contrary to the standard conception, it does not make the expression of agency in specific actions—what we could maybe call *agentiality*[10]—a straightforwardly on-off property. Following the standard conception, something reveals or expresses one's agency or it does not. If something I do, in the loose sense, can be understood, under some description, as an intentional action, it reveals or expresses my agency. It is something done *agentially*, one could want to say.[11] One must recognize, however, that whether or not a doing expresses agency can be assessed in degrees.

In turn, that makes one's *agency* a scalar property too. That is revealed by the two-fold account of agency I propose here. We have to recognize that that a person in a wheelchair *tried* to get into a given building, because of the intention they formed to do so, already expresses (their) agency—the intention guiding their failed attempt is indeed a *product* of their agency. But had they succeeded to get into the (most likely wheelchair accessible) building, as they intended, they would have displayed agency to an even larger degree. Seeing how agency is composed of (1) a capacity for *forming* intentions

[9] For another quite interesting example where a person's capacity to carry out their (very reasonable) intention, see Krause's (2015, 62) discussion of Darryl's case.

[10] That is a property that can be predicated of "doings" (events) or states (as opposed to agency, which is a property predicated of beings).

[11] As I said before, that does not entail that agency as a property of a being—an agent—is on-off in the same way. What counts for agency is the *capacity* for intentional action. So, one will qualify as an agent even if one does not constantly, or even often, exercise one's capacity for intentional action. Still, agency as the property of a being is still an on-off property; either one has a capacity for intentional action or one does not. But its being on or off is not assessed in the same way as one assesses whether a doing reveals agency.

and (2) a capacity for *carrying out* intentions in the world makes apparent how one's actions can display agency to varying degrees. That is because one can see both of those capacities impeded to various degrees. One can see one's capacity for forming intentions be more or less impeded if, for instance, one's practical rationality is functioning more or less effectively or if one is more or less manipulated. Similarly, one can see one's capacity for carrying out intentions more or less impeded if, for instance, more or less of one's intentions have an impact on the world (both in terms of quality and of quantity). The more capable one is of both *forming* intentions and *carrying them out*, the more one displays agency. One can see their agency—that is, again, their capacity for intentional action—reduced transiently if either one of their agency's component capacities are impaired. Most people will be familiar with such episodes: when one has, for instance, a (severe) cold or when one's faculties have been impaired by alcohol or drugs. More importantly, however, some see their agency stifled in a (more or less) systematic manner. That is often the case of disabled people or, one might say, of people under oppressive conditions. That is not to say that people in such circumstances are not agents or have no agency. What it means, because agency is a scalar notion, is that their capacity for intentional action is less extensive than others'.

Second, and I think this should be apparent by now, the two-fold account I propose makes clear that there are many different ways in which agency can fail or be impeded. At the most general level, agency can fail or be impeded if one's capacity for forming intentions fails or is impeded and if one's capacity to carry out intentions fails or is impeded. Of course, that is not saying much, but it seems already more telling and useful than the even more general characterization of agency offered by the standard conception. And there is much more one could say here: the failure or impeding of both of those capacities can happen in a variety of ways. I hinted at some of them in the paragraphs that precede, but I focus in the next two sections on two normatively problematic such failures that are, I argue below, relevant when it comes to group agency.

3.3 Threats to agency

My objective in sections 3.3 and 3.4 is to show that there are (at least) two wrongs from which we want to protect individuals *because they have negative effects on individuals' agency*: interference and domination. In other words, I am arguing here that the *wrong-making feature* of both interference and domination is to be located in the negative effects they have on one's agency. Interference and domination are (*pro tanto*) wrong[12] because, while being the result of or constituted by the action of some other agent, they curtail agency. To be clear, I think there might be other wrongs that are explained by the effects they have on agency. Maybe non-autonomy, for instance, or the loss of self-respect created by (relational) inequalities are wrong (at least partly) for this same reason. I say a bit more about that below. For now, I will just note that if I focus solely on interference and domination here, it is because those are the (most) relevant notions to look at when it comes to group agents. Let's start with interference.

3.3.1 Interference

Interference can be understood as the physical constraint or coercion, or the threat thereof,[13] imposed on an agent by another (Pettit 1997b, 17). To start to grasp how interference relates to agency and its value, it makes sense to look at what Berlin has to say about it when he defended his conception of freedom as non-interference[14]:

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[12] I think it would make sense to say that interference and domination are invariably *evils*. But that is just to say that interference and domination always have the same (negative) moral valence. That something constitutes interference and domination always counts against it. Note, though, that that does not mean that it is invariably *wrong*, all things considered, to interfere with or dominate some other agent. In other words, interference and domination, as actions, are only *pro tanto* wrongs. Their wrongness can be defeated by other considerations.

[13] Legal constraints also count as interference. But such constraints would not mean anything were they not backed by a state's power to (physically) constrain or coerce its subjects. As such, it seems to me like legal constraints can be equated with threats of physical constraint or coercion.

[14] Berlin (2002) was probably the first to defend such a view. Yet, even if there is no need to get in detail into this point, we can note the historical "archetype" of such as conception of freedom has been identified as Hobbes' somewhat

> I am normally said to be free to the degree to which no man or body of men interferes with my activity. Political liberty in this sense is simply the area within which a man can act unobstructed by others. If I am prevented by others from *doing what I could otherwise do*, I am to that degree unfree; and if this area is contracted by other men beyond a certain minimum, I can be described as being coerced, or, it may be, enslaved. […] Coercion implies the deliberate interference of other human beings within the area in which *I could otherwise act*. You lack political liberty or freedom only if you are *prevented from attaining a goal* by human beings. […] The criterion of oppression is the part that I believe to be played by other human beings, directly or indirectly, with or without the intention of doing so, in *frustrating my wishes*. By being free in this sense I mean not being interfered with by others. The wider the area of non-interference the wider my freedom. (Berlin 2002, 169; my emphasis)

Although Berlin does not explicitly specify why he thinks being unfree in this sense is wrong or otherwise normatively problematic, this passage is quite clear about what Berlin thinks the notion of freedom is meant to signify. One is unfree when one cannot do, because of the actions (or, more loosely, doings) of other agents, what one wishes to do or could have, notwithstanding the interference from other agents, wished to do. As Berlin puts it in this passage, one lacks freedom when one is *prevented from attaining a goal* by other agents.[15] That identifies the wrong of interference as the effect it has on one's agency. Recall that agency is composed of (1) a capacity to form intentions and (2) a capacity to carry out those intentions in the world. What Berlin identifies here as freedom as non-interference is freedom from seeing your agential capacity to carry out your intentions curtailed. While Berlin certainly does not put it in those specific terms, it appears that being unfree, on his account, entails being interfered with. In turn, though, being interfered with entails constraints put on one's capacity to carry out one's intentions. That is what makes interference and, in turn, unfreedom (*pro tanto*) wrong.

Other proponents of the non-interference account of freedom spell out somewhat more explicitly what is the problem with unfreedom. It is the case of Nozick's view in *Anarchy, State, and Utopia*. There is also a bit of interpretative work to be done here, though, because Nozick does not offer, unlike

"mechanistic" account. See Pettit (1997, 41ff.) and Skinner (1998).

[15] Berlin thinks it is quite clear that this is what *political* freedom implies and that, as a result, your wishes being frustrated through the fault of no other agent (say, because of a natural accident) should not be understood as a loss of freedom. As Pettit (2003) argues, though, that stipulation may be unwarranted and, at any rate, Berlin (as other proponents of freedom as non-interference) does not really provide a justification for it.

Berlin, a definition of freedom but writes, instead, of moral side constraints. But the central such constraint he defends in his book, what he calls the libertarian constraint, is just a constraint against interference. Nozick is clearer (than Berlin) about why that constraint should not be violated and, as such, about why it would be wrong not to respect others' freedom.

Nozick's argument starts from a familiar Kantian idea: we must respect others' capacity to set ends for themselves. While morality prescribes many kinds of side constraints, Nozick (1974, 32) argues that "[p]olitical philosophy is concerned only with *certain* ways that persons may not use others; primarily, physically aggressing against them." The constraint with which political philosophy should be centrally concerned, Nozick argues, is what he calls the libertarian constraint: it is a prohibition against the *interference* in the lives of individuals, even when that interference would otherwise benefit them—that is, even when the interference would be done for paternalistic reasons.[16] The content of the libertarian constraint can be derived from the structure of morality, which in turn incorporates a recognition that individuals' agency is to be protected:

> Thus we have a promising sketch of an argument from moral form to moral content: the form of morality includes F (moral side constraints); the best explanation of morality's being F is p (a strong statement of the distinctness of individuals); and from p follows a particular moral content, namely, the libertarian constraint. The particular moral content gotten by this argument, which focuses upon the fact that there are distinct individuals each with his *own* life to lead, will not be the *full* libertarian constraint. It will prohibit sacrificing one person to benefit another. Further steps would be needed to reach a prohibition on paternalistic aggression: using or threatening force for the benefit of the person against whom it is wielded. For this, one must focus upon the fact that there are distinct individuals, each with his own life *to lead*. (Nozick 1974, 34)

In other words, it is our being *agents* that gives normative force to side constraints. By extension, the normative force of the *libertarian* constraint also has to do with (respect for) agency. As the passage above explains, it is our having our *own* life *to lead*—that is, our own plans, our own conceptions of what our life should be to carry out—that makes the prohibition against interference, even when done for our own good, so pressing. As Nozick (1974, 49) argues a few pages later, it is the protection of

[16] Nozick's argument is mainly directed against the legitimacy of the *state*'s interference, but individuals should also be protected against interference from other individuals.

"the ability to regulate and guide [our] life in accordance with some overall conception [we choose] to accept" that makes freedom as non-interference valuable.

At this point, it should be apparent that what motivates Nozick's libertarian constraint and conception of freedom (as non-interference) is the idea that people's capacity to carry out their intentions in the world should not be impeded by the state or other individuals, no matter what the content of those intentions might turn out to be.[17] It should further be evident that the wrong-making feature of not respecting the libertarian constraint and of interference is that it constrains a person's agency. My conclusion here is exactly the same as the one I offered concerning Berlin's view: the best explanation one can give of the value of the conception of freedom that Nozick justifies and defends in the passages quoted is that interference is (*pro tanto*) wrong and that its wrong-making feature is that it reduces one's agency. Looking at those two classic proponents of freedom as non-interference gives us a clear sense that what, on the one hand, motivates the view and, on the other (more theoretical) hand, gives it its normative content is that interference is wrong *because* it curtails agency.[18]

3.3.2 Domination

Domination is not as straightforward a notion. If it seems to be an intuitive way to describe the situation of disadvantaged groups or individuals, the operationalization of the concept is more difficult to grasp. As Pettit (1997) and others[19] have argued, since domination obtains when an agent *can* interfere on an arbitrary basis with the choices of another party, the wrong of domination does not entail interference. But how do relations of domination work to wrongly affect the dominated party

[17] I say no matter what the content of those intentions is, but this is not strictly true. There is no side constraint on respecting and not interfering against intentions directed at the violation of the side constraint against interfering in other person's life. There is no prohibition against stopping you from carrying out murderous intentions.
[18] Of course, what I have not showed is that *all* proponents of freedom as non-interference share this view. Although I do not have the space to argue as such here, the same kind of argument I developed about Nozick's position could be developed to other libertarian proponents of freedom as non-interference such as Hayek (1960), Rothbard (1973) or Friedman (1973).
[19] See, mainly, Lovett (2010).

if domination does not necessarily involve the kind of physical obstacle or threat that would be present in a case of interference? The answer is that if domination does not physically or legally constrain the agents dominated, *it nonetheless imposes constraints on their agency*.

Domination occurs when (at least) three conditions obtain: "someone dominates or subjugates another, to the extent that (1) they have the capacity to interfere (2) on an arbitrary basis (3) in certain choices that the other is in a position to make" (Pettit 1997b, 52).[20] If only those three conditions are present, it will work in a manner that is similar to interference: it will impose constraints on the dominated party's agency by *reducing their capacity to carry out (certain of) their intentions in the world*. The difference with interference will be, however, that their capacity to carry out their intentions will be reduced *virtually*, so to speak, and possibly unbeknownst to them. That is, that their capacity to carry out their intentions is reduced will possibly be discovered and will be made real only if they actually try to carry out (certain of) their intentions.

