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From Corporate Moral Agency to Corporate Moral Rights

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Abstract: Recent literature suggests that organizational entities, such as states and business corporations, can qualify as moral agents. Does it follow that, as members of our moral community, group agents are entitled to moral protections? This article explores the connection between groups' moral agency and moral rights. I argue that corporate moral agency does not, in itself, ground a group's claim for moral protections. Nevertheless, a group agent can be entitled to derivative moral rights protections, which attach to the group itself but are grounded in the interests of individuals, such as the group's members. Furthermore, the agential status of a group helps to identify which rights can attach to it, given its moral agency. One such moral agency related right is a right not to be morally subverted. This right generates a duty for the group agent's members to ensure that its decision-making process incorporates sound moral reasoning. The final part of the article applies these conclusions to recent debates on the rights of states. I argue that, as moral agents, states have a moral right not to be morally subverted. It follows that citizens have a *pro tanto* duty, directed at their state, not to engage in political activities that would subvert its moral powers.

Keywords: corporate moral agency, corporate responsibility, group rights, state rights, civic duties

Introduction

In recent years there is a growing consensus amongst philosophers and political theorists around the “corporate moral agency thesis.” This thesis suggests that groups with an organizational structure can qualify as moral agents in and on themselves, if they have an internal decision-making process that allows them to grasp moral reasons and to generate consistent beliefs, desires

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and goals; and if they have authority and command mechanisms that enable them to execute their goals.¹

As many defenders of the corporate moral agency thesis argue, if a group is a moral agent, it is responsible for its actions and omissions. Corporate moral agents (CMAs), such as, business corporations and states, can be morally responsible for what they do (in the sense of being blameworthy or praiseworthy for their behaviour), over and above the individual responsibility of their members. They can also be subjected to an appropriate set of responses, such as censure and punishment, in light of their behaviour. CMAs may also be assigned with forward-looking responsibilities, for example, duties of rescue, or duties of compensation and remedy.

There is by now a very rich literature on the circumstances under which CMAs can become morally responsible for their actions.² However, less attention has been paid to the question of corporate moral rights (CMRs). We commonly attribute *legal* rights to corporate entities. For example, in most jurisdictions business corporations have the right to own property as unitary entities. But do CMAs also have corporate *moral* rights? While claims about legal rights refer to entitlements in actual legal systems, claims about moral rights are prescriptive. They are grounded in moral reasons and can therefore challenge existing legal arrangements.³ Furthermore, moral rights do not necessarily entail legal protections. They give their holder a moral entitlement, and can therefore serve to justify *moral* duties for other agents in the world, independently of legal arrangements (I discuss examples in Section V).⁴

It is commonly assumed, and I proceed on this assumption, that individuals have moral rights. Human rights, for example, are often conceived as basic moral protections, which all humans are entitled to by virtue of their human agency (and which give grounds to legal protections as well). The corporate moral agency thesis suggests that corporate entities are members of our moral community – they are capable of moral reasoning, and are the appropriate

1 Some authors suggest that non-structural groups can also qualify as moral agents. See, e.g., LARRY MAY, *THE MORALITY OF GROUPS: COLLECTIVE RESPONSIBILITY, GROUP-BASED HARM, AND CORPORATE RIGHTS* (1987). In what follows, I leave to the side that debate, and focus on structural groups, whose corporate agency is more easily asserted.

2 For a general review of that literature, see Marion Smiley, *Collective Responsibility*, in *THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (Edward N. Zalta ed., 2011), available at <https://plato.stanford.edu/archives/fall2011/entries/collective-responsibility/>.

3 PETER JONES, *RIGHTS* 8 (1994).

4 Of course, moral rights provide an argument for legal rights. But they do not always entail legal rights, as there might be countervailing considerations at play. I do not examine the implication of the proposed framework for corporate legal rights.

subjects of moral responsibility. Does it follow, then, that they too are entitled to moral protections?⁵

It's worth noting that "collective rights," i. e. rights that attach to groups in some sense, have received a fair amount of attention in earlier debates on the rights of minority cultures and of ethnic and linguistic communities.⁶ However, these debates did not address the specific question I am interested in here, namely whether corporate moral agency grounds a group's claim to *corporate* rights, i. e. moral protections, liberties and powers, that attach to it, over and above its members. In fact, many advocates of minority and cultural rights are suspicious of claims about the separate moral agency of the groups they discuss, and do not argue for CMRs.⁷ Instead they opt for a notion of "shared rights" – rights that are jointly held by individual group members (such as the right of all members of a certain religion to religious protections).⁸ There are some authors in the debate around cultural and religious rights who do argue for CMRs, for example – they defend moral entitlements that attach to tribes or churches.⁹ However, these authors too do not pay much attention to the question of whether it is a group's moral agency that justifies granting those rights.

This paper then explores the connection between corporate agents' status as moral agents, and their moral entitlements, or rights. The position I develop is as follows: Corporate moral agency cannot, in itself, ground a group's claim for moral rights, because CMAs are not the type of being whose wellbeing is sufficient, in itself, to ground moral rights claims. Nevertheless, CMRs can be substantiated, if they are necessary for the protection of individual rights. Put differently, CMAs can, and often do, have *derivative* CMRs: Rights that conceptually attach to them, but which are morally grounded in the interests of other agents in the world. Furthermore, the corporate moral agency thesis has an important role to play in our understanding of CMRs: it identifies the type of rights that only groups who are moral agents can enjoy (as opposed to other

5 Corporate moral rights can take the form of claims, liberties, powers and immunities. The examples I discuss, e.g. the right to vote, usually involve a combination of Hohfeldian incidents. Cf. CARL WELLMAN, *REAL RIGHTS* 107 (1995).

6 For review, see Peter Jones, *Group Rights and Group Oppression*, 7 J. POL. PHIL. 353 (1999).

7 Such suspicions make sense, given that the groups that are usually under discussion in these debates, e.g. ethnic communities and religious groups, lack organizational structure, and it is debatable whether they comply with the conditions for corporate agency.

8 See, e.g., WILL KYMLICKA, *LIBERALISM, COMMUNITY, AND CULTURE* 140 (1991). JOSEPH RAZ, *THE MORALITY OF FREEDOM* 207–09 (1986).

9 See, e.g., MARLIES GALENKAMP, *INDIVIDUALISM VERSUS COLLECTIVISM: THE CONCEPT OF COLLECTIVE RIGHTS* (1993). Dwight G. Newman, *Collective Interests and Collective Rights*, 49 AM. J. JURIS. 127 (2004).

groups), given their moral agency. One such right, I argue, is the right not be morally subverted, which CMAs hold against their members and against other agents in the world.

