

Corporations Cannot be Equal Legal Persons

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I appreciate your willingness to engage with this project at such an early stage. I am new to this literature, so I am surely unaware of many interesting perspectives and would welcome article recommendations. I also owe many more citations and acknowledgments, so please forgive the lack of footnotes, particularly in the latter sections as I work out my argument.

Sincerely,
Gregg

Contemporary social ontology has exorcised the ghosts that long haunted discussions of collective entities. Functionalist mental states and social institutional norms allow groups to embody a rational point of view with its own beliefs, intentions, and actions independent of any individual member.¹ Group minds are no longer spirits floating above groups of individuals. And yet, a larger worry lingers. Historically, our unease about collective entities was not just about idealist metaphysics. Early twentieth-century ethicists were morally anxious about group agents. By reifying groups as entities, we risk turning the relationships that sustain them into claims of authority over their members.

Traditional family law illustrates the worry. Legal and social rhetoric described marriage as a contract to merge two people into an ongoing family unit, one with interests distinct from those of either spouse. This picture retains intuitive resonance: people still say that some things can be good for a marriage even if not for either spouse individually. Nevertheless, the rhetoric of unity did not match the legal reality. Law created a marital 'unity' by giving a husband vast legal authority over his wife, denying her legal right to act in her own name for most purposes. Philosophical interpretations of marriage rationalized its legal subordination in the name of unity. Hegel, following Kant, used hazy ontological claims about marital unity to bless coverture's moral subordination of wives, and its role in women's systemic subordination. We could tell similar stories about how other groups or communities shielded hierarchy by demanding respect for group independence.

¹ Kendy M. Hess, *Does the Machine Need a Ghost? Corporate Agents as Nonconscious Kantian Moral Agents*, 4 J. AM. PHILOS. ASSOC. 67, 69 (2018).

Contemporary social theory addresses the ontological problem for group agents, but can it alleviate moral worries about the relationships that sustain them? I grant, for purposes of this paper, that some collectives are moral agents. My worry begins after that concession. Demands for collective responsibility easily shade into demands for collective respect. Once the law recognizes group agents with status as legal persons, groups start to seem like appropriate objects of foundational moral and legal concern.² For individual human beings, our claim to the full panoply of legal rights rests (at least in part) on our equal moral agency, on our ability to pursue our own ends while respecting similar freedom for others. Group agents have their own ends and interests. If a collective moral agent may be held responsible for failing to respect other agents' ends, then the group seems likely to demand that other agents respect its ends as well. Can a collective agent claim moral and legal rights in its own name, justified not derivatively by respect for its members but respect for the collective agent as such?

The question is not whether corporations, churches, states, or other collective entities may hold property, enter contracts, or exercise other legal powers. Law can assign legal incidents for derivative or institutional reasons. Fictional persons wield sufficient agency to satisfy whatever functional requirements are necessary to be a subject or object of Hohfeldian legal incidents. The question is whether the law must recognize collective agents as full legal persons with original rights in their own name.

Theorists who support collective moral agency quickly deny these groups status as moral patients with rights. Existing justifications for that asymmetry are unpersuasive. Many sophisticated theorists seem willing to treat moral individualism as a postulate.³ The standard move to justify this asymmetry tries to divide legal personhood, disconnecting legal duties from legal rights. They relocate the ground for rights to a capacity possessed by humans but not groups, typically a form of sentience, either the capacity to have subjective experience in general or the specific capacity to feel pain or

² Frank Hindriks, *How Autonomous Are Collective Agents? Corporate Rights and Normative Individualism*, 79 ERKENNTNIS 1565, 1576 (2014) (describing the slide by P.A. French and List and Pettit from moral agency to moral status, but also the difficulty in avoiding this slide).

³ Paul Miller, *The Concept of Personality in Private Law*, in INTERSTITIAL PRIVATE LAW, 192–93 (2024) (setting aside concern about whether artificial persons can have moral interests of their own, which allows him to look through the threshold status of personhood to simply ask piecemeal what interests artificial persons are fit to bear).

moral emotions. Sentience is likely sufficient to ground a moral status for animals or permanently incapacitated humans, but it seems unnecessary for the core rights of natural legal persons, such as bodily integrity or conscience. We need an explanation for why robust functional agency is sufficient for moral responsibility but not basic recognition respect.

This essay argues that collective agents cannot have original rights in the sense that constitutes full legal personhood. Moral agents can have original rights only insofar as those rights are consistent with equal rights for others. Collective agents can exist only through structured relations of epistemic and practical authority. The individual member agents must have role-relative reasons to treat the collective procedures as settling what it believes and intends and how they should act in their roles within its institutions. Relations of this kind can be consistent with equal individual freedom.⁴ The problem arises if the collective is said to have an original right to preserve or control its agency constituted by those relations. Such a right would convert the collective's constitutive dependence on role-relative authority into a claim to maintain those authority relations for the collective's own sake. Individual agents may enter the authority relations that generate collective agents, but their individually rightful actions cannot bootstrap the collective into a new bearer of original rights to maintain its own agency. Collective agents can therefore be genuine moral agents without being full legal persons.

The paper proceeds in four Parts. Part I examines familiar attempts to combine robust group agency with a denial of group personhood and explains why sentience-based accounts do not adequately justify the distinction. Part II evaluates two promising recent efforts by James Toomey and William Rehg to distinguish full human personhood from collective agency. Taking their basic insights as inspiration, Part III builds a Kantian argument against legal personhood for collective agents. Part IV briefly sketches the resulting legal implications, distinguishing derivative corporate rights from rights asserted in the collective's own name.

⁴ One might even think that respect for individuals requires group-level rights to self-determination, at least for legitimate states. Christopher Heath Wellman, *Group Autonomy and State Sovereignty*, in *LIBERAL RIGHTS AND RESPONSIBILITIES: ESSAYS ON CITIZENSHIP AND SOVEREIGNTY* (2013).

I. Agency Without Patienthood

A. The Existing Asymmetry

The most familiar strategy to deny rights to group agents is to divide legal personhood into two dimensions corresponding to moral agency and moral patienthood. On this view, a collective agent's capacity to act for reasons can justify non-derivative legal responsibility, but some further capacity is required before the collective can hold non-derivative rights in its own name. In *Group Agency*, List and Pettit offer two reasons for treating groups as morally responsible agents with duties but not moral patients with rights: the risks of domination from group agents and a foundational commitment to moral individualism.⁵ The former receives extensive discussion and the latter very little, which critics quickly pointed out.⁶ Nevertheless, most theorists remain committed to this asymmetry and its underlying moral individualism. Unfortunately, the literature has yet to provide a satisfying account of why robust moral agency comes apart from the kind of moral standing that grounds rights.

B. Why Sentience Does Not Explain the Asymmetry

The most common explanations look for a capacity that human beings (at least as a kind) possess but collective agents lack.⁷ If the missing capacity is required for moral patienthood but not moral agency, it could explain why collective agents bear duties without holding rights. The principal candidates are moral emotions, the capacity for pain or pleasure, and phenomenal consciousness. Each ultimately pushes the argument toward sentience, yet none explains why sentience should be necessary for the recognition respect afforded moral and legal persons.