More interestingly, though,[21] domination affects one's agency in a different manner if a fourth condition also obtains, that is, "that it will be a matter of *common knowledge* among the people involved, and among any others who are party to their relationship […] that the three base conditions are fulfilled in the relevant degree" (Pettit 1997b, 59). If that condition obtains, either fully or partially,[22] domination will impose (further) constraints on the dominated party's agency because of the parties' awareness of their differences in *status*. That is, it will do so because all the parties involved will have (common) knowledge of the *capacity* of the dominating party, because of its higher *status* or privileged *position*, to interfere with the dominated party arbitrarily and with impunity. This creates an asymmetry

[20] For Pettit, those conditions are jointly sufficient—and, one would think, individually necessary—for domination to obtain. See also Lovett (2010) who defends a quite similar view of domination.
[21] This is not to say that this does not matter, but I believe that if that was all domination was all about, the notion of interference would suffice to account for that kind of wrong. That is, though, the topic for another paper.
[22] There is no need to expand on that, but *common* knowledge might not be necessary. Knowledge of the situation on the part of the dominated party might be sufficient.

of power between the parties, for "[b]oth will share an awareness that the powerless can do nothing except by the leave of the powerful: that the powerless are at the mercy of the powerful and *not on equal terms*. The master-slave scenario will materialize, and the asymmetry between the two sides will be a communicative as well as an objective reality" (Pettit 1997b, 61). When a person is so dominated, domination will constrain her agency by limiting the choices that she sees as open or available or affordable to her. Domination will, in other words, *reduce the dominated person's capacity to form intentions* in the first place. It is not that the person will not be able to contemplate certain possible actions, although that can also become true;[23] it is, rather, that her capacity to form intentions will be stymied by the fear or the costs that she associates with certain possible actions. Someone who is in such a dominated position will effectively see the extent of the sphere of their possible intentions, goals or commitments reduced.

3.3.3 Taking stock

Looking more closely at both interference and domination allows us to establish two claims, which I have identified in the introduction as secondary claims in the economy of this chapter. They are claims, however, that are important in the justification of the two main claims of the chapter. The first of these secondary theses is that interference and domination work by thwarting one's agency. More precisely, I have just argued that interference works by thwarting one's capacity to carry out one's intentions and that domination works, if something like the "common knowledge" condition is satisfied, by reducing one's capacity to form intentions in the first place. What interference and domination are, then, are ways in which one's agency is hindered. That is a conceptual point.

I also just argued for a second, slightly different claim, namely, that interference and domination, two phenomena that are commonly accepted as (*pro tanto*) wrong *at the individual level*, should be

[23] That would be an even deeper corruption of one's capacity to form intentions.

understood as being wrong *because* they thwart agency. That is a normative claim. Although it is a secondary point in the sense that it one needed to establish the main claims of the chapters, it is a very important point. That is because it highlights something crucial about agency: that it is something that we value, morally speaking, and that we seek to protect. If interference and domination are seen as wrong and if non-interference and non-domination are goods we seek, that is because we value our own agency. [24] As I said before, however, interference and domination do not exhaust the ways in which agency can be hindered. Indeed, as I argue below, interference and domination of group agents can negatively affect individuals' agency even when individuals themselves are not directly interfered with or dominated.

3.4 Group agents, interference and domination

Up to this point, I have established—in Chapter 2—(1) that certain groups can qualify as agents, either in the form of an organization or of a goal-oriented collective[25] and—in the previous section—(2) that interference and domination both work, albeit in different ways, by thwarting one's agency. If I am right to think that those two types of collectives have agency, and if interference and domination indeed work through the effects they have on an entity's agency, organizations and goal-oriented collectives are, like individual agents, appropriate targets for interference and domination. They have intentional structures that allow them to make choices whose etiology cannot be reduced to the actions and intentions of their individual components—although those actions and intentions do indeed participate to the collective level of intentionality and agency. And as such, their choices can be constrained through interference or the possibility of interference—domination—from another agent,

[24] *Pace* Pettit, I believe that interference and domination are equally problematic. That is because, as I argued here, they are both detrimental to agency. On this point, see Skinner (2002) and Pettit (2002).
[25] Or, as I said before, in a form that is somewhere between an organization and goal-oriented collective.

be it an individual, a group of individuals or another collective agent.[26]

A collective agent can see its capacity to carry out its intentions in the world undermined because of the interference from another agent. That should in no way be surprising since that is something that is usually recognize in the way we talk about certain groups. In the Spring of 2019, for instance, we could read in (mostly British) newspapers that the merger that had been agreed upon between Sainsbury's and Asda, two corporate entities, has been blocked by the UK's Competition and Market Authority (CMA), another corporate entity.[27] As they could not carry out, because of the action of another entity, their (shared, though not collective) intention to merge into one corporate entity, we can see that Sainsbury's and Asda have been interfered with. As the agency individualists would point out, though, that we use that language does not mean that it actually is the case that Sainsbury's and Asda have been interfered with. Or, at least, it does not mean that they have been interfered with in the sense mentioned above. That is because our use of language here, would they say, is metaphorical. What such news report would really mean would be that *individuals*—say, the members of the boards or the shareholders of both corporations—have been interfered with. If what I said in the previous chapter is correct, however, it seems evident how the news report can be understood literally: certain groups, such as corporations like Sainsbury's and Asda, are agents because they have intentional structures that produce intentions that are irreducible to their individual members' intentions and that explain their actions in functional terms. As such, those groups have, and we can mean this literally, a capacity to carry out (collective) *intentions* in the world, a capacity that can be thwarted by interference from another agent.

A collective agent, just like an individual agent, can also see, because of a situation of domination in which it is a victim, choices that would have otherwise been open to it foreclosed by the menace of

[26] If, indeed, certain collectives have agency, that means that they cannot only suffer domination but also dominate other agents.
[27] See, for instance, *BBC* (2019).

arbitrary interference. As Young (2005, 145) points out, the inequality of resources and power, for instance, tends to create "conditions under which the weaker party is forced to act." In such a situation, it will refrain from considering certain choice options, it will refrain from forming certain intentions. Of course, contrary to what can happen to an individual agent, this is not because the collective agent is afraid or feels that there is a menace of arbitrary interference. As I mentioned in the previous chapters, agency individualists are correct in claiming that collective agents are not entities that have "phenomenal consciousness." As I just said, though, they do have intentions that *function* as intentions at the individual level—even though they may not be of the exact same type since individuals often have "phenomenal consciousness" of their intentions—and they form beliefs[28] that are part of the intentions they have. When the dominated collective agent is aware—has the correct belief—that the dominating party has the power to arbitrary interfere with the dominated agent, collective beliefs about that situation of domination will enter the process of collective intention formation and will thus constrain the collective's agency by effectively foreclosing certain choices and making other seem less desirable. In other words, a collective's capacity to form intentions in the first place can be thwarted by domination, just like an individual's can. A corporation like Sainsbury's, to continue with that example, could be dominated in that manner. Imagine that the CMA could, because its power is that of the state, block any market transaction *for no acceptable reason* and without having to account for its actions.[29] That would constitute a situation of domination: Sainsbury's would have to adjust its process of intention formation in such a way as to not "provoke" the CMA into interfering with its business.[30]

At this point, and this is important, I am not claiming that the interference or domination that

[28] Again, a state that can be understood functionally. See Chapter 2, section 2.5.
[29] Or imagine that instead of the CMA, that power was that of a single individual, say the Queen.
[30] While, in the real world, Sainsbury's and its shareholders might complain that the market is *too* regulated, that the CMA blocked the merger between Sainsbury's and Asda is not domination turned into deeds—or *arbitrary* interference. On the one hand, the CMA provided a (many would think very reasonable) reason for their ruling: the merger would have create a corporate entity with a share of the supermarket market so big that it would foreseeably have led to a less competitive market and raised prices for consumers. On the other hand, the CMA is accountable for its actions, its powers are limited, and Sainsbury's and Asda are not without recourse in such a situation.

collective agents like Sainsbury's can be subject to are wrong. What I take to have established here is the main *conceptual* claim of this chapter, namely, that group agents can be interfered with or dominated. In the previous section, I argued that interference and domination are both analysed in terms of constraints on agency. In this section, I argue that that conceptual point *applies to group agents as well as to individuals*. Again, though, it does not necessarily follow that interfering with or dominating group agents is, as such, wrong. That further *normative* claim still needs to be established and, consequently, whether and why interference and domination of group agents should concern us will be addressed in the next section.

Before moving on to those questions, a comment on *aggregates*—that is, non-agentive but still meaningful groups—seems appropriate. Unless aggregates come to display those aspects of goal-oriented collectives' or organizations' intentional structures, I contend that aggregates cannot be the target of interference and domination. That is, of course, because they cannot be said to have agency. Individuals that compose aggregates can obviously be dominated because of their belonging to that group, but they cannot be dominated *as* a collective, in their collective intentional capacity. No constraint can be arbitrarily imposed on their agency (as a group), on the extent and the desirability of the choices they could make, because aggregates do not decide, do not make choices and do not act collectively. That does not mean, however, that the notion of domination and its converse, non-domination, are not useful tools to assess and better the situation of people that are members of normatively relevant aggregates. As I noted above, many people are members of aggregates in virtue of their *sharing* some common traits and interests, which can act as markers of vulnerability (to arbitrary interference or oppression, say). Of course, not all aggregates are normatively relevant groups in that sense. To some extent, CEOs of very large commercial corporations form an aggregate, for they have common traits and they share certain interests (as CEOs of very large corporations). But what makes them an aggregate does not constitute a marker of vulnerability. Factory workers (or, more generally,

members of the working class), however, constitute such an aggregate: the traits they share make them vulnerable to arbitrary interference or other forms of oppression—which may incidentally be the result of the aforementioned CEOs' furthering of their own interests.[31] In any case, my point is that neither of those two groups count as an agent: while their members share (normatively relevant) traits and interests, they do not have collective intentions and, thus, they do not act as collectives.[32] As such, they cannot be dominated (as collectives).

3.5 Group agency and individual agency

Although certain groups can qualify as agents and hence be dominated or interfered with, it does not directly follow that it is wrong to interfere with or dominate a group agent. After all, what we really *care* about when it comes to ethics is what happens to *human* beings—how they are treated and what their levels of welfare are like. (Of course, if we think that one reason to care about human beings' welfare is that they are sentient beings, we might also think that we should also care about what happens to other beings such as, say, non-human animals.) In other words, it might seem like if we care about the protection (or promotion) of individuals' agency it is not so much because we see value in agency as such, but because we see value in the agency of a certain kind of beings—maybe the kind that can be said (literally) to *suffer* or *experience* interference and domination, that is, the kind that has phenomenal consciousness. One could also argue, on the contrary, that agency as such has value and that interference and domination should be understood as wrongs, because they hamper agency, even if their targets do not have phenomenal consciousness. It may be that both those positions are plausible, and I will not, as such, take sides here. What I want to argue is that *even if* we accept, maybe for the reason mentioned a few line earlier, *normative individualism*— that is, the view

[31] This may sound like a caricature, and it probably is, but stakeholder theory, which focuses on this kind of issues, constitutes a very important part of the literature in business ethics. On stakeholder theory, see Freeman (1984).
[32] Note, however, that they can *share* intentions (without having *collective* intentions).

that, in the end, normative value springs (only) from individuals—the interference and domination underwent by certain collective agents will be morally problematic.

As I said in the introduction, the central motivation behind the present work is to see if there are injustices that can be brought to light by applying the notions of interference and domination to groups *as* groups. I hope that the preceding discussion is useful in that respect. But while I contend that groups like organizations and goal-oriented collectives can indeed be dominated and interfered with just in the same way individual agents can be, I am not saying that the domination of collective agents constitutes, as such, an injustice. Even if I hope to have shown that certain collective entities should effectively be considered as agents—because they can meaningfully be said to have intentions and to act *as* collectives—I do not want to contend that they should be considered as having as much or the same kind of normative value individual agents are said to have. Again, then, the perspective I defend here, supports *normative individualism*.

In this perspective, collective agents have normative value only inasmuch as the individuals that constitute them have normative value. The same goes for what those collectives (non-phenomenally) experience. That means that the injustices I am interested in here are injustices suffered by individuals because of the interference and domination experienced by the collective agents to which they belong. I do not think we should (really)[33] be concerned by groups being dominated or interfered with as such. If collective agents cannot, strictly speaking, *experience* or *suffer* from interference and domination, individual members of collective agents can. We should not be concerned by the mere fact that collective agents are constrained in their agency, but we should be concerned by the constraints imposed on the agency of individuals because of the interference and domination imposed on the

[33] Although, I must confess, I have the vaguely Kantian intuition that agency matters as such. Contrary to what Kantians might say, though, I think I have the intuition that agency is to be understood as an impersonal value. If that intuition is justified, we might think that interference and domination of a group agent is, as such, (*pro tanto*) wrong. I have no intention of arguing for that here, though.

groups to which they belong. That is the argument that I want to make here.