The paper develops as follows: Section I explains the corporate moral agency thesis, and the distinction between conceptual and substantial justifications of corporate rights. Section II rejects two approaches to CMRs. According to the first, CMAs have an equal moral standing, and equivalent moral rights, to individual moral agents. According to the second, given that CMAs are not full persons, they do not have CMRs. Section III presents my alternative view, which argues that CMAs can, conceptually, have specific moral rights, but those rights must be justified in light of the rights of their individual members, as well as those of other individuals in the world. One important moral right which flows from corporate moral agency, and on which I expand in Section IV, is the right not to be morally subverted. Section V provides one example of the implications of the proposed theoretical framework, by arguing that states have a right, held against their citizens, not to be morally subverted.

I. Corporate Moral Agency

Social groups come in all shapes and sizes. They vary from the small and intimate to the massive and impersonal; from cooperative ventures to highly hierarchical organisations, from voluntary and open associations to coerced, closed structures. This extensive variety might cast a doubt on our ability to engage in a systematic and unified analysis of groups' rights and responsibilities. However, recent literature has identified a specific set of groups which share in common some unique features. These features set these groups apart from other groups, and invite a discussion about their normative status.

The groups I am referring to are groups that, in light of their internal structure, comply with standard requirements of moral agency. An early and influential account of such groups was offered by Peter French, who focused predominantly on the business corporation as a moral entity.¹⁰ More recent work has expanded the analysis to other groups as well. In what follows I focus on Christian List and Phillip Pettit, who develop a powerful account of corporate moral agency, which, they suggest, applies to a wide variety of political, commercial and civic groups, from political parties, governments and states, to trade unions, professional organisations and business corporations, and churches,

10 PETER FRENCH, *COLLECTIVE AND CORPORATE RESPONSIBILITY* 31–49 (1984).

clubs and universities.¹¹ List and Pettit argue that although these groups differ in size and purpose they all share in common a specific internal structure, which renders them moral agents in and of themselves, over and above their members. As such, they are members of our moral community, and therefore there is room to explore what responsibilities and rights attach to them.¹²

The claim that groups can qualify as moral agents has been subject to criticism from “individualist theorists.” As I mention earlier, these scholars reject the claim that groups are autonomous moral agents, and argue that “collective rights” (e. g. rights to collective goods such as language or religion), can only attach jointly and directly to individual group members.¹³ In this paper, I do not attempt to engage with such critiques. Rather, my goal is to explore whether, if indeed a group is a moral agent, it follows that it has CMRs.

According to List and Pettit, rational agents are able to maintain consistency between their representational states (beliefs), motivational states (desires) and their actions.¹⁴ Groups find it hard to be rational agents, because their beliefs and desires are constituted by those of their members, and simple aggregation mechanisms of these often-conflicting beliefs and desires (e. g., simple majoritarianism) will inevitably lead to inconsistencies (List and Pettit refer to this as “the discursive dilemma”). However, standardly, groups would have a strong incentive to be rational, because on-going inconsistencies between beliefs and desires undermine the group’s capacity to perform the roles they were set up for. The solution takes the form of a decision-making procedure which “collectivises reason”: it collects members’ attitudes on separate premises, and then “lets logic decide the outcome.”¹⁵ When members agree to collectivise in this way, the result of the group’s decision making process – what the group ends up “believing” or “desiring” – can be different from what some or even all group members

11 CHRISTIAN LIST & PHILIP PETTIT, *GROUP AGENCY* 39–40 (2011). Other important works on corporate agency include David Copp, *What Collectives Are: Agency, Individualism, and Legal Theory*, 23 *DIALOGUE* 249 (1984). ALEXANDER WENDT, *SOCIAL THEORY OF INTERNATIONAL POLITICS* (1999).

12 To clarify, some real-world specimen of these groups (states, churches, parties etc.) do not comply with List and Pettit’s criteria for moral agency. For example, Toni Erskine has argued that “failed states” lack moral agency (Toni Erskine, *Assigning Responsibilities to Institutional Moral Agents: The Case of States and Quasi States*, 15 *ETHICS & INT’L AFF.* (2001)). My concern here is with the typical group in each category, which is reasonably functioning and hence complying with the suggested criteria.

13 Jan Narveson, *Collective Rights?*, 4 *CAN. J. LAW JURIS.* 329 (1991). Edmund Wall, *Problems with the Group Rights Thesis*, 40 *AM. PHIL. Q.* 269 (2003). WELLMAN, *supra* note 5, at 157–65.

14 LIST & PETTIT, *supra* note 11, at 19–25.

15 Philip Pettit, *Groups with Minds of Their Own*, in *SOCIALIZING METAPHYSICS: THE NATURE OF SOCIAL REALITY* 171 (Frederick F. Schmitt ed., 2003).

desire and believe. The group then has a “mind of its own,” which supervenes upon, but is autonomous to, the mind of its individual members.¹⁶

List and Pettit suggest, then, that groups which can form consistent beliefs and desires (through a central decision making procedure which “collectivises reason”), and which are able to act on their desires (through relevant authority and command structures) are rational agents. The next step in their account is to suggest that some group agents also qualify as *moral* agents. Corporate moral agents are group agents that are able to bring into their decision-making process considerations about right and wrong, good and bad.¹⁷ It follows, then that in Rawlsian terms, CMAs possess the two moral powers: First, they have a capacity for normative reasoning, and they are able to regulate their conduct in accordance with good moral reasons. Second, they have a capacity to conceive their own good and to pursue it.¹⁸ At this level too what the group deems to be morally desirable through its decision-making process is not reducible to its individual members’ normative judgements, and hence there is room to treat its judgements separately from those of the members’.

With this framework in mind, we can now return to the question of the implications of corporate moral agency for CMRs. Does the fact that some groups qualify as moral agents in themselves imply, in any sense, that they are entitled to moral rights, and if so – to which rights? In answering these questions, we should distinguish between two possible connections between moral agency and rights.¹⁹ The first connection is *conceptual*. At this level, we investigate whether CMAs are the type of thing to which moral rights attach. The second connection is substantive: Here we investigate whether there are sufficiently strong normative reasons to grant a CMA a right. These two levels of analysis are separate but related: if CMAs are not the type of thing to which a moral right can attach, then (as the aforementioned critics of corporate moral agency thesis would confirm) there is no point to ask substantive questions about their entitlement to that right. Examining the nature of group agency, and the type of rights it might conceptually have, are therefore necessary steps in order to determine whether or not CMAs have moral rights. However, the full answer to the question requires also a substantive discussion about the moral reasons that ground those rights.

¹⁶ LIST & PETTIT, *supra* note 11, at 76–77.

¹⁷ *Id.* at 158.

¹⁸ JOHN RAWLS, *POLITICAL LIBERALISM* 19 (1995). Rawls attributes the two moral powers to individual agents, but List and Pettit’s analysis suggest that we can find similar capacities in group agents.

¹⁹ *Cf.* Adina Preda, *Group Rights and Group Agency*, 9 J. MORAL PHIL. 229–30 (2013).