It is commonly claimed, particularly among utilitarians, that the pain or pleasure of any entity demands moral concern.⁸ Some theorists also seem to think pain is necessary for moral patienthood. For example, Professor Hess argues that groups

⁵ CHRISTIAN LIST & PHILIP PETTIT, *GROUP AGENCY: THE POSSIBILITY, DESIGN, AND STATUS OF CORPORATE AGENTS* 182 (2011).

⁶ Hindriks, *supra* note 2 at 1579.

⁷ *Id.* at 1580 (referring to this strategy as normative pluralism).

⁸ JEREMY BENTHAM, *THE COLLECTED WORKS OF JEREMY BENTHAM: AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION* XVII, s.4 note b.

cannot be moral patients because “vulnerability” to experiences like “hunger, humiliation, and hatred” is necessary to see why rights matter.⁹ It is difficult to imagine how a group as such could suffer pain, even if its individual members are suffering. On the other hand, corporate agents do have intentional states equivalent to desires that can be realized or frustrated, which could generate states in a corporate agent that realize the functional equivalents of pain or pleasure.¹⁰ For this objection to groups’ moral status to be plausible, the idea must be that collective agents lack phenomenological experiences of pain, and this subjective feeling is necessary for moral patienthood.

Before considering sentience directly, I should note an analogous claim that may be more appealing to deontological theorists. Some theorists argue collectives cannot be full moral agents that demand treatment as ends in themselves because they lack either (a) moral emotions, such as empathy and care, or (b) reactive attitudes, such as resentment and indignation.¹¹ The idea, at least as articulated on their behalf by Hess, is that these emotions are necessary for an agent to respond appropriately to their own value and to the value of others.

While such emotions are certainly part of human moral agency, it is not obvious why corporate agents cannot have functional analogs. A collective agent could instantiate moral emotions in much the same way that it processes any sensory information.¹² Groups do not have nervous systems, so a group never directly ‘sees’ anything in the world. Instead, its individual agents observe events and then react within the institutional structures to transmit information and trigger appropriate responses. Suppose that the capacity for empathy is necessary to discern another agent’s suffering and respond appropriately. One of the group’s constituent agents can have the first-personal experience of empathy and then act within the institution to share that

⁹ Kendy M. Hess, “If You Tickle Us....”: *How Corporations Can Be Moral Agents Without Being Persons*, 47 J. VALUE INQ. 319, 333 (2013).

¹⁰ Kenneth Silver, *Can a Corporation Be Worthy of Moral Consideration?*, 159 J. BUS. ETHICS 253, 261 (2019).

¹¹ Stephanie Collins, *Group Blameworthiness and Group Rights*, 68 INQUIRY 937, 946 (2025) (arguing that blameworthiness requires moral self-awareness, which requires first-personal guilt); Hess, *supra* note 1 at 79.

¹² Hess, *supra* note 1 at 79; Collins, *supra* note 11 at 953.

information and prompt a collective response. Similarly, a corporation can be indignant if we understand that attitude functionally as a capacity to identify and respond to particular forms of maltreatment. If the absence of moral emotions is a genuine problem for collective personhood, then the problem must lie in the view that moral emotions require first-person phenomenal experience. That reduces the argument to the question of sentience.

Do group agents lack moral standing as patients because they lack phenomenological experiences of emotions or pain? The argument would require both an ontological or empirical premise about corporate agents, that they lack phenomenal consciousness, and a moral premise, that phenomenal consciousness is necessary for status as a moral patient.

The ontological premise for this objection might come either from physicalists who doubt that functional states explain phenomenology or from functionalists who believe group agents lack the functional states necessary to implement phenomenological experiences. A standard objection to functionalism in the philosophy of mind is that it struggles to explain subjective experience. One stalwart in this debate, Ned Block's China brain hypothetical, has become a staple of science fiction.¹³ In "The 3 Body Problem," an emperor watches from a plateau as billions of his foot-soldiers twist black and white flags to implement a binary code. Even if an arrangement of army flags could fulfill the function of intentional states, Block argues that we have strong reasons to presume that the Soldier-Computer has no experience of those intentions. A group could, of course, implement higher-order processes capable of monitoring, reporting, and responding to its states, providing a functional equivalent of awareness of those states. Nevertheless, it seems implausible to suggest the Soldier-Computer feels those states, in anything like the sense that the intentional states of humans or other animals enter their phenomenological consciousness.¹⁴

¹³ Ned Block, *Troubles with Functionalism*, in CONSCIOUSNESS, FUNCTION, AND REPRESENTATION VOLUME 1: COLLECTED PAPERS (2007).

¹⁴ A functionalist might respond that this skepticism applies asymmetrical epistemic demands to individual and collective minds. Phenomenological experiences can never be seen by a person observing the system run from the outside, whether the emperor on his cliff, the programmer watching binary on a screen, or a neuroscientist watching neurons fire—much less by the internal components of the system

On the other side, Christian List argues that functionalist accounts explain why groups lack phenomenological experiences.¹⁵ According to information integration theory, phenomenal consciousness arises in physical systems that integrate information from multiple simultaneous sources. Phenomenal experience is scalar, increasing with the level of information integration, measured by the extent of disruption the system experiences when physically partitioned. List offers three reasons to think groups lack sufficient integration to generate phenomenal consciousness. First, large groups can be decomposed into contained functional subgroups that exhibit much higher levels of information integration. Second, even in a “steering” subgroup with the highest level of integration (like a corporate board), the group can fulfill its steering function even with members randomly removed. Even the lone remaining member can process information and make decisions. That suggests the integration occurs at the level of individuals rather than at the level of the steering group. Finally, the integration contributed by individual human agents vastly outpaces the computational contributions by the group processes. After making this functionalist argument against group phenomenology, List puts a suggestion “on the table”: groups can have duties but not rights because the capacity for phenomenal consciousness may be a necessary condition for non-derivative moral significance.¹⁶

I am inclined to believe the ontological conclusion that groups lack sentience. However, I have difficulty identifying the moral reasons why sentience is necessary for status as a moral patient but not for moral agency.

Humans, the paradigm case of moral agents and patients, have phenomenological experience relevant to both. Our intentions and actions have subjective phenomenal qualities. An experience of desire seems deeply connected to human planning, and an experience of striving seems deeply connected to how humans understand themselves as acting in the world. Indeed, some reactive attitudes seem

that implements them, such as the foot soldiers, electronic logic gates, or neurons. Block’s response was accept the reasonableness of the asymmetry and treat it as a presumption. Ned Block, *Functional Role, Superficialism, and Commander Data*, in BLOCKHEADS!: ESSAYS ON NED BLOCK’S PHILOSOPHY OF MIND AND CONSCIOUSNESS (2019).

¹⁵ Christian List, *What Is It Like to Be a Group Agent?*, 52 Noûs 295 (2018).

¹⁶ *Id.* at 315.

tied to our recognition that another person failed to respect us as an agent, instead treating us as a tool to achieve their ends. The lack of phenomenal consciousness might lead us to doubt corporate agency across the board, but it does not seem to ground the asymmetry between rights and duties.

Moreover, the standard accounts of fundamental moral and legal rights do not seem to depend on the capacity for phenomenological experience. Returning to the roots of equal dignity, Kant thought we owe respect to one another as moral agents in virtue of our capacity to act according to mutual respect, not on our ability to feel pain or emotions.¹⁷ It would seem perverse to say that the psychopath who is incapable of having moral emotions like guilt or remorse is not a moral agent.¹⁸ That is not to say that phenomenology is irrelevant to morality. We have moral obligations to respond to others' needs, including their pain. We have a duty to increase our moral worth, in part by shaping our desires to conform with moral duty.¹⁹ However, neither makes phenomenology a precondition for recognizing ourselves as entitled to respect as moral agents. Indeed, Kant even believed some moral agents, angels, lacked empirical desires.