The crux of the problem, then, lies in that there is an important connection between individuals' agency and the agency of the group(s) of which they are members. Or, to put it otherwise, there is an important connection between a collective agent's capacity for intentional action and its individual members' capacity for intentional action. That connection, however, will vary depending on the kind of collective agent in question. Because their intentional structure is different, the relation between the collective's agency and its individual members' agency can be different in an organization and in a goal-oriented collective. When, as Isaacs (2011) puts it, there is a "sharp disconnect" between individual members' intentions and the collective's intentions in an organization, as might be the case with certain very large business corporations, there is arguably no impact, in terms of domination, on the individual members when the organization is being dominated. Because the individual members' intentions play no analytical part in the formation of the collective's intentions, when the latter are constrained by interference and domination, the former are not. In other words, putting constraints on an organization's agency does not necessarily lead to putting constraints on the agency of the individuals that compose the organization. If, for instance, a business corporation is dominated by the state, because of laws that allow the state to arbitrarily interfere with the said company, that does not mean that the intentions formed by a particular employee will be in any way jeopardized. That corporation's accountant, say, will continue to play her role in the organizational structure.

Contrary to what Isaacs suggests, however, it is not always the case that an organization's individual members' intentions are not "connected" to the organization's intentions. As I said before, an accountant or a retail clerk can intend to do their job in the we-mode. Maybe this possibility is even more apparent if we consider the situation of the owner of a small business (where ownership and management are not separate) or that of a physician working for a humanitarian NGO. In those two cases, we can clearly see that the individual agents have stakes in the satisfaction of the organization's

intentions and in the success of its actions. The absence of relation between constraints on the collective's agency and the agency of its individual components, thus, will be perfect only in what one could call "pure" organizations where corporate internal decision structures leave no place for individual members' we-mode intentions to play their part. I doubt, however, that such "pure" organizations really exist.

As I said earlier, many if not most collective agents have components of both types[34] of collective intentional structures as the previous examples illustrate. And the intentional structure of goal-oriented collectives is such that we can say that when the collective is dominated its individual members are also constrained in their individual agency. This is because in goal-oriented collectives individuals' intentions do play an analytical role in the formation of the collective's intentions.[35] In organizations, collective intentions are constituted by the outcomes of individuals' actions under a corporate internal decision structure. But in goal-oriented collectives, collective intentions are constituted by the relevant intentions of the individual members. Thus, when the collective is constrained in its agency, its individual members are also constrained in their agency because the range and the desirability of their choices, when it comes to their intentions regarding the collective, are limited. In other words, in goal-oriented collectives, when the collective's intentions are constrained by interference or domination it means that its individual members' relevant intentions are, as a result, also constrained: the individual's we-mode intentions are constrained. Imagine that a group of my friends and I intend, in our collective capacity, to make dinner together in a certain way or at a certain time and place and that, for some reason (maybe some landlord's capacity to arbitrarily interfere with our dinner party), we are constrained in our collective intentions: the moral problem does not lie, in that particular situation, in the fact that the group's agency is constrained as such, but rather in the fact that the individual

[34] To use Weberian language, one could say that organizations, goal-oriented collectives and aggregates are ideal-types.
[35] I come back to that and use a concrete example in Chapter 4.

members' agency—in their we-mode intentions—is constrained.

Now, one might want to say that since what we really care about here is the constraints imposed on the individuals' agency, there is no need to pay attention to the interference or domination that would be (again, non-phenomenally) experienced by the group agent. In other words, it might appear that talking about how a group can be interfered with or dominated is, at least as far as normative questions are concerned, unnecessary. There are, indeed, two kinds of situations where talking about interference or domination at the collective level might be unnecessary. As I argue below, though, that there are such situations does not mean that there are not further cases where we would miss something of normative significance if we were to ignore the interference and domination happening at the collective level.

On the one hand, it might be the case that all of the members of a given collective agent are interfered with or, maybe more plausibly, dominated without the collective agent itself being dominated. In such a situation, what might *appear* to be interference with or domination of a group agent really just is interference with or domination of individual agents. Imagine that a given Indigenous community qualifies as a collective agent because, for course, it has an intentional structure that presents elements of an organization and/or a goal-oriented collective.[36] It is quite plausible that the members of that collective agent will be in a dominated position in the dealings they have with the "majority" population of the area in which the community is established. As Pettit (1997, 122) notes, one is dominated because one is a member of a vulnerability class and "[t]hose […] in each class sink or swim together; [their] fortunes in the non-domination stakes are intimately interconnected." It might just so happen that the vulnerability class in question in our example is the Indigenous community itself. But while all of the members of the collective agent might be so dominated, that does not mean that the collective agent is itself dominated, even if the domination of its members

[36] More on this in the next chapter.

make it seem like the Indigenous community is dominated. In this example, it is just that the collective agent happens to coincide (or be coextensive) with the relevant vulnerability class.

On the other hand, it might be the case that interference or domination at the collective level also involves interference or domination at the individual level in such a way that paying attention to the collective level seems unnecessary. That is because, obviously, interference and domination at the collective level will likely involve individual members of the collective being interfered with or dominated. Imagine, again, a business corporation. That corporation intends to complete a transaction and, in order to do so, needs to deposit a check. For that to happen, we might imagine that an employee of the corporation—an organization, in the terms I used in the previous chapter—needs to pick up the check, go to the bank and, with the help of a teller, cash in the check.[37] To do so, that employee will have to form the intention of depositing the check and to accomplish the secondary actions that will allow them to actually carry out that intention into the world. There are many opportunities here for someone to interfere with that employee and prevent them from carrying out their intention(s) and, as a result, prevent the corporation from carrying out its intention of completing a transaction. The teller, for instance, might refuse, because they are in a bad mood, to do their part. Or, on their way to the bank, the employee might be mugged and lose the check. In any case, the point here is that the interference (in this case) or the domination that is experienced by the collective agent might coincide (or be coextensive) with the interference or domination experienced by its individual members. If that happens on a large scale—that is, if the interference or domination experienced by the collective agent is coextensive with the interference or domination experienced by (at least) a large proportion of its members—it might not be necessary to pay attention to the interference or domination that is experienced by the collective. Imagine that a hockey[38] team is

[37] I know, that example sounds somewhat dated.
[38] I mean *ice* hockey, of course.

unduly prevented from playing a scheduled game because someone (or some other agent) sequestered the players in their locker-room right before the game. The interference with the *team*, a collective agent, is here realized by the interference imposed on all of its members. As a matter of ethical analysis, it might be unnecessary or redundant to talk about the thwarting of the *team*'s intentions. Focusing on the thwarting of the individual players' intentions—they were sequestered, after all—seems quite sufficient.

We can note, though, that the two examples are quite different in one important respect: how the intentions of the individuals relate to the intentions of the collective. In the check deposit case, it could very well be the case that the only intentions of the employee that are thwarted are those that have to do with the performance of their role in the organization. In other words, it is quite plausible to describe the situation as one where the employee has been interfered with only *as a member* of the collective agent that is their employer. That will likely be so if the employee "could not care less," as one might say, about their not being able to deposit the check. That is the organization's problem, after all. The situation will most likely be quite different in the hockey team case. That is because the intentions of the players that are thwarted are probably not only intentions that would have to do with the performance of their role in the organization. Of course, they are prevented from getting on the ice and, as such, from performing their role as players on the team. But they are also most plausibly prevented from carrying out their own private intentions. In this case, for instance, they might be prevented, as private agents, from getting out of the locker-room.[39] What explains that focusing on the interference happening at the collective level appears unnecessary or redundant in the hockey team case, then, might be that the interference suffered by the players as private agents might be much more pressing, morally speaking, than the interference (non-phenomenally) experienced by the team as a

[39] One might imagine that they have a standing intention of not being sequestered, although strictly speaking that might not be a possible intention.

collective agent. To be precise here, in such a case it is not only that the interference experienced by the collective is coextensive with the interference experienced by its individual members. It really is that there is interference against private agents that *coincides* with interference at the collective level.

What is starting to emerge from this discussion, though, is that while it may very well be the case that in certain situations the interference or domination experienced by a collective coincides or is coextensive with interference or domination experienced by its members, the two are analytically distinct. Or, to put it another, that it is conceptually possible for a group to be interfered with or dominated without interference and domination being imposed on its individual members. A further example will be helpful in making that plain. Think, again, of an Indigenous community. This time, imagine that that Indigenous community is, more precisely, in Canada and that the Canadian (federal) government, maybe with the participation of provincial governments, announces that it will build (or finance the construction) of an oil pipeline that will go through the ancestral land of said Indigenous community. Imagine further that the pipeline will *not* disrupt the daily lives of the members of the community; it will be, say, far from residences of the members and will not, as such, require relocation or other accommodation. The project, then, is no threat to the private intentions of the Indigenous community. Still, the project might put in jeopardy intentions that the *collective agent* formed by the Indigenous community has. Those intentions may be of different kinds, but one could think that the project would threaten to thwart certain intentions that the community has about the way their ancestral land is to be used, about the values they want to see realized on their territory or about the integrity of their territory. My claim, then, is that a case like this, where there is no interference or domination suffered by the individual members (*as* individual members) of the collective agent, makes plain that the interference and domination that can be experienced by a collective agent is analytically different from that that can be experienced by its members.

Further, I want to claim that a case like that also shows that when interference or domination

happens at the collective level, this might be an injustice even if there is no member of the collective agent that is individually interfered with or dominated. Again, that is because the agency of the collective is connected with the agency of its individual members. There are goals and goods that individuals might wish for that are not possible to realize, attain or obtain *alone*. Group agents are valuable for their members insofar as they allow them to realize, attain or obtain those goals and goods. In other words, being part of a group agent opens up, for individual agents, possibilities for intentions and the expression of one's agency that would otherwise be inaccessible. That is where, then, collective intentionality comes in: collective agents can form and carry out intentions about goals and goods that are otherwise inaccessible to individual agents. Individual agents cannot, strictly speaking, *intend* to realize those essentially collective goals or to obtain those essentially collective goods. They may, of course, wish for those goals or goods to be realized in their life, but it would not make sense to say that they *intend* them as such, just like it would not make sense for me to intend to fly to the moon on my own. Collective intentions might be directed at many different sorts of objects. But they are distinctively suited to be directed at such goals, because as Tuomela (2013, 40) argues, they have to satisfy what he calls the "collectivity condition": for an intention to be collective, it "cannot […] be satisfied for the members separately—it must on conceptual grounds be satisfied for all of the members collectively and, as it were, simultaneously." There are certain goals and goods whose realization necessitate the action (and intentionality) of a collective agent just for that reason: because they cannot, on conceptual grounds, be satisfied for individuals separately—to be satisfied, they must be so for all the members of a given collective.

To come back, briefly, to our previous example, think about a certain (communal) way of life that an Indigenous community might intend to perpetuate. The community's individual members presumably *intend* to participate in (the perpetuation of) this specific way of life and, accordingly, *intend* to play their part in its perpetuation. (They also, presumably, have many other intentions that are

instrumental in satisfying their intention to participate or play their part.) They cannot, however, as individuals, intend to perpetuate that way of life. That is because it does not depend on them, as individuals, but on the community's capacity to do so. The construction of an oil pipeline on their ancestral land might thwart the collective agent's capacity to perpetuate its way of life, even if it does not threaten the everyday lives and (private) intentions of the community's individual members. It will nonetheless—and this is the important part—have an impact on the individual members' agency because if it thwarts the collective's capacity to perpetuate a certain way of life, it also thwarts the individuals' agency by closing off certain intentions that were previously opened to them. In this case, the individuals would not be able anymore to participate to this specific way of life. As I said in section 3.3.3, interference and domination are just two ways or mechanisms by which one's capacity for intentional action can be curtailed. What I am now saying is that there are situations in which some individuals' agency will be curtailed even if they are not, as individuals, interfered with or dominated. In a situation like the one just described, individuals' agency will be curtailed because the interference the group is subject to prevents those individuals' from carrying out some of their intentions—mainly, participating to and playing their part in a specific way of life—and, as such, thwarts their *capacity* to carry out their intentions.[40] That is, of course, presuming that the members of a given group have such intentions. Again, though, if the individual members' agency is stymied, it is not because they are interfered with since they are not, as individuals, subject to direct constraint or coercion.