At this point one may ask whether, given the immense variety of CMAs we find in the world, there is any point to discussing their rights at this general level. Would it not make more sense to examine whether specific groups (e. g. business corporations, or universities, or states) should be granted specific moral rights (e. g. the right to own property, or the right to free speech)?²⁰ In response I would argue that, while determining which specific CMRs specific CMAs have is an important stage in the investigation – and one I engage with in Section V, where I discuss a specific CMR that attaches to the state – it must be preceded by an outlining of the general process by which we should go about exploring such specific examples. Indeed, many deniers of CMRs deny the very starting point of this process, by suggesting that CMAs cannot have CMRs. The objection is made at the general level, pertaining to the idea of corporate agency itself. It is therefore fitting to address it by examining whether CMAs can in principle have moral rights (I address this critique in Section III). Moreover, as I argue in Section IV, there are certain moral rights that are conceptually derived from the very status of moral agency, and which therefore, in principle, all CMAs could claim. One such right is the right not to be morally subverted. Establishing that claim also requires looking at the idea of corporate moral agency at a general level.

II. From Equal Standing to No Standing

One attempt to link between corporate moral agency and CMRs highlights the similarities between CMAs and individual moral agents. On this view, given that CMAs have “a mind of their own” and a capacity to engage in moral reasoning, they have an equal moral standing to that of individuals. We find an oft-cited statement in this vein in an early work of French, where he argues that business corporations are “full-fledged moral persons” and have “whatever privileges, rights and duties as are, in the normal course of affairs, accorded to all members of the moral community.”²¹ French retracted from this statement in his later work, and it’s hard to find other advocates of the corporate moral agency thesis who support it.²² However, we should not brush aside this assertion too quickly, as one might wonder whether it is not the logical follow-up of the corporate

²⁰ I thank the editor of *Law & Ethics of Human Rights* for pressing me to address this objection.

²¹ FRENCH, *supra* note 10, at 32.

²² PETER A. FRENCH, *CORPORATE ETHICS* 10 (1995).

moral agency thesis. This suggestion was recently made by John Hasnas.²³ Hasnas focuses specifically on the moral right to democratic participation, and in what follows I use this example as well. However, the structure of his argument applies to other important moral rights, such as the right to free speech, or the right to hold property.²⁴

Hasnas's starting point is the "all-subjected principle" of democracy. As he interprets this principle, it grounds the moral right of those who are subject to the law, to participate in the making of the law.²⁵ To be "subject to the law" means "bearing full responsibility for conforming one's behaviour to the law."²⁶ It follows that only moral agents, capable of autonomous decision-making, normative judgment and self-control are subject to the law. Hasnas argues that if, as List and Pettit suggest, corporate agents are, typically, also moral agents – with their own interests and goals which they need to conform to the law – it follows that they too are subjects to the law and hence have a moral right to democratic participation, independently of their members.²⁷ Given the counter-intuitive implications of this conclusion, it constitutes "a *reductio* of corporate moral agency."²⁸

However, Hasnas's rejection of the corporate moral agency encounters a fundamental problem. Its key weakness, I would argue, is that it switches too quickly from conceptual to substantive arguments about CMRs. Hasnas successfully demonstrates that *conceptually* it makes sense to grant CMAs a right to democratic participation in the institutions that govern them. In other words, he demonstrates that CMAs are the type of things that can participate in democratic politics, given that they are capable of autonomous decision making, normative judgment and self-control. Granting them a right to vote makes sense, in a way that granting the right to vote to a coffee-making machine, or to a young child, or to a group that is made of a random collection of individuals without decision making procedures that "collectivise reason" does not. This is indeed an important insight we can draw from List and Pettit's work.

But the fact that corporate group agents could exercise a right to vote, and may well have a corporate interest in a right to vote, does not entail that there

²³ John Hasnas, Should Corporations have the Right to Vote? A Paradox in the Theory of Corporate Moral Agency (unpublished manuscript) (on file with author).

²⁴ These moral rights would translate into legal rights in reasonably just legal systems. However, my concern here is not with legal formulations but with the normative basis of such rights.

²⁵ Hasnas, *supra* note 23, at 11.

²⁶ *Id.* at 12.

²⁷ *Id.* at 13.

²⁸ *Id.* at 3.

are substantial reasons to grant them this moral protection. To see the missing step in the argument consider Joseph Raz's formulation of the "interest theory of rights," which I use throughout this paper.²⁹ Raz argues that "X has a right if and only if X can have rights and, other things being equal, an aspect of X's wellbeing (his interest) is a sufficient reason for holding some other person(s) to be under a duty."³⁰ This definition does not imply that if a CMA's has an interest, and even a strong interest, in democratic participation, it has the right to democratic participation.³¹ As Raz's definition clearly implies, to ground such a right in a corporate interest we need to show that the corporate interest is sufficient, in and of itself, to hold others under a duty.³² List and Pettit argue that this cannot be the case. Here they invoke "normative individualism," namely the view "that something is good only if it is good for individual human, or, more generally, sentient beings."³³ "Normative individualism" offers a benchmark for what counts as a valid substantive reason for judging whether or not an agent has a moral right. Accordingly, the fact that voting rights protect CMAs' vital interests is not sufficient to ground their moral right to vote, because that interest is not a valid moral consideration, in itself. Hasnas is right to point out that List and Pettit merely state their adherence to "normative individualism," without providing an argument for that view. But on the other hand, he too does not give a substantive argument in support of the claim that having an autonomous agency is a necessary and sufficient moral reason to grant an entity the right to vote, or other moral rights. If normative individualism turns out to be an attractive view, then supporters of the corporate moral agency could adopt it, and reject the equal standing view, whilst holding on to the claim that CMAs are the type of thing to which moral rights could attach.³⁴

²⁹ Notice that one could ground the moral right to vote in the will theory as well. On the relation between the conceptual and substantive levels of analysis in the will theory, see Preda, *supra* note 19.

³⁰ RAZ, *supra* note 8, at 166.

³¹ Notice that Raz accepts the conceptual possibility of corporate rights when he states that "whatever explains and accounts for the existence of [corporate] persons who can act, be subject to duties etc. also accounts for their capacity to have rights" (*id.* at 176). Cf. Matthew Kramer, *Rights without Trimmings*, in *A DEBATE OVER RIGHTS*, 79 (Matthew Kramer et al. eds., 1998).

³² MEIR DAN-COHEN, *RIGHTS, PERSONS, AND ORGANIZATIONS* 59 (1986).

³³ LIST & PETTIT, *supra* note 11, at 182.

³⁴ While I do not think Hasnas's rejection of the corporate moral agency succeeds, his analysis is important in highlighting that, given the rise of the corporate agency, democratic theorists must engage more seriously with the question of what (if anything) grants individual agents, as opposed to corporate agents, democratic participation rights.

Is normative individualism an attractive view? Answering this question in depth is beyond the scope of the current paper, but it is worth noting that it is a foundational pillar of contemporary liberal ethics. In what follows I merely mention one recent defence of this idea, which is offered by Kendy Hess.³⁵ Hess's account is of special relevance to the current analysis, because she draws from it conclusions that are radically different to "the equal standing view." Hess's analysis implies that CMAs should not be granted CMRs, however, I believe this conclusion goes too far in the other direction.