Working from the legal side produces the same difficulty. Phenomenological experience is not necessary to the foundational rights associated with legal personhood. For example, the law protects bodily integrity through battery, and the experience of pain from bodily contact is neither necessary nor sufficient for a battery. Battery doctrine protects each agent's authority to decide what happens to their body. Moreover, the boundaries of the body for legal purposes are not coextensive with things that we can feel neurologically.²⁰

The basic lesson is that the agency-patienthood distinction cannot simply be

¹⁷ William Rehg, *Business Firms as Moral Agents: A Kantian Response to the Corporate Autonomy Problem*, 183 J. BUS. ETHICS 999 (2023); Collins, *supra* note 11 at 942; Hess, *supra* note 1 at 82 (noting Kantians tempted by this move who also recognize its seems ad hoc within a Kantian framework).

¹⁸ That seems an entailment of Collins' account that moral awareness requires feelings of guilt, regret or remorse, rather than simply respect in Kant's sense of a rational intuition of our obligation to respect others. Collins, *supra* note 11 at 945–46.

¹⁹ Immanuel Kant, *Metaphysics of Morals*, in PRACTICAL PHILOSOPHY (Mary J. Gregor ed., 1999).

²⁰ Abraham Drassinower & Christopher Essert, *The Purely Juridical Person in the Law of Battery*, in LEGAL PERSONHOOD IN PRIVATE LAW (Christopher Essert, Eva Micheler, & Paul Miller eds., 2026), <https://papers.ssrn.com/abstract=5334704>.

mapped onto a functionalism-sentience distinction. Because both rights and duties are grounded in respect for agents, we should expect the reasons for empowering an agent with liberty and power rights, such as to own property, enter contracts, or protect its reputation, to bear some relationship to the reasons for requiring others to respect those rights. The next part considers two accounts that look more directly at what distinguishes collective from individual agency.

II. Alternative Accounts of Limited Legal Personhood

Two recent papers point in a more promising direction. Rather than dividing legal rights from agency in ways that require a new theory of patienthood, they argue that collective agents lack a feature of full moral or legal agency that limits the kind of moral or legal respect they deserve. James Toomey focuses on how an entity participates in law; William Rehg focuses on the kind of value a firm can possess.

A. Toomey: Participation on One's Own Terms

Professor James Toomey argues that corporations cannot be full legal persons because they lack sufficient capacity for self-directed action.²¹ An entity is a full legal person, on his account, if it can “participate” in the law in any way that the law recognizes “on its own terms, by its own prerogative.” Participating in law means exercising legal powers, such as forming contracts, complying with legal directives, or filing lawsuits.²² Toomey’s emphasis on active capacities contrasts with other accounts, like the sentience account, which treat passive capacities as the foundation of original rights. As a descriptive matter, law requires certain capacities to exercise legal powers and privileges.²³ Some agents possess them, others do not. Only “roughly cognitively healthy adult human beings” have all the capacities necessary to exercise the panoply of legal rights. All other legal persons, including infants, impaired adults, and corporations, “participate in the law in the same way, ... through the participation of cognitively healthy human adults empowered to act ‘on their behalf’, subject to fiduciary

²¹ James Toomey, *Personhood as Participation*, in *LEGAL PERSONHOOD IN PRIVATE LAW* (Christopher Essert, Eva Micheler, & Paul Miller eds., 2026), <https://papers.ssrn.com/abstract=5334704>.

²² *Id.* at 20.

²³ *Id.* at 24–25.

duties.”²⁴ Corporations are not full legal persons because they must act through other agents, which prevents them from fully participating in legal relations on their own terms.

Toomy has correctly refocused our inquiry on the connection between agency and the legal rights that follow from full personhood. He also offers a crucial insight: the paradigm case of legal persons is entitled to the full panoply of legal rights and can participate in law in all the ways it permits. Unfortunately, insofar as Toomey offers his account as a “descriptive” account, the conception he offers does not justify the laws’ distinction between full legal persons and all others.²⁵ Insofar as Toomey suggests a weakly positivist reason for this division built into the law already, I suspect his explanation that a corporation cannot participate “on its own terms” and “by its own prerogative” is either question-begging or unsound.

On several interpretations, it is immediately question-begging. Any collective agent must act “through its members” in the sense that individuals carry out its actions, legal or otherwise. Just as a corporation speaks through a public relations officer, a corporation signs contracts through an authorized employee. If any agent that necessarily relies on other agents to implement its actions cannot participate on its own prerogative, then Toomey’s participatory conception of personhood defines away collective legal persons. For similar reasons, “prerogative” cannot mean an institutionalized legal power to act, because the issue is precisely which legal powers collective agents are entitled to hold.

One natural interpretation of when an agent can participate “on its own terms” insists that an agent must be able to decide for itself how to use its legal incidents based on its own values. Young children cannot satisfy these criteria. They lack sufficient cognitive capacities to form judgments, conative capacities to act on their judgments reliably, or (moral?) capacities to form the values that are recognizably “their own” in ways that demand accountability or respect.²⁶ But corporate agents can.

²⁴ *Id.* at 18.

²⁵ I need to consider whether Miller’s conception of “conversable participants” might provide a sufficient justification. Miller, *supra* note 3.

²⁶ Strauss.

Collective agents have their own irreducibly collective beliefs, intentions, and actions. Although human beings must instantiate these judgments and actions, such as when the board decides to act and the purchasing officer signs the contract, the collective determines what that person does based on the collective's own intentions and values.

Sometimes "on its own prerogative" means having a moral or legal privilege to act without obtaining someone else's permission. Corporations plainly have such legal prerogatives against people outside the organization. Toomey might instead insist firms cannot act on their own prerogative because individual agents within the firm, like its managers, hold legal power to determine how the firm acts. This version of the argument is only slightly less circular. Corporate law gives the board authority to determine corporate action. Board votes are not external limits on the corporation's decisions; they are the corporation's decisions. If the board votes against expanding its production line, the expansion is not the corporation's plan. If an agent fails to act on its own terms whenever its actions are sustained by normative structures assigning powers among individual agents, the definition has again ruled out collective agents by stipulation.

The deeper problem, I suspect, is Toomey's analogy to children and the idea of acting "on behalf of" another. Toomey insists all legal persons other than cognitively healthy adults rely on others to participate in law in "structurally" the same way. Despite similar fiduciary duties, these structures are not analogous. Parents and guardians are substitute decision-makers for children and incapacitated adults. A twelve-year-old can decide whether they want to play football, but they are unlikely to understand the risk well or act reliably on that information. Consequently, law empowers parents to consent for their child, assuming parents will assess the risk and decide what the child should do. Corporations rely on individuals in a different sense. A corporation's actions just are the actions of individual agents within its institutional roles. The board makes a corporation's decisions, rather than making substitute decisions. The better analog for a parent is a receiver. In cases of insolvency or mismanagement, courts appoint receivers to manage a business on behalf of the corporation, in much the same manner as a

guardian for a ward.²⁷ In the ordinary course of affairs, institutional offices turn individuals' decisions and conduct into the corporation's beliefs, decisions, and conduct. This dependence is real, but it is ontological and institutional rather than a form of substitute decision-making.