The value of the collective agent's agency is a function of the value we see in individuals' capacity to form and carry out intentions. We can also note that the morally problematic situation just described, that is, the curtailment of agency suffered by the individual agents composing the collective agent, cannot be redressed unless we act to eliminate the situation of interference or domination in which *the group* finds itself. In that example, the morally problematic situation cannot be redressed, say,

[40] In the long run, it might also reduce those individuals' capacity to form intentions in the first place.

unless we eliminate (in an equally non-dominating manner) the capacity of arbitrary interference of the Canadian government. What this example shows, I hope, is that the interference with and domination of collective agents is a morally relevant concern, albeit in a *derivative* manner: it is because it affects the collective's individual members that it is a source of moral concern. The value of the collective agent's agency is a function of the value we see in individuals' capacity to form and carry out intentions.

The claim that I am making, then, is that seeing how collective agents can be interfered with or dominated helps *explain* injustices that are otherwise difficult to make sense of. Again, my contention is not that interference with or domination of group agents matter as such. It is rather that I think that *explaining* certain injustices suffered by individual requires that we pay attention to how group can be interfered with or dominated. In other words, there is an explanatory need to posit that certain groups are genuine agents that are interfered with or dominated because otherwise we would overlook certain injustices to individuals. This line of argument, then, is perfectly compatible with normative individualism. Indeed, it is because we care about individuals' agency, as I pointed out in section 3.3.3, that we should be concerned with the interference and domination that might happen at the collective level. As we can see, however, making sure that we meet our obligations toward individuals requires that we pay attention to certain social phenomena through the proper perspective. It requires, contrary to what certain agency individualists might argue, that we analyse the social world in a way that is not constrained by methodological individualism. That is what I propose here: it is only if we are ready to accept that certain groups are agents that we can uncover and appropriately explain certain injustices suffered by individuals. Otherwise, we could not see that the interference or domination that happens at the collective level is a significant moral problem because it will have adverse consequences for a group's members' agency.

3.6 Conclusion

In this chapter, I make two main claims. First, I argue that, because certain groups can qualify as agents—which I have argued for in the previous chapter—and interference and domination work by affecting negatively an entity's agency, then group agents are also appropriate targets of interference and domination. Second, I argue in section 3.5 that that group agents can be interfered with and dominated is normatively concerning because of the negative effects that that interference and domination have on the agency of the individual members of group agents. The claim that I am making about the importance of interference and domination at the collective level is, at its core, *explanatory* rather than normative as such. However, I am also arguing that interference and domination at the group level is of normative import. But if it does, it is only derivatively. I take those two arguments supporting the two main claims of this chapter to be original and, hopefully important contributions. In the next chapter, I argue that these arguments also have implications for political philosophy.

Chapter 4

Collective Rights

4.1 Introduction

Up to this point, the (positive) argument developed in this dissertation has been quite abstract. In Chapter 3, building on the argument about group agency made in Chapter 2, I argued that the interference and domination that are imposed on certain groups are morally problematic. While I think that that conclusion is by itself interesting, its importance seems limited. In the present chapter, I expand the argument to show how the interference and domination experienced by collective agents can have normative import in political philosophy. I argue that collective agents that are victims of or vulnerable to (undue) interference and domination should be protected against such wrongs by *collective rights to internal self-determination*. As foreshadowed in Chapter 1, this argument is limited to certain collective agents: cultural or national minorities.

The chapter proceeds in three sections. First, I develop a real-world example, that of Indigenous peoples, that will help make apparent how certain cultural or national minorities qualify as collective agents and why collective rights can be important tools to secure them against interference and domination. I move on, in section 4.3, to explaining in more detail what I take to be the nature and purpose of rights, both individual and collective. I argue that we can understand certain rights—including collective rights—as *instruments* in the protection of central elements of people's agency. Once that is established, I develop in section 4.4 that the argument for collective rights to internal self-determination.

4.2 A core case: Indigenous peoples

In Chapter 2, I argued that certain groups can qualify as agents. I gave a few examples of groups that qualify as agents because they display intentional structures that correspond to those of

organizations or goal-oriented collectives. For instance, a group of friends making dinner together corresponds to a goal-oriented collective, and business corporations, such as Sainsbury's, constitute (agential) organizations. The purpose of those examples was to illustrate how groups *can* qualify as agents (and be interfered with or dominated). These examples are not the main focus of the dissertation. Rather, my objective is to argue that cultural or national minorities, because they qualify as agents, should be recognized as entitled to certain (legal) protections.

There are many different kinds of cultural and national minorities. As I said in Chapter 1, I am interested in those whose claims are not or cannot be accommodated by liberal multiculturalism's "minority rights" approach. That still leaves us with a wide variety of groups. The situation of certain of those groups is much more normatively pressing than that of others. In other words, some of those groups, in the present world, fare much worse than others, both in terms of their agency and along other dimensions.[1] Indigenous peoples worldwide are in such pressing situations.[2] It is notable that a large number of the criticisms of liberal multiculturalism, at least in the Canadian context, comes from Indigenous authors[3] or from the perspective of Indigenous peoples.[4] For this reason, although the approach to collective rights that I develop applies to other kinds of cultural or national minorities (and to other kinds of group agents), I focus on the case of Indigenous peoples. In this section, I establish that they qualify as agents and show how they can be and are interfered with and dominated. Because of the particularly urgent situation that Indigenous peoples find themselves in, they provide a powerful illustration of why we should care about (certain) groups' agency and do something to protect it.

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[1] E.g., health, access to resources, education, etc.

[2] That seems to be the case, maybe most obviously, in North America and Australasia. But it is also the case in many other parts of the world, such as South America, European and Asian arctic regions and Africa. There is so much reporting and studies about Indigenous peoples' situations that it does not seem worth citing anything in particular. For an overview, though, see United Nations (2009).

[3] See, say, Turner (2000) and Alfred (2005).

[4] See, for instance, Tully (1995) and chapters 7 and 8 in Tully (2008).

Of course, Indigenous peoples do not form a homogenous class and each people is distinct in how it is internally organized, how it relates to other agents (such as non-Indigenous governments), what its goals are, and its material situation. In what follows, I narrow the focus to the Indigenous peoples in Canada. Although there are more than 600 Indigenous—that is, First Nations, Inuit and Métis—communities in Canada, and I do not mean to lump them together, there are some general commonalities that can be abstracted from their specific circumstances, such as the fact that they all have some degree of local self-government. That being said, the organizational details outlined in the next paragraphs cannot always be extrapolated to *all* Indigenous groups in Canada. (Most details in fact correspond to First Nations communities only.) Note that the specific details are used as illustration and not as a definitive explanation of how a cultural or national group can qualify as an agent (and be interfered with or dominated).[5]

4.2.1 What is a people?

I claim in this section that Indigenous peoples qualify as group agents and that, as such, they can be interfered with or dominated. In order to defend that claim, however, it is important to be clear about the specific Indigenous groups that I am identifying as agents. In that regard, things are quite complicated with Indigenous peoples in Canada. There are, for instance, 634 recognized First Nations communities in Canada. Those communities, however, have different kinds of relationships with one another and to the territory. Many of them form larger cultural-linguistic groups or Nations, such as the Innu, which comprise nine First Nations communities in Quebec. Other groups, such as the Naskapi in northern Quebec, comprise only one First Nation community. Some others, such as the Malécite in the Bas-Saint-Laurent region, also comprise only one First Nation, but whose population

[5] One can also note that since almost two-thirds of Indigenous people in Canada are members of First Nations communities, those details in fact concern most Indigenous communities.

is territorially divided between two communities. Contrary to what can be observed with other cultural or national minorities that could qualify as agents—such as, say, the Catalans—Indigenous communities in Canada cannot be neatly distinguished from one another on the basis of, say, shared language, territorial contiguity or clearly distinct social and governmental institutions.

For my purposes here, I will stipulate that the appropriate Indigenous groups are Indigenous *peoples*.[6] Following what I just said, what counts as an Indigenous *people* will, at least in Canada, vary greatly. A single First Nation community might form a people in that sense—which seems to be the case for the Naskapi—while other peoples might be constituted by several communities coming together. To some extent, that is to be determined by the Indigenous communities and peoples themselves. Whether or not, for instance, the Innu form a single Indigenous people is, at least in part, a function of the nine Innu First Nations understanding themselves (or not) as belonging to a single people. It is also quite importantly a function of their actually sharing a certain (formal or informal) institutional identity *and* of their external behavior. The Cree form the largest cultural-linguistic Indigenous group in Canada. It is hard to see, though, how they could be understood as forming one Indigenous people in the sense proposed here, even if all of the Cree First Nations were to represent themselves, in some sense, as a single people.[7] That is because they lack the combination of institutional identity and external behavior that would qualify them as *a* people—that is, that would mark them off as a distinct agent. As should become apparent below, that is simply because the Cree First Nations do not instantiate, as a group (of groups), a single intentional structure. They, rather, form different group agents that do not come together as a further and larger group agent. Note, however, that they could *choose* to become such an agent and, since they already share so much along the dimensions mentioned above, a single people.

[6] This use of the notion of a *people* is inspired by Rawls (2002) and Seymour (2017). Of course, neither Rawls nor Seymour think that peoples are agents in the sense defended here.
[7] As far as I can tell, they do not represent themselves as a single people.

The notion of *people* is also useful here to distinguish the kind of groups I am concerned with from two other kinds of groups that are formed by Indigenous persons (as individuals or peoples). On the one hand, Indigenous political advocacy groups, for instance, might very well qualify as group agents, but that is not the kind of group that is relevant here. I am thinking in particular about the Assembly of the First Nations (AFN). I would think that the AFN, a political organization which represents around 90% of the First Nations' members, is a group agent. Moreover, it could be argued that its members share, at least to a certain extent, a common history. It does not, though, qualify as a people because it *does not represent itself as a people*. Its purpose is simply to advance the *common interests* of different peoples. On the other hand, Indigenous people (in the plural sense) in Canada do not constitute *a* people (in the singular). That is because Indigenous people do not form an *agent*. They certainly form a meaningful aggregate because they share certain interests—which is why the AFN exists—but that is not sufficient for agency. Indigenous *peoples*, then, are those Indigenous group units that (1) qualify as agents, (2) represent themselves as a people along the dimensions mentioned above and (3) have the capacity to act in accordance with the way they represent themselves.

Again, though, why do Indigenous peoples qualify as *agents*? The reason why is quite simple: they qualify as agents because display agency through collective intentional structures. That should in no way be shocking. The more interesting question is, rather, *how* do Indigenous peoples qualify as agents? Or, in other words, how do Indigenous peoples display agency? To answer this question, one must look at the purpose Indigenous peoples see themselves as having and at how they are organized to serve that purpose.

4.2.2 Indigenous peoples as goal-oriented collectives

In the previous chapter, I hinted at a general explanation of the purpose Indigenous peoples are seeing themselves as having, an explanation that, in its most abstract form, most likely applies to non-

Indigenous *peoples* as well: what Indigenous peoples are meant to achieve is a certain way of life. The goal—one could talk about a sort of standing and driving intention—around which Indigenous peoples are organized is the continuation of a certain way of life. Note that that does not imply that that way of life is fixed in any way, nor that there cannot be internal disagreement as to what the specifics of that way of life are or should be. This idea relies, however, on the fact that the way of life that an Indigenous people is meant to carry forward or actualize is, in some important ways, different from the ways of life of the peoples or societies from which it distinguishes itself. That is, at least in part, what constituting a people means. That is a quite abstract explanation, though, as it offers only a sort of general framework for how to understand the kind of goals or intentions that are central to the constitution of Indigenous peoples as agents.

To understand what intending the continuation of a certain way of life entails, more precisely, in terms of further goals or intentions for each individual Indigenous people, one would have to look at each people's formal and informal institutions and self-representations. What this general goal of the continuation of a certain way of life entails, then, is specific to each Indigenous people. We can note a few general tendencies, however, that help to understand why Indigenous peoples claim for themselves independence from mainstream or non-Indigenous Canadian institutions.

For one thing, most Indigenous peoples in Canada entertain a relationship with their land and territory that is quite different from the way non-Indigenous people(s) relate to land and territory (Turner 2000; Alfred 2005; Coulthard 2014). Most Indigenous peoples have a form of spiritually-informed relationship with the land and territory that is inherently non-exploitative or even, as Coulthard (2014) argues about the Dene peoples, anti-capitalistic. There is no need to get into details here, but Coulthard argues that (at least for Dene peoples) it is even more than that: Indigenous peoples have a way of understanding the world that is radically different from that of Western cultures, a way of understanding the world that comes with very different set of ontological assumptions.

According to him, there is a distinction to be drawn "between Indigenous place-based and Western time-oriented understandings of the world" (Coulthard 2014, 60). That, in turn, leads to an approach to environmental conservation and "governance" that is in stark contrast with how non-Indigenous peoples and governments have approached the environmental question. It is that kind of relationship with the land and territory that motivates, for instance, many Indigenous peoples' opposition to economic development projects that endanger the land which, many Indigenous peoples think, has to be passed on to future generations unsullied.

