

## **Rights and Participatory Goods**

James Morauta, April 2005

*Abstract.* What sorts of things can individuals have rights to? In this paper I consider one influential negative claim: that individuals *cannot* have rights to so-called “participatory goods”. I argue that this claim is mistaken. There are two kinds of counter-examples, what I call “actualization rights” and “conditional rights”. Although the scope for individual actualization rights to participatory goods may be relatively narrow, individual conditional rights to participatory goods are both common and important: they are one of the main vehicles that the realm of rights has for protecting and promoting the interests that individuals have in participatory goods.

[This is an updated (shorter, less laboured) version of a paper that appeared in the *Oxford Journal of Legal Studies* in 2002. The conclusions are the same, though the route is a bit different. The published version also considers, and rejects, another argument for the holding constraint, which is based on a principle that I call the “Control Condition”.]

### **1. The Holding Constraint**

What sorts of things can individuals have rights to? In this paper I consider one influential negative claim: that individuals *cannot* have rights to so-called “participatory goods”. I will call this claim the *holding constraint*: it is a constraint on the kind of entity that can hold rights to participatory goods.<sup>1</sup>

This holding constraint is often put forward as part of a theory of group rights. The idea is that any right to a participatory good, since it cannot be held by an individual, must be a group right of some sort: a right which is held by a group as such, or a right which is held jointly (in some suitably strong sense of “jointly”) by each of the members of a group, or something like that. On this view, all rights to participatory goods are group rights.

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<sup>1</sup> The most prominent defence of the holding constraint is given in a series of articles by Denise Réaume (see especially Réaume 1988 and 1994). See also Jones 1999.

But the implications of the holding constraint for the group rights issue are not my main concern here.<sup>2</sup> My aim is to assess the constraint itself. I will argue that the holding constraint is false. More specifically, I will argue that there are two kinds of counterexamples to the constraint: two kinds of rights to participatory goods—what I call “actualization rights” and “conditional rights”—which *can* be held by individuals. If my arguments succeed, they undermine the view that all rights to participatory goods are group rights (though they don’t, I should note, cast any doubt on the existence of group rights).

The paper proceeds as follows. To make our discussion manageable it will be helpful to have a general account of rights on the table. In Section 2 I sketch the account I favour: the *interest theory of rights*. Since this is also the theory favoured by those who defend the holding constraint, working with the interest theory is working on neutral ground. In Section 3 I explain what a participatory good is. In Sections 4 and 5 I argue, against the holding constraint, that it is possible for individuals to have rights to participatory goods. Section 4 deals with actualization rights, and Section 5 with conditional rights.

A note on terminology: unless I indicate otherwise, all the rights and duties that I discuss here are supposed to be *moral* rights and duties. To save words, and to ease the exposition, I won’t always say this explicitly; but you should take it as read throughout. (I say a bit about legal rights to participatory goods in Section 4.)

## 2. The Interest Theory

The slogan of the interest theory is that rights protect interests. Here is a formulation that will serve our purposes:<sup>3</sup>

*The interest theory of rights.* An agent S has a right to F if and only if (a) S has an interest in a good G; and (b) there is a sufficient justification for imposing, upon some other agent(s), duties to S which (i) help to secure S’s having F, and thereby (ii) protect or promote or otherwise serve S’s interest in G.

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<sup>2</sup> Though see n. 14 below.

<sup>3</sup> This formulation borrows quite a lot from Joseph Raz’s version of the interest theory. See, for example, Raz 1986, pp. 166–8, and Raz 1995, p. 31.

Those who have ventured into the labyrinthine, post-Hohfeld debates about the nature of rights will notice that this formulation glides serenely over lots of complications. It no doubt needs quite a bit of elaboration and refinement. However, it will help our discussion to have a relatively simple framework in the background, and what I have to say in this paper can be applied, with suitable modifications, to other formulations of the interest theory.

According to the interest theory, rights always come with correlative duties: whenever S has a right to F, some other agent (or agents—I'll take this for granted from now on) has duties, owed to S, which help to secure S's having F. The phrase "duties...which help to secure S's having F" isn't meant to pick out any particular kind of duty or set of duties. Exactly what the duties are will vary from right to right; different rights come with different correlative duties. The duties could be negative (e.g., duties to refrain from interfering with S's having F), or positive (e.g., duties to take steps to facilitate S's having F), or both.

The main point I want to emphasize about the interest theory is what it says about the *justification* of rights and their correlative duties. (I'll allow myself to talk interchangeably about justifying a right and justifying its correlative duties.)