B. Rehg: Conditional Value and Recognition Respect

While Toomey tries to remain descriptive to maintain some agnosticism about fundamental values, Professor ____ Rehg goes straight to the deep moral question.²⁸ He argues that firms are not full moral persons because, having been created to serve the purposes of their shareholders, a firm can have only conditional rather than absolute value. He begins with the Kantian justification for treating human agents as ends in themselves. "To call a reason-endowed agent an end-in-itself is to recognize that agent as having intrinsic, unconditional value, which sets the agent apart from entities or goals whose value depends on contingent desires or circumstantial utility."²⁹ When a rational agent sets ends, she necessarily regards herself in this way. As a matter of consistency, she must extend the same recognition to other rational agents. This universal principle grounds recognition respect.

Corporations cannot have similar moral value. Individual human agents enter cooperative activities to achieve purposes they value. The collective persists as an entity only insofar as those individuals remain committed to cooperating to realize its purposes. Thus, Rehg argues, the value of the collective is contingent on the value of its members' ends, rather than the absolute value that we recognize in an agent that is an end-in-itself. Firms cannot be full moral persons.

But they are not morally irrelevant. Human agents are entitled to recognition respect in virtue of their rational capacities, regardless of whether they exercise those capacities well. By contrast, Rehg argues, a firm is a moral agent that deserves respect only insofar as it in fact manages to constrain its pursuit of ends by moral demands.³⁰ The collective acts from moral principles only insofar as individual agents build and

²⁷ Del. Code Ann. tit. 8, § 291 (West); *In re Bayou Grp., L.L.C.*, 363 B.R. 674, 685 (S.D.N.Y. 2007).

²⁸ Rehg, *supra* note 17.

²⁹ *Id.* at 1004, citing Groundwork.1004, Citing groundwork

³⁰ *Id.* at 1005.

sustain structures that respond to those principles and hold participants accountable. Thus, the firm's moral agency is an achievement of its members, worthy of esteem but not unconditional recognition respect.³¹

I believe Rehg is right to return to the foundational connection between agency and recognition and respect and, in particular, to a Kantian emphasis on the universality of any judgments about entitlements that flow from recognition of moral agents. I also suspect he is right to distinguish group from individual persons by the fact that human agents must sustain the structures that provide collective agency. However, I find the grounds he offers for denying recognition and respect to the group as such unpersuasive.

The fact that individuals create an entity to achieve their purposes does not entail that the entity's value, once it is up and running, is contingent on its creator's purposes. Founders create nations. Parents create children. A creator's purpose does not, by itself, fix the moral status of the entity created.³² The problem would be deeper if group agents can persist only insofar as constituents sustain their pursuit of a specific purpose. Recognition respect for agents, as Toomey identified, seems connected to their possession of the full range of abilities. However, Rehg's argument for this persistence condition rests on an unfounded assertion that all firms have limited purposes. Why insist individuals cannot establish an all-purpose collective entity with ends determined by the collective itself? If group agency is robust enough to generate irreducibly collective beliefs and intentions, continued dependence on individual participation does not by itself show that the group's value remains conditional on its founders' purposes.

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Toomey and Rehg identify two important features of the connection between personhood and agency: (1) full legal persons have sufficient agency to justify their

³¹ *Id.* at 1007.

³² Rehg may reply, fairly, that his argument is explicitly limited to firms that "exist primarily as market actors" and "never leave the market." However, it is unclear what justifies this scope restriction or how markets could have such intrinsic moral significance. Human agents also act in markets and sometimes operate under the special adversarial permissions associated with them. Corporate firms do many things that are not, or at least not directly, participating in market transactions.

participation with equal rights in all basic legal relations, and (2) a collective agent has agential capacities only insofar as individual persons implement its intentions, beliefs, and actions. However, they do not fully capture the moral significance of these insights. The next part takes those insights in a different direction, arguing that group agents' ontological dependence on authority entails that they cannot claim equal legal rights in their own name.

III. Collective Agency and Equal Freedom

The agency of a collective entity is constituted by the individual agents who occupy its institutional roles and treat its judgments and plans as authoritative. There is nothing necessarily objectionable about this constitutive authority. The legal relations that define the roles may be consistent with equal respect. Moral problems arise when a collective agent tries to claim a right to control or preserve its agency for its own sake. It is not sufficient to insist that the individuals have rightfully created a higher-level moral agent, as if that were sufficient to justify rights in its own name. Moral agents should have all and only those original legal rights and duties consistent with equal freedom for all other agents. Corporate agents cannot have a legal right in their own name to control their agency because that agency consists of authority relations among other agents. The ultimate objection is therefore moral rather than ontological, though it rests on ontological premises. Collective agents can be real agents but not full legal persons.

A. The Form of Corporate Ontological Dependence

The dependence of corporations on individuals runs deeper than Toomey acknowledges. Corporations do not merely need agents to act on their behalf in the way that children need adults to help them. Corporate agents are ontologically dependent on individuals.

A collective agent needs other agents to implement the functions that constitute its beliefs and intentions.³³ Some of those sub-agents might also be collectives, but any organizational hierarchy ultimately bottoms out in individual human agents. Modern

³³ Kendy M. Hess, *Re-Bunking Corporate Agency*, 68 INQUIRY 979, 994 (2025).

social ontology explains how collectives can sustain beliefs and intentions distinct from those of any individual member, but the collective intentional states do not exist in a cartoon bubble floating above a collection of humans. Theorists of group agency are not offering a dualist theory of group souls or neo-Hegelians attempting to reinvigorate spirit. Collective agents have beliefs and intentions only insofar as human agents implement them by operating within formal and informal structures.³⁴

Collective agents' dependence on individual human agents differs fundamentally from children's reliance on parents. Children rely on adults to provide the food and shelter that sustains them physically, but a child's existence is not ontologically dependent on adults. Each child is a self-subsistent natural person. By contrast, individual human agents are the constituent parts that implement the collective's actions. While this constitutive relationship raises hard moral questions about the relations among individual and group agents, the ontological dependence alone cannot establish a hierarchy of moral standing.

B. Collective Agency Depends on Constitutive Authority

Collective agents are not simply sets of humans. The constituent human agents must be arranged in structured relationships. Ontologically distinct collective agents arise and persist only if the individual agents occupy institutional roles in which collective judgments and plans settle what counts as the group's belief or intentions and guide role-based conduct over time. I will call these relations of constitutive authority. Epistemic and practical authority is necessary for the persistence of any collective agent, at least on any modern secular account of group entities.

Rather than survey every theory of collective agency, I will describe features shared by prominent functionalist accounts. No agent, individual or collective, can deliberate from scratch on every occasion. Whether evaluating propositions of fact, norms, or the application of norms to facts, an agent must take some propositions as settled, at least provisionally, to draw further inferences and then act upon them. The same is true of a collective. A collective agent must be capable of settling on positions that guide later deliberation. For a proposition to count as settled at the group level,

³⁴ *Id.* at 989.

individual members must ordinarily treat the group's judgment as a premise for deliberation and action undertaken in their corporate roles, even when those individuals would reach a different conclusion on their own.