Unlike many deniers of CMRs, Hess accepts that groups can be moral agents. However, she suggests that they are not moral *persons* in the relevant sense. Hess distinguishes between two conceptions of personhood.³⁶ The first is a functional conception, according to which a person has rational capacities that enable it to enter the "social contract," thus accepting political rights and duties.³⁷ The second is an experiential conception, according to which to be a person is something that experiences, that is able to have senses, emotions and passions, and that is able to engage in meaningful relationship with others.³⁸ As we already saw, the corporate moral agency thesis demonstrates that CMAs are persons in the functional sense; but it does not ground corporate personhood in the experiential sense. Hess argues that this fact poses a fundamental problem for defenders of CMRs, because our standard set of liberal moral attaches to experience and vulnerability: only beings that can experience suffering are exposed to bad things like hunger, pain or isolation, and "it is precisely this vulnerability that accounts for the rights and protections that are typically awarded to [persons]."³⁹

Hess's rich analysis of personhood offers one persuasive justification for normative individualism, which, as I noted earlier, is missing from List and Pettit's account. Accordingly, it is not rational and even moral capacities that ground a being's moral standing to demand rights protections. Rather, it is the ability to have emotions and to experience pain (and pleasure) that is necessary and sufficient for one's wellbeing to be morally significant. In what follows I accept Hess's justification of normative individualism, and proceed on the assumption that only individuals' (or sentient beings') wellbeing matters,

³⁵ Kendy M. Hess, "If You Tickle Us ...": *How Corporations Can Be Moral Agents Without Being Persons*, 47 J. VALUE INQ. 319 (2013).

³⁶ There are other conceptions of personhood in Hess's paper, but they are not relevant for the current analysis.

³⁷ Hess, *supra* note 35, at 331.

³⁸ *Id.* at 333.

³⁹ *Id.* Cf. Michael Hartney, *Some Confusions Concerning Collective Rights*, 4 CAN. J. L. JURIS. 293 (1991).

morally.⁴⁰ However, there are reasons to think that Hess draws too strong conclusions from this assumption. For on one interpretation of her account, given the connection between experiential personhood and moral rights, CMAs have no claim to CMRs. This conclusion is evident in her claim that “*all* of the rights we now claim to ourselves ... are best understood as further efforts to protect ourselves and other persons from those who would exploit our vulnerabilities.”⁴¹ And, yet, I would argue that Hess’s version of normative individualism does not necessarily ground the conclusion that CMAs cannot have any rights. For there is a different route for grounding CMRs that does not rely on their moral personhood. On this route, CMRs can be substantively grounded in the wellbeing of agents that matter, namely individuals (or sentient beings). In the next section I turn to explore this idea.

III. From Individual Rights to CMRs

My defense of CMRs takes a middle ground between the two views I discuss. On the one hand, unlike “the equal standing view,” I accept normative individualism and its insistence on the exclusive value of sentient beings. On the other hand, unlike Hess, I argue that group agents can and do have moral rights that attach to them, rather than to their members. This approach takes the lead from Dwight Newman’s analysis of CMRs, but it also offers important revisions to it.⁴²

Newman’s position is based on the interest theory of rights. His starting point is the observation (shared by List and Pettit) that groups can have corporate interests that are not reducible to the interests of their members.⁴³ It follows that, conceptually, given that they have corporate interests, CMAs qualify as

⁴⁰ I cannot provide a fuller defense of this version of normative individualism in the scope of this paper. There is a rich body of literature around this issue, much of it challenges the original Kantian view that only moral agents have moral standing. Examples that are often mentioned in that debate are young children and animals, whom we commonly think have moral rights even though they lack moral agency. For one powerful rejection of the Kantian thesis, see Christine M. Korsgaard, *Facing the Animal You See in the Mirror*, IX HARV. REV. PHIL. 4 (2009). Korsgaard’s account is compatible with Hess’s and provides additional arguments for it.

⁴¹ Hess, *supra* note 35, at 333 (emphasis added).

⁴² Newman, *supra* note 9.

⁴³ Newman does not explicitly limit his analysis to CMAs, but the examples he gives are of such entities (e. g. unions, churches and states). (*Id.* at 140–46). I remain skeptical that we can speak of non-reducible group interest in the absence of institutional mechanisms that can separate the agency of the group from that of its members. I therefore limit my analysis to corporate agents that follow List and Pettit’s prescriptions.

potential right holders. Next, Newman suggests that a corporate interest gives rise to a CMR if and only if the protection of that interest is necessary for the protection of the group members' rights. As he explains, "if we accept individual rights, we presuppose certain collective rights"⁴⁴ because there is a "necessary dependence of certain individual interests on collective interests."⁴⁵ Returning to Raz's formulation, a CMA has a CMR if it is necessary to fulfil a certain aspect of a group's wellbeing (its interest), which is itself necessary for the fulfilment of group members' wellbeing (their interest), and that aspect of group members' wellbeing (their interest) is a sufficient reason for holding some other person(s) to be under a duty (i. e., it constitutes a right).⁴⁶

While this formulation of CMRs is context-dependent, there are many examples in our world to which it applies. Consider the example of religious freedoms. We commonly think that individuals have a moral right to freedom of religion. But many religions and religious practices have a collective nature: they revolve around organized structures, or institutions, that have a distinct and autonomous identity over time (e. g. the Church). Without those institutions, their followers' individual right to freedom of religion would become meaningless. It therefore follows that these institutions are entitled to moral protections that would allow them to maintain their autonomous identity (for example, protections from state interference). Thus, "the individual right to freedom of religion *presupposes* the fulfillment of certain collective interests of religious collectivities."⁴⁷

But in what sense does a right like protection from state interference attach to the Church rather than to its members? An answer to this question can be found in standard conceptualisations of the rights of role-holders (such as policemen or judges). As Matthew Kramer and Hillel Steiner explain – in response to the critique that such rights cannot be explained by the interest theory, because they protect the interests of third parties – role holders have an interest in being able to perform their role.⁴⁸ In fact, this is what role holders desire in virtue of them being role holders. Going back to the distinction between conceptual and substantive arguments for rights, we can say that the idea here

⁴⁴ Newman's use of the term "collective" is equivalent to the term "corporate" as deployed in this paper.

⁴⁵ Newman, *supra* note 9, at 158, 159.

⁴⁶ Other versions of this middle path appear in Vinit Haksar, *Collective Rights and the Value of Groups*, 41 *INQ.* 21 (1998). Jones, *supra* note 6.

⁴⁷ Newman, *supra* note 9, at 161. In Section V, I discuss the example of reasonably just states, whose CMRs are necessary for the protection of individual rights.