In general, Indigenous peoples also have a conception of the law (Tully 1995; Borrows 2002; 2016) and of political governance (Horn-Miller 2013) that is quite different from the one embedded in mainstream or non-Indigenous legal and political institutions. To take just one example here, many Indigenous peoples approach decision-making in political contexts as a participatory, consensus-based process. That is the case, for instance, in Kahnawà:ke, a Kanien'kehá:ka (Mohawk) First Nation in southern Quebec (Horn-Miller 2013). That, too, is in stark contrast with the adversarial politics that is often carried out through non-Indigenous political institutions. A list of such contrasts could go on and on. But the point I want to make here is that Indigenous peoples are organized around goals and intentions—around a way of life—that are recognizably different from that of mainstream or non-Indigenous peoples or societies in Canada. The goals and goods they seek to achieve *collectively* are notably different from those that non-Indigenous Canadians seek for themselves.

Their being organized around those goals—or, more abstractly, around the goal of the continuation of their (traditional) way of life—should already be an indication that Indigenous peoples qualify (at least) as goal-oriented collectives as defined in Chapter 2 and, as a result, as agents. In Chapter 2, I followed Isaacs (2011) in arguing that goal-oriented collectives display agency because of the relation that exists between the goal around which the collective is organized, the sense that individual members have of themselves *as* playing a certain role in the collective and their appropriately

constrained (we-)intentions.[8] We can observe this kind of collective-intentionality-forming relation in Indigenous peoples. As I just argued, there clearly is a goal around which Indigenous peoples are organized. That goal—the continuation of a certain way of life, whatever that way of life specifically is—informs, on the one hand, how the individual members of Indigenous peoples conceive of themselves as, indeed, *members* of a certain community. That might involve many different things, but it will likely involve seeing oneself as having a certain role in the community.[9] That role, in turn, might be different from one individual member to the other. One's role, for instance, might simply be to perpetuate certain traditions while, for someone else, it might involve representing the community in interactions with other agents. On the other hand, the goal around which Indigenous peoples are organized also shapes the (relevant) intentions of their members. In other words, we can observe how the individual members' intentions are normatively constrained by the goal (or more specific goals) around which Indigenous peoples are organized. This is something that we can most easily observe in *action*. For instance, efforts to keep alive Indigenous languages or political opposition to extractive economic development are actions that are the fruit of relevant—that is, collective-directed—individual intentions being appropriately constrained by the goal around which a given Indigenous people might be organized.

4.2.3 Indigenous peoples as organizations

Importantly, however, Indigenous peoples in Canada also display features of organizations. They indeed have formal institutions that constitute what French (1979) would call corporate internal

[8] As I noted in Chapter 2, Isaacs (2011, 36) wrote that we should understand "collective intention as a state of affairs consisting of a complex of appropriately constrained individual intentions, the relationships between them and to the joint goal, and the individuals' understanding of themselves as standing in relation to others as members of a group in pursuit of a joint goal."

[9] I say likely here because I want in no way claim that all members of a given Indigenous people—or, for that matter, of any goal-oriented collective—have to understand themselves as having a certain role for intentionality to be possible. As I noted in Chapter 2, what is required is, at least, that non-operative members of the group tacitly accept the group's intentions.

decision (CID) structures. All First Nations in Canada have their own political and governmental institutions in the form of band councils. Some First Nations have also chosen to come together to form tribal council, governmental institutions to which member communities delegate certain of their powers.[10] Band and tribal councils, of course, assign administrative and representative roles to certain members of the First Nations they represent, and they codify, at least to a certain extent, decision-making procedures. Those political and governmental institutions are, in most cases, much less hierarchical and all-encompassing than their non-Indigenous equivalents. That is, of course, in large part because the political culture and norms are different in Indigenous communities.[11] But it is also because of more local and direct role they are in place to serve. Nevertheless, those institutions are CID structures, in French's sense, and they confer on First Nations (and associations of First Nations) organization-like intentional structures.

However, as I will note below, the fact that Indigenous peoples display organization-like elements does not involve that there is a "disconnect" between their collective intentions and their individual members' intentions. On the contrary, because Indigenous peoples also strongly display goal-oriented-like intentional elements, there is an important connection between the individual and collective levels of intentionality. Their organization-like features simply reinforce, in my view, the analytic distinction between those two levels of intentionality. Moreover, the fact that there is such a connection is normatively significant.

Even after reading those explanations, one could still wonder how this argument about Indigenous peoples qualifying as agents work. In other words, one might think that I just explained *how* Indigenous peoples might qualify as agents but that I did not show *why* they actually do. That might be so, but in response to this, I mainly refer the reader to Chapter 2. As I argued there, the details of how goal-

[10] Some tribal councils have been formed by treaty with the Canadian federal government. For instance, Treaty 8 First Nations of Alberta is composed of all the First Nations signatory to Treaty 8.
[11] See again Horn-Miller (2013).

oriented collectives and organizations work are meant to show how certain collective entities—Indigenous peoples, in this case—realize states of affairs that hold the right functional (causal) relation to a group's actions—or, more generally, behaviour and other intentional states—to qualify as intentions.

4.2.4 Indigenous peoples and interference

If what I say in the previous section is correct, then it should be evident that Indigenous peoples, as collective agents, can be interfered with and dominated. In this section and the next, I say a few words about how Indigenous peoples are indeed interfered with and dominated.

There is no doubt that provincial and federal governments in Canada have interfered with and continue to interfere with Indigenous peoples. Natural resources exploitation projects on Indigenous ancestral lands and recognized Indigenous territories are pushed forward by non-Indigenous businesses and governments, *without the consent* of Indigenous peoples, quite frequently. The same goes for other forms of commercial development. Historical examples abound, but one can think here of the Quebec government's unilateral decision to build (and actually start work on) the La Grande hydropower complex on Cree land in the early 1970s. Or of the "Oka Stand-Off" in 1990 where, in Alfred's (2005, 46) words, "the Kanien'kehaka communities (located around the city of Montréal) [resisted] the Canadian state's attempt to expropriate lands and impose its police authority on them," and which was provoked by a real estate developer's attempt to build a golf course and condominiums on the site of a Kanien'kehá:ka burial ground.[12] Examples of violently enforced legal interference also abound. One can think here of the events of 1981, documented in the film *Incident at Restigouche* (1984) by Alanis Obomsawin, when Quebec's provincial police raided twice the Listuguj Mi'gmaq First

[12] In both those cases, the concerned Indigenous communities fought back. In the first case, resistance led to the James Bay and Northern Quebec Agreement between the Cree, Inuit and Quebec government in 1975. I come back to the second case in the next paragraph.

Nation (Restigouche) in an attempt to enforce new restrictions imposed by the Quebec government on Indigenous salmon fisheries. In all of those cases, non-Indigenous agents, mostly governments, interfered with given Indigenous peoples' goal or intention to practice a certain way of life and, thus, thwarted their capacity to carry out certain collective intentions.

There is, it is to be noted, important differences between the cases just mentioned. The interference imposed on the Listuguj Mi'gmaq First Nation by new regulatory restrictions on salmon fisheries and the (quite violent) police raids is clearly carried out through interference imposed on the First Nation's individual members. What happened in Oka in 1990 is a little different, however, and reinforces the point I made using the (semi-fictitious) pipeline example in the previous chapter, that is, that interference at the individual level need not be present for interference at the collective level to happen. In other words, it reinforces the point that it is conceptually possible for a group to be interfered with without interference being imposed on its individual members. What has been called the "Oka Stand-Off" certainly involved interference at the individual level. But the "stand-off" occurred because the Kanien'kehá:ka communities decided to fight back against the interference imposed on them, as group agents, by Oka's municipal government and a local real estate developer. The development project on the Kanien'kehá:ka burial ground did not constitute direct interference with individual members of the communities. However, it did endanger the communities' capacity to maintain their way of life and, as such, constituted interference at the collective level. The difference between those two cases should not obscure the fact that even in the former, the interference imposed on the members of the Listuguj Mi'gmaq First Nation can be conceptually separated from the one imposed on the group itself. It is just that sometimes interference with a given group agent goes hand-in-hand with interference with its individual members. As I argue below, protecting the group itself might require measures that are different from those required to protect the individuals.

4.2.5 Indigenous peoples and domination

I doubt that what I just said about Indigenous peoples being interfered with is in any way controversial. It seems evident that they are interfered with, as collective agents, on a regular basis. These examples of interference, however, are symptoms of a much more pernicious situation. It is obvious that if such interference, mostly on the part of non-Indigenous governments, can happen, it is because those governments have the power to interfere with Indigenous peoples. In many instances, such as in Oka in 1990, Indigenous peoples have been able to push back against that power and, to some extent, to keep it in check. But even when they have the capacity to push back, their faith ultimately always rests in some other agent's hands. The Oka "crisis," for instance, was "resolved" when the federal government bought the contested land. Notably, though, the land has never been since ceded to the Kanien'kehá:ka people. It is still controlled by the federal government, which, of course, can do whatever it pleases with it. This points to a deeper problem for Indigenous peoples and their relations with other agents: not only are there other agents that have the power to interfere with them, but ultimately some of those agents' power is unbridled and can be exercised at will and with impunity. In other words, Indigenous peoples are in a situation of domination.

Because Indigenous peoples are not recognized as equal parties in their relation with the Canadian or the US government—to use Pettit's (2001; 2004) terminology, they are not recognized an *equal discursive status*—they find themselves in a situation of domination. I think we can observe the effects of the dominating relation North American federal governments have with Indigenous peoples in at least two respects. One important aspect of the relations between Indigenous peoples and non-Indigenous settlers has been and still is expressed through treaty negotiations. Treaties, however, are often disregarded or altogether (unilaterally) annulled by non-Indigenous governments.[13] This happens because non-Indigenous governments obviously have the power or the capacity to arbitrarily interfere

[13] For an poignant account of many of these (almost countless) cases, see King (2012).

with Indigenous peoples. And this capacity on the part of non-Indigenous governments places Indigenous peoples in a dominated position: it constrains their intentions and, therefore, their decisions and actions. Indigenous peoples, for instance, will settle in treaty negotiations, anticipating (more) arbitrary interference if they do not, for less than they would otherwise wish or for arrangements that are completely different from what they would otherwise want. This happened in the past and it is still happening.[14] Yet, the non-recognition of Indigenous peoples as discursive equals takes other forms than deceptive treaty negotiations. Mainly, one can think about Canada's Indian Act. Of course, in many respects, this piece of legislation interferes with Indigenous peoples by setting restrictions on what they can claim or do as nations.[15] But it also sustains and fuels Indigenous peoples' situation of domination by establishing, in many respects, opportunities for arbitrary interference on the part of federal (or other levels of) governments.[16] And that, again, creates "conditions under which [the dominated] party is forced to act" (Young 2005, 145).

As Coulthard (2014, 41) notes, this situation of domination has also been entrenched in constitutional jurisprudence by the courts:

> The political and economic ramifications of recent Aboriginal rights jurisprudence have been clear-cut. In *Delgamuukw v. British Columbia* it was declared that any residual Aboriginal rights that may have survived the unilateral assertion of Crown sovereignty could be infringed upon by the federal and provincial governments so long as this action could be shown to further "a compelling and substantial legislative objective" that is "consistent with the special fiduciary relationship between the Crown and the [A]boriginal peoples." What substantial objectives might justify infringement? According to the court, virtually any exploitative economic venture, including the "development of agriculture, forestry, mining, and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, and the building of infrastructure and the settlement of foreign populations to support those aims." So today it appears […] that colonial powers will only recognize the collective rights and identities of Indigenous peoples insofar as this recognition does not throw into question the background legal, political, and economic framework of the colonial relationship itself.

[14] Again, see King (2012), especially the last chapter.
[15] It also interferes, in other respects, with Indigenous *individuals*.
[16] In the same way as, for instance, marriage laws did (and still can) foster domination by creating opportunities for arbitrary interference on the part of the husband.

The sheer power of the Canadian state, combined with the fact that the legal and more fundamentally constitutional doctrine that it abides by is so unbalanced, makes it clearly the case that it has the power to arbitrary interfere with Indigenous peoples. And this affects what Indigenous peoples can reach for in terms of intention formation. The capacity the Canadian state and its agents have to ignore the claims made by Indigenous peoples—to ignore their voices—has deleterious impacts on Indigenous peoples' capacity to form intentions. As I said before, they will settle for positions they would not otherwise choose. In other words, the power the Canadian state has thwarts Indigenous peoples' agency, even when it does not interfere directly with them. This, I argue, is why Indigenous peoples need to be recognized collective rights.