This practice is a form of epistemic authority, but it is somewhat unusual. Philosophers are familiar with epistemic authority in the contexts of testimony and expertise. My credence in a proposition ought to increase when a source I regard as better informed or more expert endorses it. I believe the universe is expanding because I understand that proposition to be the consensus among cosmologists, even though I have never performed a spectral analysis and could not explain the mathematics of redshift. Members of a collective may regard group judgments as authoritative in this familiar evidentiary sense. But that form of deference is neither necessary nor sufficient to perform the belief-settlement function required for collective agency.

A collective agent reaches judgments about facts, values, or morality through deliberative procedures. Once those procedures conclude, any individual member may still believe she has better information, expertise, or judgment. Collective agency does not require individuals to abandon their judgment. It does not require convergence in members' beliefs. What it requires is that, when individuals act in the relevant institutional roles, they ordinarily deliberate from and act on the collective's settled positions. A collective has the capacity to form its own beliefs ontologically distinct from those of its members insofar as those who reject the conclusions of its deliberative processes nevertheless reliably treat them as settled for their role-based purposes.

The mechanisms that make stable collective judgment possible are not mysterious. Human beings can act as if a proposition were true, even if they personally believe it is false. Of course, imagination alone is insufficient to provide the needed stability. A collective agent needs its constituent members to have reliable reasons to treat its judgments and intentions as settled premises for deliberation and action. It needs individuals to have role-relative practical reasons that are usually decisive. The reasons could be exclusionary but need not be. A member may continue to consider contrary reasons, may believe the collective is mistaken, and may sometimes be justified in refusing to comply. Nevertheless, any dissenters need strong enough

practical reasons to reliably use propositions that they doubt in their practical deliberation within their institutional roles. Collective agency requires enough reliable, role-governed compliance for group-level attitudes to guide further deliberation and conduct over time.

This limited, role-relative practical authority takes center stage in collective intentions. On functionalist accounts, an agent forms an intention whenever it treats an end as a standard to guide and coordinate its conduct over time. Collective agents form intentions when their decision procedures generate plans and individual members ordinarily take those plans as guides for their conduct within their institutional roles. The individuals must treat the plan as a norm to appraise and criticize their own and others' conduct on the collective's behalf. A collective has its own ontologically distinct intentions insofar as individual members establish and maintain these relations of practical authority necessary for group-level guidance.

Group agents exist only insofar as their members reliably treat the output of deliberate procedures as settling the truth of factual premises for further deliberation and fixing intentions for purposes of action. In other words, group agency presupposes individuals treat it as an epistemic and practical authority, but the group need not generate exclusionary reasons or settle what the individual should do all things considered. The authority is role-relative and defeasible. Nothing in this structure by itself shows that the authority is illegitimate or that the members cease to be independent moral agents. The moral question is what follows if the collective is then said to possess an original right to the maintenance or integrity of the very relations that constitute it.

C. Innate Rights Require Exclusive Control of One's Agency

Even the strongest advocates of collective agency generally recognize that collective agents should not have every right that human agents possess. The standard example is a right to life. It seems implausible to say that corporations have a right to exist when the law allows members to dissolve their corporation. But we should not be too quick to infer moral conclusions from existing doctrine. The procedure to certify dissolution is an action of the corporation via its board and shareholders, just like any

other. It is arguably akin to suicide, which some regard as a right. Corporations already receive due process before the state deprives them of property or revokes their charter for alleged malfeasance. If interests of the collective agent can justify protection against those deprivations, why not against a deprivation of its very existence?

Answering that question requires returning to the foundations of legal rights. We need to understand what grounds legal rights in the paradigm case of the human person before asking whether a collective person also holds original rights. Why do human legal persons have rights such as freedom of thought and bodily integrity? It is admittedly difficult to justify such foundational and deeply held moral rights, but I think the best justifications sound in Kantian theories of individual dignity.

Freedom of thought and bodily integrity fall into Kant's category of "innate private rights" that each person holds merely in virtue of being a person.³⁵ As a human agent, I simply am my thoughts and my body.³⁶ I am free only if I, rather than anyone else, am entitled to judge what I believe is true and entitled to choose how I use my body.³⁷ Whenever rational agents act in the world, they assume that they are free in this sense. Such freedom is a postulate of agency. Furthermore, as a matter of consistency, we must recognize that any other human agent will make the same judgment about their own freedom of conscience and bodily integrity. Whatever justifies my assumption of innate rights applies equally to them.

Although an agent cannot help but assume they are entitled to pursue their ends, they can trust this postulate only if they can see how they can enjoy these innate rights consistently with every other person's doing the same. In contemporary rights terminology, original rights must be compossible.

Fortunately, it is easy to see that human agents can enjoy equal innate rights because they are necessarily consistent. One person's liberty to exercise their factual and moral judgment does not limit anyone else's liberty to exercise their own judgment. Similar arguments support equal rights to bodily integrity. My freedom to decide whether anyone else touches me places no limits on other people's liberty to choose who

³⁵ Kant, *supra* note 19.

³⁶ ARTHUR RIPSTEIN, *FORCE AND FREEDOM: KANT'S LEGAL AND POLITICAL PHILOSOPHY* 40–41 (2010).

³⁷ *Id.* at 35.

touches them, at least assuming we are in circumstances of justice where the world has sufficient physical space. However, the right to bodily integrity, unlike freedom of conscience, does limit others' liberty. They cannot touch me without my consent. However, that purported liberty is not one that people can enjoy as equals, so it is not one that anyone can rightfully claim.

Private and public law recognize both forms of innate right. Any minimally just legal system contains some claim for trespass to the person, such as battery, together with a power to consent to contact and a privilege of self-defense. It will also protect freedom of conscience. Despite contemporary tendencies encouraged by the U.S. Constitution, freedom of thought should not be conflated with freedom of speech. Human agents should be entitled to wide freedom of speech, but speech is a form of action in the world with causal consequences that can interfere with other people's bodily integrity, freedom of conscience, or acquired rights. The law must permit speech in ways that respect other individual rights. Fraudulent misrepresentation, for example, protects individuals against efforts to manipulate their conduct by deceiving them in ways that bypass or corrupt their judgment.

Innate rights are justified by their necessity for human agency, but the Kantian argument is not consequentialist. The point is not that innate rights improve our lives according to some objective measure of human welfare, although they probably do. Nor is the argument teleological in an Aristotelian sense. The law is not required to protect innate rights because these freedoms are intrinsically valuable for human beings, although they probably are. Rather, each human agent, given the kind of rational embodied agents that we are, cannot help but presuppose that she, rather than anyone else, is entitled to control what she judges true and what happens to her body. To be a human agent just is to claim exclusive authority over one's own agency. A human agent must be entitled to those freedoms so long as those freedoms are consistent with equal freedom for other persons, and universal freedom of thought and bodily integrity are fully consistent. This is what it means to have original innate rights on the Kantian picture.

To recognize another human being as a full legal person is therefore to recognize

an innate right to exclusive control of their thought and body. Moral respect for human agents, the paradigm of juridical personhood that grounds original legal rights, assumes that a juridical person is an entity capable of exercising agency under conditions of equal freedom. Returning to the question of this essay, the issue is not whether a collective can exercise agency. I grant that it can. The question is whether the authority relations that constitute collective agency can form the basis of the collective's original innate rights to the integrity of its agency.