⁴⁸ Matthew Kramer & Hillel Steiner, *Theories of Rights: Is there a Third Way?*, 27 *OX. J. LEGAL STUD.* 291 (2007). Cf. Kramer, *supra* note 31, at 80–81.

is that the rights of role-holders are theirs at the conceptual level: They attach to the agent that has a capacity and interest to perform the role. That said, substantively, we would need additional arguments to ground the claim that a role holder has the right to perform their role, and these arguments would usually pertain to other agents. After all, it would be strange to argue that the fact that a policewoman has an interest in arresting a suspect is sufficient, in and of itself, to grant the policewoman that right. Rather, the right can only be justified in light of citizens' (sufficiently strong) interests in security and the rule of law.

We are thus led to the conclusion that the rights of role holders would often be "derivative" rather than "original" rights.⁴⁹ As Meir Dan-Cohen explains, original rights are granted to an agent A out of concern for A itself. In other words, the substantive reasons they rely on relate to A's own interests. Derivative rights, on the other hand, are rights that are granted to an agent A, but out of concern for another entity. A derivative moral right is properly ascribed to A, because A has the capacity to enjoy that right, and "may rely on it to solicit a decision in her favour, granting her a particular benefit."⁵⁰ So, to give another example, a parent's right to make a decision about her child's education is not the child's right to make the same decision (given that children lack the necessary capacities to make such a decision). It is a liberty that the parent can claim for herself, or the parent can exercise, and which, as such, attach to her. However, at the same time it is grounded in the child's own interests.

Newman's justification of CMRs must take a parallel route: for it too suggests that *conceptually*, a CMR is tied to an interest of a group agent and protects that interest; but that substantively, the right is grounded in reasons that pertain to the interests of the group's members. As such, it can only be a *derivative* CMR.⁵¹ By way of illustration, consider the right of states to sign international

49 "Often" rather than "always" because it might be possible to find a case where a role holder's interest is also a sufficient justification for their right.

50 DAN-COHEN, *supra* note 32, at 58.

51 Some critics of the interest theory of rights find Kramer and Steiner's reply to the "third party's interest" challenge unsatisfactory. The debates between defenders and critics of the interest theory are intricate, and go beyond the scope of this paper. Nevertheless, it's worth pointing out that CMRs could be grounded in other theories of rights. For an exploration of how they fit the will theory of rights, see Preda, *supra* note 19. Another interesting candidate is Leif Wenar's recent "kind-desire" theory of rights, which aims to resolve the aforementioned "third party's interest" challenge (Leif Wenar, *The Nature of Claim Rights*, 123 ETHICS (2013)). Wenar suggests that, conceptually, rights correspond to a right-holder's desires given her role or kind (genus), that certain duties toward her would be fulfilled: for example, the desire of a judge,

treaties. This is a legal right in international law, but we commonly think it is grounded in states' moral entitlements (I expand on these in Section V). Conceptually, it is plausible to argue that the right attaches to the state, in the sense that it protects a state's moral interest in maintaining legal autonomy. It is not the citizenry – the aggregated collection of citizens that are subject to the state authority – that has the right to sign treaties, given that we can hardly imagine the citizenry, as an unstructured aggregation of individuals, being able to exercise such a right. But in order to be successful, the state's moral claim to legal autonomy must be supported by moral arguments that pertain to its citizens' interest in a functioning political authority.

A second modification to Newman's account concerns his exclusive focus on the interests of group *members* when considering substantive arguments for CMRs.⁵² Other advocates of CMRs make similar claims.⁵³ But it's not clear why the substantive reasons that are used to justify CMRs are limited to the interests of group members. It may be the case that, empirically, a group agent's members are the most likely to be affected by the group agent, or that the relevant functions of the group agent, which we want to protect, relate predominantly to group members. But, if we accept normative individualism we must reject a view that is exclusively concerned with the interests of group members in the substantive discussion over the content of a group's CMR. Clearly, there are important questions to ask about the right balance between members' and non-members' wellbeing when considering a group's claim to moral protection, and the answer to such questions could change in light of the nature of the group in question and its relation to its members. But as a general rule, normative individualism dictates that fundamentally all individuals (or sentient beings) matter, at some level. So if CMRs are to be justified in light of their function with relation to individual (or sentient beings) interests, we ought to give consideration to the interests of both members and non-members.

qua judge, is that she is able to perform her role, or the desire of an animal, *qua* animal, is that it should not to be tortured and so on. CMR will fit into this framework in the following way: a CMA has rights that correlate to the duties on others that the CMA would desire to be fulfilled *qua* CMA. A CMA has *moral* rights that correlate to the duties on others that the CMA has valid *moral* reasons to want to be fulfilled. Given moral individualism, the moral reasons we would count as valid in this context would be reasons that pertain to the wellbeing of the individual members of the group (and, as I suggest below, of other individuals in the world).

⁵² Newman, *supra* note 9, at 140–41.

⁵³ See, e.g., Haksar, *supra* note 46, at 31. Jones, *supra* note 6, at 374.

IV. The Right Not to Be Morally Subverted

The previous section pointed to the process by which we determine whether a CMA is entitled to a moral protection: in the first stage, we determine which functions the CMA serves in the world, and which of these functions are valuable, in the sense that they are necessary for the fulfilment of individual rights in a meaningful way. Here, as I emphasised, we should take into account the interests of both group members and non-group members. In the second stage, we determine which moral protections the group requires, at the corporate level, in order to be able to execute its role. The group is entitled to these moral protections, if there is a sufficiently strong substantive justification for them. Often, at this stage we would also have to balance groups' CMR claims against other rights claims: A group's CMR might be necessary for the protection of some individual rights, but at the same time may undermine another set of individuals' rights claims. In such cases, we would need to engage with the usual process of rights balancing, and judge which side has the stronger substantive argument in its favour.⁵⁴

Some might find this proposal a disappointing answer to the question with which I opened this paper, namely – does corporate moral agency entail CMRs? For it appears that corporate moral agency is neither necessary nor sufficient to ground CMRs: It is not necessary, because if all that matters is the function that a group plays in the world then, presumably, groups that are not CMAs but who nevertheless play an important function might also be entitled to CMRs.⁵⁵ And it is not sufficient because, as we saw, a CMA's interest cannot by itself ground moral protections.⁵⁶ This disappointment is not entirely misplaced, but in my view, it is unavoidable if we wish to hold on to normative individualism. That said, we should be wary not to overlook an important and weighty conceptual connection between corporate moral agency and CMRs. For corporate moral agency is necessary to ground specific CMRs. After all, there are rights that, conceptually, can only attach to groups that are CMAs. I have already mentioned one example – the right to vote, which requires at the minimum the ability to engage in moral reasoning and to have control over one's actions.

Another right that is tied directly to a group's moral agency and moral powers, and which has received less attention in the literature, is the right not

⁵⁴ Cf. Jeremy Waldron, *Rights in Conflict*, 99 ETHICS 503–19 (1989).

⁵⁵ For example, as “moral patients,” see Keith Graham, *The Moral Significance of Collective Entities*, 44 INQ. 21 (2001).