In contrast with what I said about interference in the previous section, it might intuitively clearer that the domination that Indigenous peoples as group agents are subject to is not reducible to the domination of individual Indigenous persons. In treaty negotiations, for instance, it seems evident that it is a group agent—or a group of group agents—with which the Canadian federal government has the power to arbitrarily interfere. That Indigenous peoples *as group agents* are in such a power relation with the federal government is even reflected in the passages from the court's decision in *Delgamuukw v. British Columbia* reproduced above in the quote from Coulthard. But more than that, what should be clear is that in the relation of domination revealed in treaty negotiations, it is not individuals as private persons who have to adjust their demands and behaviour out of fear of arbitrary interference. It is the group itself. This will of course likely mean that some members of the group will have to adjust their behaviour because of the operative role they play in the group. But again, it will not be as private agents but as role-holder in the group's organization. Here again, then, we can see that it is conceptually possible for a group to be dominated without domination being imposed on its individual members.[17]

[17] That is of course not to say that Indigenous persons in Canada are not also dominated as individuals. They certainly are.

4.3 Rights, individual and collective

In the previous chapter, I argue that that group agents can be interfered with and dominated is normatively concerning because of the negative effects that that interference and domination have on the agency of the individual members of group agents. In this chapter, I want to argue that that conclusion warrants the recognition of genuinely collective rights—that is, again, rights that obtain for collective agents as such—to those group agents that are victims of or vulnerable to (undue) interference or domination. In the previous section, I developed the case of Indigenous peoples in Canada to illustrate how certain collective agents are indeed victims of interference and domination. I now want to argue that peoples, at least those that are in a vulnerable position such as Indigenous peoples in Canada, should be recognized genuinely collective *legal* rights.

It should be clear that the argument that I am making here is based on *moral* considerations. But there are different paths from moral considerations to the justification of legal rights. One important such path, maybe the most intuitive and popular, is to say that legal rights are meant to make sure that a certain kind of particularly stringent moral obligation is discharged. The logic of the position is the following. Particularly stringent moral obligations—Nozick (1974) calls them side-constraints—give rise to moral rights.[18] From moral rights, a natural step to take is to argue that, for the purpose of regulating or ordering the way we live together in political communities, we should adopt *legal* rights that mirror the content of moral rights. I take it that that is the position Nozick (1974) embraces[19]: the role of the law and the state is to protect individuals against the infringement of their moral rights (warranted by moral side-constraints) by other individuals or state agents.[20] That justification for

[18] On this view of *moral* rights, see also Kamm (1995).
[19] That is also a view often embraced about human rights. See, for instance, Tasioulas (2007).
[20] That is why, of course, he argues for a "minimal" state. There is a limited number of moral rights and, as such, there should be a correlatively limited number of things that the state should look after.

collective legal rights is not available here, however. The argument that I developed in the previous chapter implies that we do not have the kind of particularly stringent moral obligations towards groups that would justify their having moral rights. Recognizing such moral obligations towards groups would certainly require attributing some sort of intrinsic value to group agents themselves, *which is not compatible with normative individualism*.[21]

A second view is available, though. We can conceive of legal rights as *instruments* to achieve, in our legal and political communities, certain of our *moral* goals. This is, of course, of view that is popular amongst consequentialists.[22] I take it, though, that many nonconsequentialists political philosophers endorse, at least partly, such a view. We can note that Rawls, and I use him as an example because of the influence he had on the development of political philosophy in the last few decades, seems to endorse such a view. Indeed, on Rawls' view, the rights guaranteed by the (lexical priority of the) first principle of justice are instruments in the service of justice as fairness. In other words, if they are valuable, it is because they promote justice conceived of as fairness.[23] While there might be a lot of space for disagreement about the nature of *moral* rights, it seems to me that the instrumentalist view of *legal* rights is not particularly controversial. The core idea here is that *legal* rights do not have to fit perfectly the moral picture, even if their role is to further moral goals. It seems that consequentialists and nonconsequentialists alike can subscribe to that idea.

If we accept the instrumentalist account of legal rights, there seem to be no more obstacles to recognizing rights to entities that are not individual agents. They are instruments for the realization or furthering of moral goals and, if rights whose subjects are collective agents can appropriately further a moral goal, it seems that collective rights would be warranted. There is thus no need to show that

[21] As I said before, it might turn out that normative individualism is not justified. If that were the case, then group agents might be said to have moral rights.
[22] See, for instance, Pettit (1988).
[23] See, of course, Rawls (1971, 60–61).

collective agents have moral rights and that those should in turn be enforced through legal rights. We more simply have to show that a certain moral goal would be suitably furthered by the recognition of legal rights whose subjects are collective agents. That is, based on the case developed in section 4.2, what I do in section 4.4.

Before moving on, though, a general comment about what collective legal rights might be instruments for seems warranted. Different legal rights[24] might have different purposes. Certain (individual) rights might be meant to protect or promote one's well-being, for instance, whereas other (individual) rights might be meant to protect everyone's (or every citizen's) political equality. At least some (quite central) rights are, I argue, meant to *protect central elements of one's agency*.[25] Again, I am not claiming that the purpose of all (individual) rights is reducible to the protection of one's agency. It is quite plausible that there is a plurality of sources or justifications for rights. But some of them, I think, are best justified by appealing to the fact that they are important tools to either protect us against impediments to our agency—to either of its two component capacities—that other agents could impose on us or promote our agency by providing us with certain resources or opportunities.[26] The right to freedom of association or antidiscrimination rights would be good examples of the first sort, while the rights to shelter and education would be examples of the second sort. If, as I have argued in the previous chapter, the interference and domination experienced by collective agents is morally problematic because it has negative effects on their individual members' *agency*, then it seems that we might be warranted in using rights as instruments to protect individuals against such effects on their agency. That does not, yet, prove that genuinely *collective* rights are warranted. It might very well be the case that certain *individual* rights are enough to protect certain group agents from undue interference

[24] Simply rights, in what follows.
[25] I take this view to be intuitively appealing and I will not defend it further here. Note, though, that a very similar view is proposed by Sen (1985) and Nussbaum (2001), but also, more specifically concerning human rights, by Griffin (2001).
[26] To be clear, the view here proposed is not meant to take sides in the now classic dispute between will and interest theories of rights.

and domination.[27] The rest of this chapter is dedicated to showing why, in certain cases, genuinely collective rights are, indeed, warranted.

4.4 Collective rights to self-determination

4.4.1 The argument

The general structure of the (abstract) argument of this section is quite simple and can be broken down as follows. (1) If the interference or domination experienced (non-phenomenally, of course) by certain collective agents is normatively problematic, as I have argued it is, then we should protect those collective agents against interference and domination. (2) In order to protect *individuals* against interference and domination, we recognize certain (legal) rights. (3) Therefore, by analogy, we should recognize rights to collective agents to protect them against interference and domination. I have established (1) in Chapter 3 and, as I said in the previous section, I take (2) to be fairly uncontroversial. My task for this final section is to show why (3) makes sense. To do so, I rely on the case developed in section 4.2 and I argue that *individual rights are insufficient to protect the agency of group agents and, by extension, of their individual members*.

The first thing I want to note in defense of (3) is that recognizing rights to collective agents might not be the *only* way to protect vulnerable collective agents against interference and domination. As a matter of fact, the recognition of rights to individuals might not be the only way to protect them against interference and domination either. We can observe, for instance, that (comparatively) *powerful* individuals[28] are, in general, less vulnerable to those two evils. However, and again I take this to not be particularly controversial, it seems like the best strategy we have figured out to protect *all* individuals equally against interference and domination is to adopt certain individual rights.[29] That is because

[27] I think that Kymlicka's group-differentiated *individual* rights are, for that reason, at least partially successful.
[28] I imagine that, in this day and age, power mostly is a function of wealth.
[29] Of course, not all rights will protect everyone equally. Merely *formal* (or procedural) rights, in the face of existing social

rights, at least if they are recognized to all and have the right content, [30] equalize power by flattening relational inequalities. They do so by affirming the validity of certain claims for all rights-bearers.[31] All of that is to say that it seems like our best guess as to what will protect individuals against interference and domination is individual rights. And the first claim I want to make in defense of (3) is that unless one shows that there is a better strategy that would apply specifically to groups, we can assume that the same will also be true at the collective level.

That does not establish, of course, that we actually need collective rights. But as I showed in section 4.2, there *are* certain collective agents that are (particularly) vulnerable to interference and domination. That is the case of Indigenous peoples in Canada. But, even if I did not develop those examples, it is also the case of Indigenous peoples in the United States, in South America, in Africa, in Australasia and in the artic regions of Europe and Asia. I would also venture that, although to a lesser extent, it is also the case of many (non-Indigenous) national and cultural minorities in many multinational countries.[32] The argument here, then, is that for those peoples who are indeed vulnerable to interference and domination, the best tool we have to protect them against (undue) encroachment on their agency by other agents, such as encompassing states, is to recognize them certain collective rights. That is, rights that have as subjects collective agents *qua* collective agents.

As I said in the previous chapter, the agency of individuals is often intimately intertwined with that of certain collective agents. While that might not be the case with certain collective agents—we can imagine, say, business corporations, which qualify as collective agents, where the agency of their individual members is only tangentially connected with that of the corporations—it certainly is the

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or economic inequalities, might not succeed along that dimension.

[30] Rights, of course, can also achieve the converse if they do not apply equally. Think of slavery era or Jim Crow era America.

[31] He does not put it in exactly those terms, but this is what I take Pettit (1997) to be arguing when it comes to the legal and institutional arrangements that freedom as non-domination requires.

[32] It is possibly the case for the Québécois and Acadians in Canada, for instance, or of Catalans and Scots in Europe.

case with Indigenous peoples and their individual members. That is mostly because what Indigenous peoples stand for is a particular *way of life*, one that is, at least in some respect, unique to each people. The connection between a people's agency and its members' is, for that reason, quite pervasive. It touches on many, if not most, aspects of the individual members' lives. More importantly, though, the goods or goals that the individuals can achieve through the group's agency are largely unique. In order to protect the individuals' agency being thwarted through the interference and domination that can be experienced by the collective agent to which they belong, we need to protect the collective agent's (1) capacity to form (specific) intentions that aim at achieving those goods and goals and its (2) capacity to carry out those intentions. As I think I have showed in section 4.2, Indigenous peoples' capacities to do so are often, if not continually, thwarted.

Because what we need to protect here is collective agents' capacity to effectively intend certain *collective goods or goals* and to carry out those intentions, what we need are instruments that protect the collective's capacity as such. *For that purpose, in many cases, individual rights will not do*. Individual rights will not suffice to protect, for instance, Indigenous peoples from encroachment on their ancestral land and territory, as is the case with the (semi-fictitious) case of the pipeline or with the events that led to the "Oka Stand-Off." Individual rights will not suffice either to justify the kind of policies that Kymlicka labels as "internal restrictions." Although this has nothing to do with Indigenous peoples, one might think here of Quebec's Bill 101. If individual rights prove to be insufficient here, it is because the goals or goods of which the achievability is to be protected are of the collective kind.

That is not to say that, in certain contexts, individual rights might not effectively protect a collective's agency. The right of association, for instance, might very well protect dinner parties' collective capacity to make dinner together. When the objects of a collective's intentions are more robustly collective, however, traditional individual rights will not be sufficient to protect the collective's agential capacity to achieve the intended goods or goals. That is the case with Indigenous

peoples, whose goal is the continuation of a certain *way of life* and the achievement of those goods that are associated with that way of life. That is why, then, Indigenous peoples' (and, most likely, other vulnerable collective agents) need to be recognized *collective rights to self-determination*.[33] That is, again, rights to self-determination whose subjects are collective agents.

4.4.2 The extent of collective rights

Collective rights to self-determination protect, along certain dimensions, collectives from being interfered with or dominated. The specific content of the rights to self-determination that need to be recognized to a given collective agent will depend on the kind of encroachment the collective agent needs to be protected against. In the case of Indigenous peoples, since their ways of life depart importantly from that (or those) of the larger Canadian non-Indigenous society, the rights to self-determination they should be recognized will likely be quite extensive. Based on what I said before in section 4.2, it seems that they should be recognized rights to (at least) territorial self-determination, cultural self-determination, linguistic self-determination and political self-determination. In other words, Indigenous peoples in Canada should be recognized rights to the *control* of their land and territory, their cultural institutions and their political or governmental institutions.