D. Innate Rights for Collectives are Inconsistent with Equal Freedom

The preceding analysis does not show that collective agency itself is inconsistent with equal freedom. Individuals may permissibly occupy institutional roles in which collective decisions give them strong, usually decisive, but defeasible reasons for role-based action. The difficulty begins with the rights for the collective as such. A collective agent just is, at the relevant level, the organized deliberations and actions of its constituent agents, in something like the way a human agent acts through thought and body. But a collective cannot claim an original right to control, preserve, or insulate the means of its agency without turning the authority relations that constitute it into duties owed to the collective for its own sake.

1. Life and Agential Integrity

The problem is clearest for collective analogs to bodily integrity and life. For a collective agent to have an innate right to agential integrity, it would need a claim to demand the physical and deliberative means through which its agency is realized remain available and protected from interference, analogous to a human agent's right to control her body. But the collective's means are themselves agents. A human right to bodily integrity can be universalized because no other person could rightfully claim authority over my body. Recognizing a collective right to agential integrity raises much harder problems. It threatens to make the continued availability or organization of individual agency something owed to the collective itself.

Common hypothetical examples in the functionalism literature can dramatize the problem. Let us return to Ned Block's hypothetical imagined in "The 3 Body Problem." Even if the Soldier-Computer could realize phenomenal consciousness, the moral

question would remain because each foot-soldier is a person in her own right. We have no similar moral concern for the neurons that implement human intentions or for the electronics that implement an A.I.'s intentions.³⁸ The agent instantiated by the soldier-computer might be a genuine agent, perhaps even a sentient one. But an original right to persist held against the soldiers themselves would require some duty on their part to remain in, or return to, the formation for the sake of sustaining the higher-level agent. We should separate the ontological question - whether the soldier-computer exists as an agent - from the moral question whether its existence gives it a claim to the continued participation of the persons who constitute it.

Real collective agents use their constituent agents in less crass ways, but their ontological structure creates the same moral problem when a claimed right runs against the participants themselves. A church could have an original right against schism only if its members had some duty, owed to the church as such, not to leave or transform the association. A corporation could have an original right to persist against its participants only if some persons had duties, grounded in the corporation's own standing, to continue supplying the roles or resources through which it persists. Collective agents exist only insofar as human agents continue to sustain the authority relations necessary to form the collective's beliefs, intentions, and actions. The question is whether the collective's existence can itself generate a right to that continued support.

The problem becomes sharper when we consider collective action. Human agents act through their bodies, which is why bodily integrity is necessary for equal liberty. Block's human-computer hypothetical can be imagined with robotic parts that merely implement the computer's intentions. Modern theories of corporate agency, by contrast, assume that corporations act through human conduct. A corporation culpably violates its neighbors' rights when its employees, acting within their roles, dump chemicals into a river. Employees usually have decisive role-relative reasons to carry out corporate plans, but those reasons arise from employment, agency, contract, office,

³⁸ Other science fiction examples reinsert the moral question. In the Formic species in the *Ender's Game* series, a Hive Queen suppresses the agency of individual drones treating them as extensions of her agency. Similarly, in *Ancillary Justice*, a galactic empire creates artificially intelligent ships by wiping the memory of human beings so that computer systems can use their bodies to act in the world.

and other legal relations that must themselves be justified consistently with the employees' standing as persons. The corporation's existence as an agent does not add a new, original claim that these relations be maintained for the corporation's sake. A right to agential integrity or persistence would do exactly that. It would convert the authority necessary to constitute the collective into an entitlement of the collective to preserve that authority. No such original entitlement follows from group agency itself.

While I have found no scholars arguing for a corporate right to life,³⁹ jurists commonly argue that legitimate states have a right to persist and perhaps even a duty to sustain and perfect themselves.⁴⁰ States present a harder case. Claims of national self-determination are commonly framed as rights against external interference, while citizens retain a power to revise or dissolve their political association.⁴¹ That structure may suggest that the apparent right of the state is ultimately grounded in the rights of the individuals who constitute the political community rather than in the state's intrinsic moral standing as an agent.

Nothing in the argument here requires resolving the larger theory of national self-determination. The point is only that claims conventionally described as a state's right to persist or determine its own political future may ultimately have to be reconstructed through the rights of the individuals who constitute the political community rather than through the intrinsic moral standing of the state as an agent. I leave that question aside. The claimed collective right to freedom of conscience provides a cleaner setting in which to test whether a collective agent can hold an original right against interference with the processes that constitute its agency.

2. Freedom of Conscience

Unlike a corporate right to life, a corporate right to conscience has prominent analogs in existing legal argument. One might suppose that a collective agent is at least

³⁹ The closest analog I could find was Roger Pilon, who argues that corporations have a right to exist that is derivative from the individual right of association and contract. "Corporations and Rights: On Treating Corporate People Justly," 13 *Georgia Law Review* 1245 (1979)

⁴⁰ Vattel, *The Law of Nations: Book II*, s. 16, https://constitution.org/2-Authors/vattel/vattel_02.htm (last visited Aug. 27, 2026).

⁴¹ Subversive individual citizens or groups pose a particular problem for self-determination. Avia Pasternak, *From Corporate Moral Agency to Corporate Moral Rights*, 11 *LAW ETHICS HUM. RIGHTS* 135 (2017).

entitled to form its own judgments without interference. But the same structural problem reappears.

To assess the claim, compare what it takes to undermine freedom of thought for a human agent, as opposed to freedom of expression or religious practice. Imagine the familiar evil genius equipped with a brain ray that can alter a victim's neurons. Suppose a neuroscientist uses the ray to cause me to hold beliefs or intentions that I otherwise would not. Even if her benevolent goal is to improve the accuracy of my beliefs, the intervention compromises my agency. Now imagine an analogous saboteur for a collective agent: an environmentalist targets a corporation's employees or shareholders to alter its corporate beliefs or intentions. From the collective agent's perspective, the saboteur has bypassed its deliberative procedures and changed its collective judgments. Has the saboteur violated the collective agent's freedom of thought?

No. Even if a collective agent has beliefs ontologically distinct from those of its individual members, it cannot have an original right against third-party influence on the persons whose actions constitute those beliefs. To see why, we need to identify what makes the brain ray a violation of freedom of thought in the individual case.

The analogy is tempting because in both cases an external force interferes with an internal belief-formation process. If my own brain produced the same neural changes, we would ordinarily say that I changed my mind. The neuroscientist instead applies a force that bypasses the mechanisms that form my judgments.

While this is on the right path, a purely physical explanation of the internal-external divide is insufficient. Our nervous system constantly encounters external causal influences. In fact, that is what we want. If the world did not cause physical changes to our neurons, our perceptions and beliefs would not be appropriately grounded. We just want the appropriate kind of external influences. We want veridical perceptions that trigger reliable inference mechanisms. Which causal mechanisms are "appropriate" in this sense is a matter of epistemic norms, rather than empirical facts.⁴²

⁴² Internal processes can undermine our agency just as easily, such as if a person lost the ability to distinguish dreams from reality. One might also challenge whether the body's physical boundaries define the bounds of "external" intrusions. The neural ray seems equivalent to a hacker who interacts with an AI computer system to alter the weights of its neural net. The hacker trespassed in a way that violates

Something further is missing from a purely epistemic account. Even if the scientist induced veridical perceptions and implanted beliefs supported by sound reasoning, they would still not be my perceptions or beliefs in the relevant agential sense. Conversely, my beliefs remain mine even when I reach them through unreliable perceptions or invalid inferences. I am entitled to my false beliefs just as well as my true ones, although not in an epistemic sense, but in a moral one. I am entitled to judge what I believe rather than have another person determine it for me. The brain ray compromises agency because it gives the neuroscientist control over a domain that is mine to govern. Freedom, or lack of freedom in this case, often concerns relations of authority between persons.