⁵⁶ Cf. Richard Schragger & Micah Schwartzman, *Some Realism about Corporate Rights*, in THE RISE OF CORPORATE RELIGIOUS LIBERTY 361 (Micah Schwartzman & Zoë Robinson eds., 2013).

to be morally subverted. This right is invoked by Jeffery Howard, who focuses on individual moral agents.⁵⁷ His starting point is the two Rawlsian moral powers, which individual agents standardly possess. As Howard points out, political-liberal literature has paid ample attention to the way in which the state can undermine citizens' second moral power – namely the capacity to conceive one's own rational advantage and conception of the good – by subjecting them to paternalistic policies. But less attention has been paid to the way in which moral agents' first moral power can be undermined by external interference. According to Howard, moral agents' capacity for moral reasoning can be wrongly *subverted* by other agents, and when that happens, they are more likely to fail to engage in proper normative reasoning or to act on good moral reasons. A morally subverted agent acts wrongly, and is blameworthy for that, but her wrongdoing is at least partly caused by other agents' interference, and they too should be held into account.

Moral subversion can take various forms: it can be motivational, as when agent A creates a strong reason for agent B to act wrongly (e. g. offer her financial incentives to do wrong); and it can be epistemic, as when agent A causes the formation of false normative beliefs in agent B.⁵⁸ Howard forcefully argues that, given the foundational importance of the two moral powers to our human agency, we have a right to be protected from such subversions. In other words, other agents have the duty to refrain from undermining our capacity for good moral reasoning, and to support us in maintaining that capacity.⁵⁹ When agent A subverts agent B, and instigates her to do wrong, A fails to respect B as a moral agent, and in that sense A wrongs B (as well as the victims of B's wrongdoing).⁶⁰

Howard's discussion focuses on *individuals'* right not to be morally subverted. But it is easy to see that CMAs, who, as we already saw, by definition also possess the two Rawlsian powers, are also vulnerable to moral subversion. CMAs are vulnerable to what one may call “interactional subversions” by other agents; and they are also vulnerable to what one may call “structural subversion,” namely subversion in the form of laws that foreseeably set them up to fail

⁵⁷ Jeffrey W. Howard, *Moral Subversion and Structural Entrapment*, 26 J. POL. PHIL. 24 (2016).

⁵⁸ *Id.* at 31.

⁵⁹ *Id.* at 30. Howard sets various limits on the scope of that duty, e. g. that the subverting activity should foreseeably affect the moral capacities of the subverted agent, and that is not a “morally protected” activity. In what follows, I accept those limits.

⁶⁰ Notice that Howard's argument is limited to moral duties. He does not argue that the duty not to subvert others should be legally enforced (as that question depends on other considerations as well).

morally.⁶¹ At the interactional level, CMAs are vulnerable, for example, to direct subversions from their group members, e. g. members who intentionally structure the group's decision-making process in a way that would hamper its ability to properly engage in moral reasoning; or who hide relevant information that would generate proper moral reasoning at the corporate level. At the structural level, consider for example the legal practice of shareholders' limited liability in the context of corporate ethics. Some authors argue that this legal arrangement incentivises business corporations to engage in morally hazardous activities, such as activities which can potentially generate a higher profit margin, but which are also more likely to lead to accidents. Corporations are prone to engage in such activities because limited liability protections guarantee that their costs would fall on victims rather than on shareholders. If it is the case that limited liability encourages such behaviour, then it follows that regulations that allow it are morally subversive: they provide business corporations with strong incentives to act in a morally irresponsible manner.⁶²

The fact that CMAs are vulnerable to moral subversion implies that, conceptually, we can identify a CMR not to be morally subverted. As the preceding analysis demonstrated, to ground such a right we also need to provide substantive argument that demonstrates the necessary dependence of individuals' (or sentient beings') relevant interests on the corporate right not to be subverted. Such a demonstration must be done on a case by case basis, so in the next section I expand on this connection with regard to one dominant CMA in our world, namely the state.

V. The Moral Rights of States

In this section I turn to demonstrate the applicability of the account for the specific case of the state. For the purposes of this discussion, I define the state as an institutional legal order with a monopoly over the legitimate use of organized violence, an internal and external sovereignty, and whose authority is exercised

⁶¹ *Id.* at 37.

⁶² It is beyond the scope of this paper to determine whether limited liability is indeed morally problematic in this specific way. For arguments in support of this claim, see, e. g., CHRISTOPHER KUTZ, *COMPLICITY: ETHICS AND LAW FOR A COLLECTIVE AGE* 237–40 (2000). Andrew G. Haldane, Bank of England, *Who Owns a Company?* University of Edinburgh Corporate Finance Conference, May 22, 2015, available at <http://www.bankofengland.co.uk/publications/Pages/speeches/2015/833.aspx>.

over a collection of individuals (society) and within a defined territory.⁶³ There is a rather widespread agreement amongst advocates of the corporate moral agency thesis that properly functioning states are prime examples of CMAs.⁶⁴ While international law grants states a wide range of corporate legal rights, my concern here is with the CMRs of states.

As the framework from Section III entails, a state would have a specific CMR, if and only if it is the type of entity that is capable of exercising that right, and if that right protects a corporate interest, that is necessary for the meaningful fulfilment of the rights of individual agents (taking into account both the state's citizens and other agents in the world). One may recognize the structure of this argument from recent debates about states' authority. We commonly assume that reasonably just states have legitimate authority over their subjects. Legitimate authority translates into the moral right to demand obedience.⁶⁵ According to one dominant defence of reasonably just states' legitimate authority, it is grounded in the fact that the state is necessary in order to secure citizens' basic rights to security and freedom.⁶⁶

Another related set of states' CMRs that have been formulated in this way are territorial rights (standardly understood as the right to territorial jurisdiction; the right to resources in a given territory, and the right to control the borders of a given territory). Recent analyses of these rights suggest that they attach to states because they are necessary for the protection of citizens' rights.⁶⁷ As one author writes in that vein: "states have territorial rights because their jurisdiction serves the interests of their subjects."⁶⁸ Using the framework I developed here we can say that, on these views, conceptually, the state is the agent who holds territorial rights, but substantively the rights are grounded in the rights of the population over which the state exercises authority.

Some have questioned the viability of states' CMRs, by arguing that the proper agent to whom rights like the right to territorial jurisdiction attach is not the state, but the members of the state. For example, Margaret Moore argues that territorial rights attach to "peoples," namely groups of individuals who reside in a specific territory and have "the viable capacity to establish and maintain

⁶³ This definition is borrowed from WENDT, *supra* note 11, at 201–14.

⁶⁴ For elaboration, see *id.*

⁶⁵ Richard B. Friedman, *On the Concept of Authority in Political Philosophy*, in AUTHORITY 56 (Joseph Raz ed., 1990).

⁶⁶ This defence draws on Kant. For elaboration, see ANNA STILZ, LIBERAL LOYALTY: FREEDOM OBLIGATION AND THE STATE (2009).