This does not imply, though, that Indigenous peoples should form nation-states of their own. I argue here that what Indigenous peoples' situation in Canada commands is the recognition of collective rights to *internal* self-determination. That is, rights to the control of their own internal organization and affairs. The recognition of such rights does not require that their subjects form independent nation-states. Indeed, such rights are, for instance in federal systems, already recognized to many sub-(nation-)state units. For example, Canadian provinces and American states are all

[33] I did not note that before, but I think we can also conceive of those individual rights that protect individuals against interference and domination as individual rights to self-determination.

recognized a more or less extensive list of such rights to self-determination. Of course, the rights to self-determination in (most) federal contexts are attributed on somewhat arbitrary or historically contingent bases to political administrative units. And for that reason, they are often importantly limited and have often been interpreted as subsidiary to the power of the federal state. I think the collective rights to self-determination that should be recognized to Indigenous peoples need to be much more robust because of the kind of collective agent that Indigenous peoples are. As far as the question of institutionalization goes, however, the comparison with Canadian provinces and American states is interesting. As Coulthard (2014, 73) notes, this is indeed what the Dene Nation, a political group advocating on the behalf of many First Nations of the Northwest Territories, suggested in their 1981 "proposal, titled *Public Government for the People of the North*, [which] called for a transfer of power to a 'province-like' jurisdiction named 'Denendeh'."

In practice, then, what is required to protect Indigenous peoples (and, most likely, other collective agents) from interference and domination from other powerful agents are collective rights to *internal* self-determination. Given their specific goals, that is what will allow Indigenous peoples to further their objectives, and those of their individual members, unthwarted. There is, in practice, no need for them to become independent nation-states to achieve those objectives. The aim here is simply that other agents, such as the Canadian federal state, be forced to treat Indigenous peoples as "discursive equals," to those other agents to effectively *heed* their voices.[34] I will note, though, that achieving that end might also require, in certain contexts, that a right to *external* (or full) self-determination be recognized. As many have argued, the possibility of *exit*, even when unexercised, has a tendency to modify the terms of a relationship favourably for the most vulnerable of the parties.[35] As such, recognizing, maybe through some constitutional feature, that there might be reasonable rationales for

[34] As opposed to merely letting them speak, as is most often the case.
[35] In relation to domination, see for instance Taylor (2017).

a certain kind of collective agent—say, peoples—to secede from the polity to which it belongs might be required for that kind of collective agent to effectively be protected against interference and domination. But I would venture that cases where that is needed are somewhat rare because many other arrangements can be imagined that would appropriately protect and empower a vulnerable collective agent. In any case, it seems to me that Indigenous peoples, although this is largely a function of what they want and of how they represent themselves, are not in a situation that requires the recognition of a right to external self-determination.

4.5 Conclusion

In this chapter, I did two things. On the one hand, I argued that certain collective agents should be protected from interference and domination by being recognized rights to collective internal self-determination. On the other hand, I argued that Indigenous peoples in Canada are such collective agents. If I used specifically the case of Indigenous peoples, it is because I think their situation is, normatively speaking, particularly urgent. As I suggested, historical (even recent) examples of how they are interfered with and dominated abound. If what I said in Chapter 3 and earlier in this chapter is correct, that is normatively quite worrying. Again, though, that is not because I think we should care about the faith of collective agents as such. Rather, it is because in many cases, such as that of Indigenous peoples, individuals' agency is intimately linked with a collective's agency. In interfering with and dominating a collective agent, then, one also thwarts the agency of its individual members. That is the situation in which Indigenous people (in the singular) find themselves in Canada. And that is why their communities need to be protected by collective rights to internal self-determination.

Conclusion

5.1 Renewed normative grounds for collective rights

The goal of this dissertation has been to offer a justification for a set of collective rights for cultural or national minorities that was compatible with the standard package of individual rights and, more generally, with normative individualism. As I noted in Chapter 1 such justifications have been proposed by other authors in the past thirty years. My objective was also to offer a justification that would not fall prey to the same problems as those other available arguments do. I come back, in the next two subsections, to the two most important of those problems and make a few comments along the way about the upshots of the argument developed through Chapters 2 to 4.

5.1.1 Robust collective rights

The argument proposed here, which we might call the Argument from Collective Agency (ACA), does much better than Kymlicka's Argument from Autonomy or Patten's Argument from Neutrality to justify *robust collective rights*. In other words, it does much better at addressing the claims made by groups that do not seek integration in a "host" society but rather seek self-determination, such as Indigenous peoples (at least in Canada). As I argued in Chapter 1, Kymlicka's and Patten's multiculturalist approaches only justify rights to the rectification of some cultural disadvantages, special rights that are due, according to liberal justice, to culturally disadvantaged citizens of a liberal state. Again, that is not what most national minorities, such as Indigenous peoples, claim they are entitled to. They rather demand to be recognized as politically sovereign peoples whose entitlements are justified independently of liberal (domestic) justice and whose participation is required in order to determine the content of those entitlements.

The Argument from Collective Agency (ACA) can provide a justification for the validity of such

claims. That is indeed what I argued, among other things, in Chapters 3 and 4. In Chapter 3, I established that (1) collective agents can be, because they are *agents*, interfered with and dominated, and that (2) the interference and domination that collective agents are subject to are normatively problematic because they thwart, by virtue of the connection between a group's agency and its individual members' agency, some individuals' agency. We take individual agency to be of value and, as is demonstrated by our taking non-interference and non-domination as important values to defend or promote, its protection to be something we owe to individuals. We can therefore conclude, from (1) and (2), that (3) we owe[1] to *individuals*—those negatively affected by the interference and domination that a collective agent of which they are members is subject to—to protect against interference and domination those group agents of which they are members. As I said before,[2] for some group agents, that might already be taken care of by the standard (liberal) package of individual rights. For other groups whose *raison d'être* is more robustly collective, however, the standard package will not be enough to effectively discharge our obligation.

In Chapter 4, I argued (4) that there are indeed certain group agents, such as certain cultural or national minorities, that are subject to interference or domination and for whom the standard (liberal) package of individual rights will not suffice to adequately protect their individual members. I used, in support of (4), the case of Indigenous peoples in Canada because, as I noted, their situation is, morally speaking, particularly pressing. There are many other cultural and national minority groups to which this argument applies, even if their situation is not as normatively concerning as that of Indigenous peoples.[3] I also noted, again in Chapter 4, that since the best tools we have found to protect *individual agents* against interference and domination are *individual rights*, it seems likely (5) that the best tools to

[1] Throughout the chapter, one should understand the obligations I am talking about as *pro tanto*.
[2] See Chapter 4.
[3] As I say in the next paragraph, the argument and its conclusions also concern many groups that are not (cultural or national) "minorities."

protect *collective agents* against interference and domination will be some sort of *collective rights*. That is not a particularly controversial claim to advance, though. Even if Kymlicka and Patten fail to justify properly collective rights, they both have the intuition that "collective" rights are needed to redress situations of cultural disadvantage because the goods that the disadvantaged individuals need to access are, in some sense or another, of a collective nature.[4] I finally concluded—from (3), (4) and (5)—(6) that we need to recognize to (at least certain) collective agents, such as Indigenous peoples, *collective rights to self-determination*. The purpose of those rights is not to redress cultural disadvantages as defined through the lens of liberal justice—and, in practice, by a certain state—that would accept as legitimate only certain kinds of ends or considerations—such as, say, (a certain conception of) autonomy. It is, rather, to ensure that people's capacity for intentional action, which entails a capacity for forming intentions and a capacity for carrying out those intentions, is adequately protected. Such a concern with agency is much more capacious than a concern with, say, autonomy or neutrality: it accommodates a much wider variety of ends and, as a result, can address the claims made by cultural or national minorities like Indigenous peoples.

We can further note that the ACA does not justify an obligation toward certain groups, and as a result rights, that would be subordinate to the interests and "rights" of existing states and majority populations. I concentrated here on what the ACA would mean for certain cultural or national minorities, such as Indigenous peoples, because that has also been the focus of those who have attempted to develop (liberal) theories of collective rights.[5] But the consequences of the ACA are not limited to what we might owe to those kinds of groups. In fact, it seems like it justifies obligations

[4] Of course, Seymour also accepts a similar claim.

[5] As I argued in Chapter 1, though, those authors have not been particularly successful at coherently and satisfactorily developing such a theory. That is not to say that Kymlicka and his liberal multiculturalism have not been successful. While Kymlicka's approach presents some important problems, I have to recognize that he and the policies his approach inspired did have had a markedly positive impact on how liberal democracies approach cultural diversity.

toward many other kinds of groups.[6] Most importantly for our present purposes, it helps to make sense of the obligations that we might have toward collective agents such as states or non-minority national groups. (That is, of course, if they qualify as collective agents.) It helps make sense, for instance, of the obligation that other agents, such as other states or supranational agents, have to not intervene in a given state's internal affairs. And it justifies the legal rights that have as a purpose to make sure that we satisfy that obligation.

The outcome of the ACA is not, then, that we should recognize some "special minority rights" to certain groups, "special minority rights" that are to be pitted against the much weightier rights of the state and interests of the majority. It is, more generally, an argument for the recognition of certain obligations we might have toward certain kinds of groups. If the ACA justifies collective (legal) rights to self-determination for cultural or national minorities, it is because they are the best tools to satisfy our obligation toward those groups and their individual members to protect them against threats to their agency. It should however be clear that the ACA entails that we have the same general obligation toward other group agents such as states or non-minority national groups. It is just that those other group agents might not be in a position that requires them to be recognized legal rights to self-determination, at least at the domestic level, because they are most likely not vulnerable to interference or domination. This is another way in which the ACA helps to better address the claims made by groups such as Indigenous peoples: it recognizes that the obligations we have toward them is on an equal footing as those of other agents toward states or non-minority national groups. The rights the ACA justifies are not, at least in principle, "special" nor "minority" rights.

Accordingly, one of the advantages of the view I develop in this dissertation is—to put it in terms that are used by Kymlicka (and Seymour)—that it can coherently justify, without sacrificing normative individualism, rights or policies that entail *internal restrictions*—and not just external protections. In

[6] I come back to this in section 5.3.

Chapter 1, I argued, following Seymour (2017), that Kymlicka's approach cannot coherently justify the kind of language laws that are in effect in Quebec[7] *because they impose internal restrictions on the freedom (or autonomy) of Quebec residents*. Yet, Kymlicka nonetheless thinks that those language laws are justified. The ACA offers the tools necessary to justify *coherently* policies of that kind and the rights that might be claimed by a collective agent to adopt and implement such a policy. On my approach, the justification for such rights and policies has to do with how they protect the collective's and its members' agency.

The ACA also helps justify the kind of rights to (and policies of) robust self-determination that groups such as Indigenous peoples are claiming. Indeed, it readily justifies the kind of demands for transfers of powers to "province-like" jurisdictions for self-determining Indigenous peoples, such as those proposed by the Dene Nation in 1981. Since those are not claims for rights to or policies of redress of cultural injustices, multiculturalism does not provide the tools to address such claims.

The last practical payoff of the ACA that I will mention has to do with *external* self-determination or, to put it otherwise, secession. Liberals in general, multiculturalists included, accept that secession might be a necessary remedy for particularly egregious harms suffered by a given minority group. Consequently, liberals in general also accept that certain peoples, those that are the victims of particularly egregious harms, have a *right* to external self-determination. However, as is hinted at by the language I used here, the conditions set by liberals for the recognition of such a right are very difficult to satisfy. They require harms that reach the level of egregious violations of human rights—such as, say, genocide.[8] Multiculturalists recognize that this bar is too high for the justification of a right to secession. For instance, Patten argues that a national minority's claim to a right to secession will be justified if the "state has failed to establish arrangements that extend recognition to a national

[7] Colloquially referred to as Bill 101.
[8] See, for instance, Buchanan (1991).

minority" (Patten 2014, 235). On his account, a failure of recognition is a failure, on the part of the state, to adopt measures to redress a cultural injustice. This seems to be a step in the right direction. But on my approach, the conditions to satisfy to be recognized a right to external self-determination are even less demanding. All that is required is that the recognition of such a right be needed to protect a certain group agent against interference and domination. To be clear, however, that does not mean that secession will necessarily be warranted for such a group. The *recognition* of a right to secession might be enough to realize our moral objective.[9]

So, the ACA is an argument for robust collective rights to self-determination, that is, collective rights that hold their normative ground against the rights of the state and the interests of the non-minority cultures. The robust collective rights to self-determination thus justified, however, do not conflict with the standard (liberal) package of individual rights. Or, at least, they do not conflict with individual rights more than, say, individual rights conflict with one another. As I have emphasized, I am committed to normative individualism—that is, the view that, in the end, normative value springs (only) from individuals—and I take the conclusion of the ACA to be fully compatible with that view. It is the same kind of consideration that justifies certain *individual* rights that ends up also justifying *collective* rights to self-determination: it is a concern for individuals' agency. That is because, as (3) above highlights, those *collective* rights are meant to protect *individuals* against certain kinds of impediment to their agency. There is, then, no conceptual or analytic conflict between individual rights and those collective rights.