It may feel natural to fall back on the language of choice, but that route is a dead end. Even if voluntarism about belief were true, no one can have a right to form beliefs free from all influence by others. Other people may persuade us. They may confront us with ideas we would rather ignore, such as when flat-earthers are bombarded with images of a round planet. Other people may even alter our beliefs outside our conscious awareness. Advertising influences preferences. Education and culture transmit most of our beliefs. The relevant right cannot therefore be a right against causal influence as such. No one could have a right to be free from others' influence, without subjecting everyone else's liberty to that individual's choice.⁴³

The distinction is instead between permissible influence and forms of control that treat others as if they were not entitled to determine their own judgment. Persuasion and exposure are ordinarily permissible; deceit, intimidation, and coercion are not. The innate right to freedom of conscience correlates with duties not to control another person's judgment through impermissible means. Private law reflects this relational structure. Doctrines like fraudulent misrepresentation, deceptive practices, and undue influence protect a person's exercise of judgment in deciding how to act or whether to exercise legal powers. These doctrines are the empirically realistic counterparts of the brain ray: they regulate ways one agent may attempt to control another by manipulating

the AI's agency in a manner similar to battery, even if the system sent code to his computer and accepted his proposed amendments back into its system, so he never physically invaded anything.

⁴³ RIPSTEIN, *supra* note 36 at 39.

the processes through which the latter forms and acts on judgments.

Collective agents cannot have an analogous original right to conscience. The saboteur is external to the corporation and may deliberately seek to alter its beliefs by bypassing its formal deliberative procedures. But the corporation cannot demand, in its own name and simply for the sake of preserving its own judgments, that outsiders refrain from addressing the constituent agents whose judgments and actions realize the corporation's agency. A corporation cannot demand that environmentalists stop writing to its employees or shareholders about pollution, even if the campaign asks shareholders to amend the charter in ways that would transform the corporation's identity. A church cannot demand that members of another faith refrain from speaking with its bishops even if those conversations might change the bishops' beliefs or, ultimately, the church's institutions. An original collective right against such influences would conflict with the individual participants' own freedom of conscience.

The corporate 'saboteur' is therefore less like the manipulative neuroscientist and more like an outsider urging members of an association to change its commitments. The outsider may hope to transform or even dissolve the collective agent. Yet unless some independently justified duty restricts communication with those individuals, the collective's interest in maintaining its existing beliefs or procedures cannot itself supply such a duty. Similar questions arise for political communities, but I do not need to resolve here whether claims of state self-determination can ultimately be reconstructed through citizens' rights.

The same is true of other collective agents. A collective cannot object in its own name when constituent agents change their minds in ways that alter collective beliefs, revise the practices that constitute its deliberative mechanisms, or even eliminate the collective agent. Nor can it claim an original right against outsiders who persuade constituent members to do so. Collective agents therefore cannot possess an original right to conscience consistent with equal liberty for individual agents.

Collective agents, then, cannot have innate rights in the same sense as individual human agents. A supposed corporate right to existence or freedom of conscience would correlate with duties requiring constituent agents, or sometimes

outsiders dealing with them, to maintain or insulate the authority relations that constitute the collective's beliefs, intentions, and actions. Individuals may already have such duties for independent reasons arising from contract, office, fiduciary obligation, or other legitimate legal relations. What cannot ground those duties is the collective's own claim, as an end in itself, to the preservation of its agency. Treating those relations as owed to the collective for its own sake would convert constitutive authority into ultimate normative authority over the persons through whom the collective exists.

E. Can Voluntary Association Generate Original Rights?

The argument so far rules out innate collective rights, but it leaves an important possibility. Perhaps collective rights can be built from the voluntary acts of individual agents. An advocate might take inspiration from a parallel ontological debate. Some critics argue that structures sustained through voluntary compliance are too unstable to constitute a genuine group agent. Hess responds, correctly in my view, that voluntary exit is consistent with collective agency so long as departures are not so frequent or abrupt that they destroy functional stability. The analogy to human agents is instructive: replacing some neurons does not make me a different person, even though sufficiently extensive replacement would eventually raise difficult questions of identity. Collective agents, like other persisting objects, can have vague persistence conditions.

That response may answer the ontological objection, but it makes the moral problem more salient. Can individual agents voluntarily create relationships stable enough to sustain collective agency and then, through the very success of that construction, generate a new bearer of original rights? Put differently, can rights grounded in the equal freedom of individual persons bootstrap into original rights held by the collective agent their relations constitute?

One possibility is that many agents form bilateral legal relationships that respect equal liberty, those relationships jointly constitute a corporate agent, and the obligations voluntarily assumed by the individuals provide all the role-relative authority necessary for the collective to function. In the soldier-computer example, perhaps the collective need not possess an innate right requiring the soldiers to remain in formation if each soldier has instead contracted to remain until a replacement is found. If legitimate

individual obligations can stabilize the relations that constitute the agent, one might ask why the resulting agent cannot then acquire rights in its own name.

This possibility moves the argument into the domain Kant called acquired right, though in a novel form. Acquired rights differ from innate rights because an agent must do something to establish a particular acquired right: take possession, acquire property, or enter a contract. Ordinarily, however, the agent who creates an acquired right is also the person who holds it. The group case threatens to separate the creators of the rights from a new alleged right-holder constituted by their relations.

Acquired rights are nevertheless original rights in the relevant justificatory sense: they are ultimately grounded in respect for the human agents who hold them. They are necessary for human beings to pursue ends under ordinary circumstances of justice, whereas innate rights protect conditions necessary for agency as such. Freedom of conscience and bodily integrity secure only a narrow realm of independence. Human life is interdependent; we pursue our lives alongside and together with others, and we must be able to pursue those activities so long as they remain consistent with equal liberty.

The difficulty is that most complex human ends presuppose restrictions on others' liberty. We pursue ends by using objects over time, relying on other people to perform discrete tasks, and sometimes authorizing others to pursue ends on our behalf. Objects, acts, and people become means to our ends. To set a reasonably complex end, an agent must assume that the necessary means can be placed at her disposal; otherwise, she is merely wishing for a state of affairs. Acquired rights therefore create a special problem for a theory of equal liberty because they authorize one person to constrain choices that another could otherwise make.

Unlike innate rights, acquired rights restrict liberties that others could have enjoyed in principle. Respecting my bodily integrity does not deprive anyone of a liberty that could be rightfully theirs, because no one could claim authority over my body consistently with my equal freedom. Property is different. We can imagine a world in which no one has a right to exclusive use of objects: everyone may use whatever she physically possesses, but no one may demand that others refrain from using an object after she puts it down. Such a world could preserve a kind of equal liberty, but many

ordinary human ends would become inconceivable. A person cannot establish a home if anyone may occupy the shelter whenever she leaves it. The very idea of a home presupposes an authority to limit how others use a portion of the world that they might otherwise have been free to use.