⁶⁷ See, e.g., ALLEN BUCHANAN, JUSTICE, LEGITIMACY AND SELF DETERMINATION (2004). Lea Ypi, *A Permissive Theory of Territorial Rights*, 22 EUR. J. PHIL. 288 (2014).

⁶⁸ Anna Stilz, *Nations, States and Territory*, 112 ETHICS 578 (2011).

political institutions.”⁶⁹ Moore argues that members of peoples have a shared right to collective self-determination, which involves shaping the conditions of their existence through their political institutions. This right translates into the standard set of territorial rights. Moore’s justification for territorial rights recognises that the political institutions of the state are necessary in order for a people’s right to self-determination to be realised, but she nevertheless maintains that, given that territorial rights stem from the shared right of collective self-determination, “the people are the fundamental holder of territorial rights.”⁷⁰

However, I am not convinced that Moore successfully demonstrates that, conceptually, a “people” is the type of agent that can hold territorial rights such as the right to territorial jurisdiction. As I have argued in Section II, there are rights that can only attach to CMAs, given that they require certain abilities that only CMAs have. Jurisdictional authority is clearly a right of this type. For only a corporate agent that possess the two moral powers and that is able to act autonomously can exercise this right. Moore states that a people is a group with the *capacity* to establish and maintain political institutions. Put differently, this statement implies that “a people” has the capacity create and support a state agent. But I would argue that in order to be the appropriate holder of the right to territorial jurisdiction, a group needs more than the capacity to create a corporate agent. *It* must have the capacity to exercise jurisdictional authority, and the people – in the aggregate form – simply does not have that capacity. The state, on the other hand, has that capacity, given its relevant decision-making procedures and authority structures. Once a people has created a state agent, it is *that* agent which conceptually holds territorial rights. Moore is right to argue that fundamentally, that right is grounded in the shared interests of the state members (or the people); but conceptually it is hard to see how it can lie with any other agent but the state.

Assuming my critique of Moore is correct, we can agree with statist theorists that the functions that states serve grant them a familiar set of CMRs, including “internal rights,” directed at their citizens (e.g. the right to be obeyed); and “external rights” directed at other agents in the world (e.g. the right the territorial jurisdiction). To that familiar set I would add, perhaps more controversially, the right not to be morally subverted. In what follows I explain how this right applies to states and the implications for their citizens.

The claim that states have a right not be morally subverted assumes, at its background, a theory about our normative expectations of states. The questions:

69 MARGARET MOORE, A POLITICAL THEORY OF TERRITORY 50 (2015).

70 *Id.* at 96.

what states owe their citizens and also what they owe other agents in the world, such as vulnerable populations in distant countries, have been the subject of heated debates in recent decades. For example, some argue that states have only very basic negative duties to respect the human rights of non-members, whilst others argue for a much more extensive set of positive duties, including duties of assistance and even redistributive duties. My goal here is not to contribute to that debate, but rather to point out that any theory we have about the functions that states ought to play in the world *vis-a-vis* their own citizens and non-members would conceptually imply that they have the right not to be morally subverted. For if we develop a normative expectation that states engage in moral reasoning that would lead to the recognition of their moral duties, and if we acknowledge that this normative expectation could be frustrated, if a state's first moral power is undermined through subversion, it follows that we should recognize the conceptual possibility of the state's right against subversion.

I now turn to explore the substantive arguments for the state's right not to be subverted. As we saw, a substantive justification of a state's CMR must show that it is necessary for the fulfilment of individuals' rights in a meaningful way. At this point we can identify two sets of weighty individual interests the meaningful realisation of which requires the protection of a state's CMR not to be subverted. The first is, rather straightforwardly, the interests of individuals whose rights are directly violated by the state when it fails to comply with its moral duties; clearly their rights depend on, and ground, states' capacity for moral reasoning. The second is the rights of citizens who are not directly wronged by their state. Here I would argue that, even if they are not the direct victims of their state's violations of its moral duties, citizens are wronged by these violations, because, as members of their state they become complicit in its wrongdoings. After all, states, and especially democratic states, pursue their policies on behalf of, and in the name of their citizens. Furthermore, they use their citizens' resources to execute their policies, and are assisted by their citizens' compliance. As several authors have recently argued, it follows that citizens bear a special moral connection to *their* state's policies. When their state commits a wrong, they share complicity for that wrong; they are justified in feeling ashamed; and they incur special duties to make that wrong right. These duties fall on citizens even if they, personally, did not support their state's wrongdoing. As members of a corporate agent who acted wrongly, they cannot escape their connection to that wrong.⁷¹

⁷¹ See discussions in Margaret Gilbert, *Collective Guilt and Collective Guilt Feelings*, 6 J. ETHICS 115 (2002). KUTZ, *supra* note 62. Avia Pasternak, *Limiting States' Corporate Responsibility*, 21 J. POL. PHIL. 361 (2013).

However, I would argue that as moral agents, citizens have a strong moral interest in not being involved in wrongdoing. For being part of a corporate agent that fails on its moral duties is a heavy moral burden – it connects us to a harm, thus tainting us in a sense; it encumbers us with duties to the victims we would not have had, had our group complied with its duties. If this observation is correct, it follows that when some citizens and legislators fail in their duty not to take part in the moral subversion of their state, they are also wronging their fellow-citizens, because they render them complicit in corporate wrongdoing.

To be clear, as the analysis above acknowledges, the state's right not to be subverted is a derivative right: as a CMA, the state has a corporate level interest in being able to act on its moral duties, and it can demand its citizens to assist it in discharging them. Substantively, this corporate interest is not important enough to ground an original right. But it is important enough to generate a derivative right, i. e. a right that protects the state itself – its own moral reasoning – but that is justified in light of the rights of individuals not to be subjected to wrongful treatment, and not to be made complicit in wrongdoing.⁷²

What would the state's right not to be subverted imply in practice? In answering this question, I focus on the citizens of a given state (although the right not to be subverted can create duties for additional agents, e. g. other states in the world). If a state has a right not to be subverted then its citizens have the duty, directed at their state, and in addition to their standard political obligations, not to engage in activities that would subvert its first moral power. I give one example of what that duty might translate into. Consider the causal connection between democracies' level of compliance with basic human rights requirements, and their participation in international human rights institutions. I take it that a standard normative expectation of states, and in particular of democratic states, is that they do not violate the basic human rights of their own citizens and of non-citizens. However, it is often the case that democratic states fail to live up to this expectation, for various epistemic and motivational reasons, such as "fear, xenophobia, sectarianism, prejudice, indifference, and political intrigue," which are "powerful solvents of constitutional commitments."⁷³ Some scholars argue that a reliable way to reduce the effect of such subversive factors, and to increase democracies' compliance with human rights

⁷² I have focused here on the state's right not to be subverted. But similar conclusions would apply to other CMAs within the state. The government, for example, would also have that right, as would be specific departments within the state.