Of course, it might very well happen that, in practice, individual-rights-claims clash with certain collective-rights-claims. The fact that collective rights are meant to protect the agency of individuals, though, offers us a way to approach the adjudication of such competing claims. Instead of pondering

[9] National minorities such as the Catalans or the Québécois, for instance, might be in such a situation. That does not mean that I think Catalans or Québécois should, morally speaking, secede from their respective state.

whether, say, the interests of the group outweigh those of certain individuals, we should rather aim at balancing the different interests of the individuals concerned. If all the relevant rights-claims are about the protection of agency, then it seems like we should probably aim at the resolution that promotes the best the agency of the relevant individuals. If the individual-rights-claims in question are about a different sort of individual interest, then we should aim at a resolution that balances those different (individual) interests. Of course, I do not think that *agency* is the only relevant (moral) consideration and hence, in practice, our concern for individual agency will have to be balanced against other considerations. This will certainly involve trade-offs, which might sometimes be seen as somewhat tragic. And I am certainly aware that the kind of balancing act that I am proposing here will be, in practice, quite complicated if ever achievable. But the moral world is messy and satisfying our obligations should be expected to be often, if not most of the time, a complicated matter. Moreover, as I note again in section 5.2, my objective here is not to develop a *theory* of collective rights, but to provide (coherent) normative grounds for their justification.

5.1.2 Not cultural rights

A second important issue for the justifications of collective rights already available in the literature, which I identified in Chapter 1, is that they all problematically rely on the notion of culture and its value. The Argument from Collective Agency avoids doing so. Contrary to Kymlicka's, Patten's and Seymour's arguments, my approach does not posit culture or cultural belonging as normatively operative. In my justification for collective rights for cultural or national minorities, nothing relies on the value of culture or of cultural belonging.

As should be clear by now, the normatively operative notion in my argument is that of (individual) agency: it is the value we see in our own agency that makes the protection of the agency of certain groups an obligation. As I said before, even if I focus in the context of this dissertation on cultural or

national minorities, the ACA and its conclusions certainly apply to other kinds of groups, provided that those groups qualify as agents and that the interference and domination they can be subject to would thwart their members' agency.[10] That the groups in question are *cultural* in nature or instantiate what Kymlicka calls a "societal culture" is irrelevant according to the ACA, at least, as far as the general normative argument goes.

That a group is cultural in nature will most likely be relevant in explaining how it constitutes an agent. In other words, the explanation of why a certain group qualifies as an agent will most likely, if the group is indeed cultural in nature, involve references to the group's culture, cultural traits, cultural practices, etc. That a group is cultural in nature will also be relevant in the determination of what, exactly, is required for our obligation to protect its agency—and, as a result, the agency of its members—to be adequately discharged. A group agent who has as its main objective the perpetuation of a given culture or way of life, such as an Indigenous people, will require protections that are wholly different from those appropriate for a group of friends making dinner together. In a similar fashion, different cultural or national groups will likely require different sets of self-determination rights to make sure that they are not vulnerable to interference or domination. All will depend on what their goals or the goods they seek to achieve are. And references to the groups' cultures will be necessary to explain how and why the protections they are to be recognized should be different. Again, though, the notion of culture plays no normative role here. And as such, the ACA avoids having to rely on a substantial and controversial account of culture or of its value to justify collective rights for cultural or national minorities.

5.2 An argument, not a theory

[10] This second clause is meant to disqualify those group agents whose intentional structure is so independent from the intentions of their members that interference and domination at the collective level would not affect the agency of the groups' members. As I noted in Chapter 3, though, I doubt that such a "pure" form of organization has ever existed.

The project of this dissertation leaves many questions open. There are many avenues with which I do not engage. I will therefore conclude in the two last sections by highlighting some of the ways in which the argument of the dissertation could be expanded upon.

As I said before, my objective in this dissertation was to develop an *argument* for collective rights for cultural or national minorities that performs better, at least along certain dimensions, than other available arguments. There is, of course, an important difference between developing an *argument* for collective rights and developing a *theory* of collective rights. While the latter would certainly require doing the former, it would also require expanding considerably on at least four different questions. First, a theory of collective rights would require that one specifies in more detail the form that those rights should take. I said that the rights that are justified by the ACA are "collective legal rights to self-determination." While I also said something more precise about each of the terms of this phrase, a fully-fledged theory would most likely require specifying, at least, the notion of *legal* rights and what form rights to *self-determination* could or should take.

Second, a fully-fledged theory would require that one specifies *who* or *what groups* are the subjects of those collective legal rights to self-determination. For reasons that I explained earlier, I used the case of Indigenous peoples in Canada to exemplify the kind of group agents to which the ACA and its conclusions apply. Indigenous peoples, indeed, are groups that qualify as agents that are in a situation of domination and are often unduly interfered with. It also happens that recognizing robust collective rights to self-determination, as they themselves claim, would quite clearly help to better their predicament by reducing the domination and the chances of interference that they are, as peoples, subject to. Other groups are also in a similar, even if not as morally pressing, situation. Acadians and Québécois, in Canada, for instance, might qualify in the same way for the recognition of collective rights to self-determination. Catalans in Spain and Scots in the United Kingdom are other "classic" examples. A fully-fledged theory would require explaining which of those groups indeed qualify and

for what reasons. It would also have to explain why certain other groups whose situations share important characteristics with that of Indigenous peoples do not qualify for the recognition of collective rights to self-determination. I am thinking here of groups such as (fairly large) immigrant communities, African Americans or Jewish people.[11] Such a theory would also need, in its effort to identify the appropriate subjects of collective rights, to provide an argument for why (or why not) it should limit its scope to, say, *cultural or national minorities*. I somewhat arbitrarily stipulated that those groups are the focus of this dissertation. As it should be clear by now, though, the Argument from Collective Agency, because it does not (problematically) rely on the value of culture, applies to a wide variety of groups and not only to cultural or national minorities. A theory of collective rights would need to specify, then, if (and why) the subjects of the rights it argues for are limited to a certain kind of group.

Third, a fully-fledged theory would need to say more about the objects of collective rights. What are, indeed, the specific goods, material or not, that collective rights to self-determination are meant to protect? Although I take this question to be different, it is clearly related to the specification of what *self-determination* involves. This question about the objects of collective rights is, in some sense, more concrete. A complete theory would need to determine the specific objects of the rights that should be recognized to specific subjects. For instance, we might think that for their agency to be adequately protected, certain groups will need to be recognized a right to self-determination along *cultural* lines. Indeed, practicing cultural self-determination is one possible way in which a group agent of a certain kind—say, a people—be self-determining. What that entails for a given group is not self-evident, though. It needs to be specified. It might, for a given group, require rights over certain natural resources. That is so for many Indigenous peoples because perpetuating their ways of life might

[11] As in all of the people around the globe who identify as Jewish. If what I said in the previous section is correct, it should be clear that the people of Israel should be recognized collective rights to self-determination according to the ACA.

require rights to hunt or fish in a certain way. For a different group, though, it might not require such rights over natural resources. Again, a fully-fledged theory of collective rights will need to make clear what kind of objects, if not what specific objects, those rights could or should be about.

Finally, such a theory would need to address the question of *institutionalization* of collective rights. I said that the rights that the ACA justifies are *legal* rights. There are, however, many different ways to institutionalize legal rights. I think the biggest question here is at what level of a state's legal system collective rights to self-determination should be institutionalized. I said nothing about that in previous chapters, but one might think that for certain groups whose situation is particularly vulnerable, such as Indigenous peoples in Canada, the rights that the ACA justifies should be *constitutionally* entrenched. They should, in other words, be institutionalized at the most fundamental level in a given state's legal system. But it might also be the case that, for other groups, institutionalization at less fundamental levels could perform the required function. And even if it is agreed that collective rights to self-determination for cultural and national minorities are to be constitutionally entrenched, what that means exactly is also a question that a fully-fledged theory should address. Should it mean, as has been proposed for instance by the Dene Nation,[12] that the relevant minorities be recognized a form of province-like (or state-like, in the American model) status in a state's constitution? Or should it rather be institutionalized in a different kind of constitutional provision?

Those are the kind of questions that a *theory* of collective legal rights to self-determination (for cultural or national minorities) would have to address. Most of those questions, however, are beyond the scope of the present dissertation. Here and there in the previous chapters, and especially in Chapter 4, I give hints about what I think a theory developed on the basis of my Argument from Collective Agency would look like. But in the present context, that is the most I can offer. Again, that is because my objective has been to develop a new normative argument in favour of collective rights and not a

[12] See Coulthard (2014).

fully-fledged theory.

5.3 The moral status of groups

As I mentioned in the Introduction, there are two central reasons why my aim was to develop an argument for, rather than a theory of, collective rights. The first is that I think the main flaws of those (liberal) theories of collective rights that have been proposed up to now are to be located in their normative grounds. While we both subscribe to normative individualism, their specific *normative* arguments are explanatorily and conceptually flawed. As such, my objective here has (simply?) been to offer a different, maybe more promising perspective of what could ground, normatively speaking, (at theory of) collective rights. The second reason is that this dissertation is, in some sense, the first step in a larger research project: exploring the normative implications of certain positions in social ontology—more precisely the normative implications of the view according to which certain groups qualify as *agents*. The goal of this larger research project is not, then, to produce a theory of group rights but to explore what group agents might be owed. In relation to that project, the conclusion of this dissertation is that (at least certain) group agents might be owed protection against interference and domination, *at least when that domination and interference result in the hindering of a group's individual members' agency*.

In this dissertation, though, I focused on a certain set of group agents, namely, cultural or national minorities. But as I said before, many other kinds of groups might qualify as agents. One can think here of religious communities (Amish or Mennonite communities, for instance) or religious associations and corporations,[13] or of business corporations. A question that I purposefully avoided but that the larger research project needs to engage with, then, is about the kinds of groups that might

[13] Different religious corporations have indeed made claims to special group rights. See, for instance, *Burwell v. Hobby Lobby* (2014) and *Law Society of British Columbia v. Trinity Western University* (2018).

indeed qualify as group agents and that might, for that reason, have a heftier moral status than non-agential groups.

Another important question to tackle would be about the exact nature of the moral status of such group agents. Actually, that seems to entail at least two different issues. On the one hand, one will need to determine what it is, if anything, that might give group agents a status of potential victim of wrongs. The Argument from Collective Agency that I developed here is already a quite plausible answer to that general question. But it is, I think, *one* plausible answer among others. In the course of working out the ACA, I assumed certain positions as correct. In particular, I said that the ACA is not only compatible with normative individualism, but that it is by design made to conform to it. I did not, however, really defend normative individualism. I simply took it as a plausible position, one that is (at least seemingly) endorsed by most liberal political philosophers and, in particular, by multiculturalists such as Kymlicka and Patten. Since my argument was mostly directed at them, it made sense to me to take on board that fundamental moral assumption of theirs. One might want to contest the truth of normative individualism, though. In Chapter 3, I hinted at a possible argument for group agents having substantial moral status: the impersonal value of agency. If it turned out that agency was valuable as such, one might think that interfering with or dominating group agents is (*pro tanto*) wrong as such, not because of the effects that interference and domination have at the group level on individuals' agency. Further, agency considerations might not be the only relevant ones to the determination of the moral status of group agents. In any case, those are the kind of views that a more expansive inquiry about the moral status of groups would have to grapple with.

Such an inquiry would also need to determine whether there are relevant differences between different kinds of group agents that might justify different sets of obligations for those groups. For instance, if it is determined that the right kind of considerations, as I have argued through the ACA, are about *individual* agency, does that make a difference in what is owed to business corporations when

compared to what is owed to cultural or national (minority) groups? Again, as I suggested, the difference in how tightly individual members' intentions connect with a group agent's intentional structure might here make a *normative* difference. Business corporations, for instance, might need less robust protection against interference then cultural or national groups.

This is all to put the argument made in this dissertation into perspective. While I specifically argued about collective rights for cultural or national minorities, the new direction in which I took that issue opens up a string of new avenues of inquiry in social ontology, normative ethics and political philosophy. Unfortunately, in the present context, I can only gesture at those questions. I hope to be able to take them up in the future.

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