The same structure appears throughout ordinary life. We assume that we may make baskets, set aside reeds for later use, exchange baskets for a neighbor's help tilling a field, and enlist friends in a joint project. I can pursue such ends only if some means are at my disposal - if others can be required not to use the reeds, if the neighbor can obligate herself to till the field, and if collaborators can undertake obligations that organize our joint activity. The Kantian problem is to explain how rights that restrict others' possible choices can nevertheless be consistent with everyone's equal freedom.

To ground acquired rights, Kant must show that these rights are morally possible. That is, he must provide a philosophical construction – a hypothetical situation consistent with necessary empirical truths about human nature and the world – to demonstrate that such rights can be consistent with equal freedom.⁴⁴ Accordingly, Kantians seek to explain how anyone can, consistent with equal liberty for all, acquire an exclusive moral right to control how others use objects (property), what deeds they perform (contract), and what ends they pursue (status). Such constructions offer proof of concept, in a sense, although they also do something more informative.

Juridical constructions identify conditions under which acquired rights can be compossible. Legitimate legal institutions must define, apply, and enforce acquired rights. Their content must also be limited so that one person's acquired authority does not place another under an uncontrolled will. The standard examples include limits on property necessary to preserve access and other background conditions of independence. More generally, systems of private right must operate within institutions that preserve the conditions under which persons can remain equally free rather than becoming dependent on another's arbitrary choices.

⁴⁴ Paul Guyer, *Kant's Deduction of the Principle of Right*, in *KANT'S METAPHYSICS OF MORALS: INTERPRETIVE ESSAYS* 23 (Mark Timmons ed., 2002).

Returning to collective agency, the question can now be stated more precisely. Can individuals voluntarily enter the long-term authority relations necessary to constitute a collective agent, on terms consistent with equal liberty for themselves and others, and thereby generate original rights held by the collective in its own name?

The difficulty is that the acquired rights generated by voluntary association are rights of the individual agents: rights specified by contract, employment, agency, partnership, property, and related status relationships. Those rights may create stable authority structures, and the authority they create may be enough to constitute a genuine higher-level agent. But their justificatory source remains the equal freedom of the individuals who acquire and bear them. Nothing about the functional success of those relations supplies the further premise that the agent they constitute has acquired intrinsic moral standing of its own.

Status relationships come closest to the kind of indefinite association collective agency requires. Marriage, employment, agency, and similar relationships can impose ongoing obligations to take account of another's ends or accept another's direction. But such relationships are permissible only if their authority can itself be constructed consistently with equal liberty. The resulting role-relative reasons therefore remain bounded by whatever conditions make the underlying relationship legitimate. The fact that these bounded relations also realize a collective belief or intention does not transform them into authority that the collective can claim as a matter of original right.

This point also suggests a stronger argument, although the paper need not depend on it. The legal devices that make organizational authority consistent with equal freedom often preserve the participants' status as independent juridical persons through some combination of exit, voice, limits on duration or scope, fiduciary constraint, transferability, and public-law regulation. Different institutions need not use the same devices. What matters is the more abstract principle: legitimate organizational authority cannot simply treat the individual agents as resources belonging to the collective. To the extent that equal freedom requires such protections, the very conditions that make collective agency legitimate also preserve the normative priority of the persons whose relations constitute it.

The narrower conclusion is enough for present purposes. Voluntary association can explain extensive derivative rights and legal powers exercised in a collective name. It can also explain why a collective agent may be legally responsible for actions in its own name. Law cannot, however, bootstrap from the individuals' moral standing to legitimate bilateral relations, to collective agency, and then to a new source of original moral standing. The existence of the higher-level agent does not explain why the individuals' legitimate obligations should now be owed to that agent for its own sake. An additional account of the collective's independent moral standing would still be required.

IV. Legal Implications

[I am just beginning to think through this section, but I also expect it to be mostly gestural in any case.]

To be clear, my conclusion that collective agents cannot be entitled to full legal personhood does not mean the law cannot treat groups as persons with rights and duties. Substantial corporate rights can be consistent with equal liberty for their members and for others in society. It only limits the available justifications for corporate rights and duties. Because a collective agent is not the kind of entity whose freedom the law can respect in its own right, the justifications for allowing groups to hold rights or duties as a group person must be instrumental. Group legal personhood – both duties and rights – is merely a means to facilitate the rights of individual participants and to restrain the systemic implications of their individually rightful actions. We must ask whether individual persons may aggregate and organize their legal powers through a collective form, and how to structure the collectivity's legal duties and rights to ensure they respect the rights of participants and outsiders.

I expect this conclusion to have little impact on private law, where corporate agents are resoundingly viewed as merely instrumental tools. It has a more direct impact in public law. The law may extend freedom of religion, speech, or association to collective agents, but the justification cannot be that the group is a legal person presumptively entitled to the same freedoms as any other person. Any rights for the collective as such must be justified by either (a) the rights of the participant members in

exercising their rights through the collective form or (b) the rights of other people or groups who interact with the group as its members exercise their individual rights through this collective form (they may have needs to interact with individuals collectively rather than individually).

More controversially, my conclusion rules out a common individualist justification for corporate constitutional rights. Advocates for corporate religious liberty often argue that the state violates the religious liberty rights of individuals (or unjustly discriminates against them) if their ability to participate as a collective in the market or in state programs (like provision of adoption services) is conditioned on agreeing to comply with general laws contrary to their religious beliefs. This argument commits an aggregative fallacy. Individuals may exercise their constitutional rights through collective entities only insofar as is consistent with equal constitutional liberties for others. Just as the scope of individual rights must be limited to render them compossible with equal rights for all (freedom of association cannot extend to racial discrimination by sellers in markets because the systemic consequences undermine the basis of equal respect), individual rights can be exercised through the corporate form only in ways consistent with equal liberty for all. If respect for employers requires restrictions on the authority of employers or corporations, then the religious citizens can claim to exercise their religious liberty through a closely-held corporation in ways that violate those restrictions – contrary to Hobby Lobby. Similarly, the law can restrict freedom of speech as necessary to ensure its functions, both to respect the conscience of the speaker and the listener. Individuals cannot channel their speech through collectives in ways that undermine the informational space necessary for freedom of conscience.

V. Conclusion

Contemporary social ontology has made collective agency far less mysterious than it once appeared. This paper grants that achievement. A sufficiently organized group can hold beliefs and intentions distinct from those of any individual member, act on those attitudes, respond to reasons, and bear responsibility for what it does. None of that requires a ghostly group soul. Nor does it require members to surrender their moral

agency. Collective agency can be sustained by defeasible, role-relative reasons that are usually decisive when individuals deliberate and act within their institutional roles. The success of the ontological project does not itself create a moral problem. The problem arises only when we ask what rights the resulting agent may claim in its own name.

The answer turns on the difference between constitutive authority and authority as a matter of original right. A collective can think and act only insofar as individual persons treat the group judgments and plans as authoritative within their roles. Individuals can rightfully enter voluntary bilateral relations sufficient to constitute a higher-level collective agent, but these bilateral duties cannot bootstrap the collective agent into a presumptive status as a new source of original moral standing. Collective agents can be equal participants in our juridical life only if they can hold innate rights consistent with equal rights for others. A collective right to existence, agential integrity, or conscience would make maintaining or insulating those relations something owed to the collective for its own sake. Such recognition would subordinate the individual constituent agents. Law must not recognize that collective agents are full legal persons with original rights in their own name.