⁷³ Jamie Mayerfeld, *A Madisonian Argument for Strengthening International Human Rights Institutions: Lessons from Europe*, in *GLOBAL GOVERNANCE, GLOBAL GOVERNMENT* 214 (Luis Cabrera ed., 2011).

standards, is through membership in international human rights institutions (such as, the European Court of Human Rights). Jamie Mayerfeld, for example, suggests that membership in such institutions increases democracies' ability to engage in proper moral reasoning, *inter alia* because it provides them with mutual support, and with the ability incorporate each other's experiences.⁷⁴ If Mayerfeld's empirical observations are correct, it follows that state leaders and legislators have a *prima facie* duty to negotiate the inclusion of their state in such institutions; and that their many citizens also have a *prima facie* duty to vote for parties or legislators who would support this inclusion. So citizens who cast a vote, whether in parliamentary elections or in a referendum, against the inclusion of their state in international human rights institutions, violate (all else being equal) that duty to their state not to subvert it.⁷⁵ While these duties would conceptually be owed to the state, because they would seek to protect its normative decision making procedure, so that it acts on good moral reasons; failing to act in this way is wrong because it undermines the rights of those who would be harmed directly by the state and of fellow citizens. For example, assume, as some argue, that the United State's refusal to be included in major international human rights institutions is a "major reason" for its involvement in serious human rights violations, like torture.⁷⁶ If this argument is correct, it follows that American citizens and legislators have a duty to support their state's first moral power, by demanding that it is included in relevant international human rights institutions. If they fail to do so, they harm those who suffer human rights violations at their state's hand; and they also harm their fellow citizens, who become complicit in serious human rights violations.

Of course, one might challenge the observation that international human rights institutions increase compliance with human rights. But whether or not that empirical observation is correct, the point remains that given that the state has the right not to be subverted, its citizens ought to consider the ways in which its decision-making procedure is vulnerable to insidious internal and external influences, and to support the implementation of mechanisms that would enhance its capacity for moral reasoning.

74 *Id.* Cf. Andrew Moravcsik, *Explaining International Human Rights Regimes: Liberal Theory and Western Europe*, 1 EUR. J. INT'L. REL. 157 (1995).

75 Citizens do not necessarily have an overall duty to vote for parties that are likely to endorse the inclusion of their state in international human rights institutions. There will be other items on the political agenda, which must be given proper consideration as well. But citizens should take this normative consideration into account.

76 Jamie Mayerfeld, *Democratic Legitimacy of International Human Rights Law*, 19 IND. INT'L & COMP. L. REV. 53 (2009).

I now turn to examine two objections to the claim that the state has a corporate right not to be subverted. The first objection concerns the potentially oppressive implications of the claim that the state has a moral right, against its citizens, that they respect its moral capacities. For example, a state with an anti-abortion policy might evoke its right not to be subverted in order to justify a ban on a pro-abortion political party, because that party might epistemically “subvert” the state into reversing its anti-abortion agenda. Does my argument sanction such behaviour?

The answer to this question is negative. For my focus has been on state’s moral rights and on citizens’ corresponding moral duties. That citizens have a moral duty to vote in certain ways does not translate into the claim that they have a legal duty to do so, or that the state may ban political parties in order to prevent them from voting in certain ways. There are many other normative considerations that play a role in determining democratic states’ legal right to limit political participation, and while the state’s right against subversion should play a role in that analysis, that role is by no means decisive. That said, it is true that the state, and other citizens, could in principle argue that voting for a pro-abortion party is morally problematic, given the subversive potential of such a vote. However, note that all claims about the moral right not to be subverted are based on a background theory of right and wrong. It is only when A instigates B to perform something we think is *wrong*, that we can accuse A of subverting B. In the example above, *if* abortion constitutes the murder of innocent human beings, then voting for a party that supports abortion may count as a potential subversion of the state’s moral capacities. But if abortion is morally permissible, voting for a pro-abortion party is not subversive in this way. Anti-abortion activists may argue that citizens who vote for a pro-abortion party are subverting the state only if they can reasonably show that abortion is wrong. If there is a disagreement about this question, then their opponents could easily reject the subversion charge. Put differently, my claim about the state’s moral right not to be subverted does not take a position about the substantive moral theory that generates our moral expectations of the state. It only identifies an additional reason why we ought to strive to ensure that our state has the normative capacities to correctly identify its moral duties and to act upon them: failing to do so constitutes a failure to respect our state’s moral capacities.

The second objection concerns a more general worry about statements in support of citizens’ duties towards their state as an entity that is separate to them. One might argue that such claims run too close to fascist adorations of the state. But this objection mischaracterises my argument: As I emphasised time and again, the idea that states have CMRs is entirely compatible with moral

individualism, and with the denial of the idea that states are valuable moral agents in and of themselves. States' CMRs are grounded in the functions they play, as necessary institutions for the protection of individual rights. It gives moral priority to individuals, and hence has nothing in common with fascist perceptions of the state that grant it moral worth and even superiority. Furthermore, I would argue that emphasizing the duties that citizens have towards their state has an important rhetorical value. After all, many people feel strong affiliation with their state, and with their role as members of their state; they feel pride in its successes and shame in its moral failures. An affirmation of the state's right to demand of us that we respect its moral personality, by ensuring that it can act in a morally responsible way in the world, echoes these moral sentiments; it highlights the identity of the state as an artificial creation of the people, that is set up in order to protect their rights and to discharge their duties to each other and to other people in the world, but that requires constant maintenance of its capacities to do so.

Conclusion

This paper sought to examine whether corporate moral agency entails CMRs. My answer to this question draws on a functional account of CMRs, which grants CMAs a limited, derivative moral standing. Key to this account is the distinction between a conceptual and a substantive justification of corporate rights. While substantively, CMRs are grounded in individual interests, it nevertheless remains the case that conceptually, the right attaches to the group rather than to its members.

Given the functional nature of the defence of corporate rights, the paper does not give definitive positive answer to the question of which rights CMAs have in the real world. This question, as it turns out, can only be answered on a case-by-case basis. That said, I suggested that the very idea that some group agents are morally responsible agents, with their own deliberative moral capacities and the duty to act upon normative reasoning, leads to the conclusion that they can have, and are very likely to have, rights that protect these deliberative capacities. This suggestion points to an important connection between the idea of corporate moral agency and specific CMRs.

As the final section of the paper suggested, the analysis has practical implications with regard to real CMAs. One case I have focused on was that of states and their right to be protected from moral subversion. But more generally, the proposed framework has implications for other types of CMAs. Consider for

example, recent rulings by the US Supreme Court, which expand the political and civil rights of business corporations. As the analysis here suggests, one reason to question such these decisions is that they are not sufficiently sensitive to the distinction between conceptual and substantive justifications of CMRs. The corporate moral agency thesis certainly gives us grounds to accept that, conceptually, business corporations can have civil and political rights. But to substantively grant such rights, we must show that they are necessary to protect the rights of individual agents in the world. CMAs can have moral rights, but to justify them, we must look above and beyond the corporate entity itself.