The interest theory makes it an essential feature of a right that it protect or promote or otherwise serve (hereafter usually just "serve") the interests of the right-holder. Given this, it is tempting to think that any justification for a right must come from the interests of the right-holder. But that would be a mistake. What the interest theory requires is simply that *there be* a sufficient justification for imposing duties which serve the interests of the right-holder. The justification for imposing those duties will inevitably appeal to the interests of the right-holder. But the justification may also appeal to other considerations—and in particular, to the interests of other agents. Intuitively, imposing duties which serve a right-holder's interests can be something which is also in the interests of other agents. Indeed, in some cases it may be that the rights would not have been justified if they had not also served those other interests; it may be that the interests of the right-holder alone would not have been enough to justify imposing the relevant duties.<sup>4</sup>

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<sup>4</sup> For a different view on this last point, see Raz 1986, ch. 7. The formulation of the interest theory that Raz gives in this chapter requires that the interests of the right-

Consider, for example, the right that a parent caring for a child with severe mental and physical disabilities has to financial support from the government. (Assume she has such a right.) The parent's right to support is partly justified by the interests of the parent, who may be placed under tremendous emotional, psychological and financial strain by the situation she is in. But the parent's right is obviously also partly justified by other considerations, most notably the interest that the child has in the parent receiving financial support. Furthermore, it's plausible that the parent's right would not have been justified if it was not also in the child's interest that the parent receive that support; the parent's interest alone would not have been enough to justify imposing the relevant duties on the government. As we'll see later (in Section 4.1), this point will allow us to dispense quickly with one sort of argument for the holding constraint.

### 3. Participatory Goods

Here's the standard definition:

*Participatory goods.* A good *G* is a participatory good if and only if *G* is constituted by an activity which requires the participation of more than one individual.

It is not merely that the *production* of a participatory good (bringing it into existence or sustaining it in existence) requires joint activity—although that is certainly true. Rather, the participatory good just *is* the joint activity. The joint activity of producing a participatory good also constitutes the participatory good.<sup>5</sup>

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holder alone be sufficient to justify imposing the duties. He agrees that other people's interests may also be served by imposing duties that serve the interests of the right-holder. But if I understand him correctly, he thinks that those other interests only affect what he calls the "importance" or "weight" of the right and its corresponding duties.

<sup>5</sup> See especially Réaume 1988, pp. 7–13 and Réaume 1994, pp. 120–121. For related definitions see Green 1988, pp. 206–209; Green 1991, pp. 320–321; Green 1994, p. 103; Hartney 1991, pp. 298–301; Raz 1995, pp. 35–6; Waldron [1987] 1993, pp. 354–359. Although these definitions differ on various matters of detail, they share the key features which are relevant to the argument for the holding constraint.

Participatory goods are also *intrinsic* goods in the following sense: the joint activities that constitute participatory goods are valuable even if they don't produce anything distinct from the activities that is valuable. Since not all joint activities have this kind of value, not all joint activities are participatory goods. A full theory of participatory goods must therefore say something about which joint activities are participatory goods, and why. Fortunately, we don't need a full theory there. For our purposes it'll be enough to have a couple of standard examples to work with. (My suggestion about these examples is merely that some aspects of the goods in question have the structure of participatory goods, not that they are exclusively participatory in nature.)

First, friendship. It's plausible that at least part of the good of friendship is constituted by certain sorts of activities that require the participation of more than one individual. Our acting in these ways towards each other is not just a way of producing the good involved in friendship; it does not just bring that good into existence or sustain it in existence. Rather, it at least partially constitutes that good.<sup>6</sup>

Second, speaking one's native language. If speaking one's native language is a distinctive good (and I'll assume for the sake of argument that it is), then it's plausible that at least part of that good is constituted by certain sorts of activities that require the participation of more than one individual. Our speaking our native to each other is not just a way of producing the distinctive good involved in speaking one's native language; it does not just bring that good into existence or sustain it in existence. Rather, it at least partially constitutes that good.<sup>7</sup>

Is there anything about the nature of rights or participatory goods which entails that individuals cannot have rights to participatory goods? To answer this we need to spell out what an individual right to a participatory good would look like. In the next two

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<sup>6</sup> Friendship is used as an example in, e.g., Green 1988, pp. 207–208; Green 1991, p. 321; Hartney 1991, p. 298; and Jones 1999, p. 360.

<sup>7</sup> Speaking one's native language is used as an example in, e.g., Réaume 1988, pp. 17–26; Réaume 1994, p. 127ff. For some other suggestions for participatory goods see Green 1988, pp. 207–209 (the “pleasures of civic life”); Jones 1999, p. 360 (a team game, a convivial party); Réaume 1988 (living in a cultured society, being a member of a religious community).

sections I'll consider two kinds of candidates for individual rights to participatory goods, what I call "actualization rights" and "conditional rights".

#### **4. Actualization Rights**

Suppose that a participatory good *G* is constituted by the joint activity of a group *M*. A right *R* held by an individual member *S* of *M* is an *actualization right to G* just in case *R* is a right to participate in the activity constituting *G*.

Since one participates in the activity constituting a participatory good only if the activity takes place, an actualization right is a right that the activity actually take place—or as I will sometimes put it, a right that the participatory good actually exist. For instance, if I have an actualization right to speak my native language, what I have is a right that others actually speak my native language with me.

At first glance, actualization rights look to be perfectly possible, and so to be counter-examples to the holding constraint. So why do some people think that they aren't possible, that an individual cannot have an actualization right to a participatory good?

There are two main sorts of arguments against actualization rights in literature. Here I'll set out the best versions of the arguments that I can muster. I don't claim that anyone endorses these arguments in exactly these forms, though the general lines are easily recognizable in the literature, and my responses to these two arguments generalize to other versions of the arguments.<sup>8</sup> Both these arguments are meant to be quite general arguments against the possibility of any individual rights to participatory goods, but I'll focus in this section on how they apply specifically to actualization rights. (I discuss conditional rights in Section 5.)

##### ***4.1 The moral argument***

The first argument has two steps. It starts with a claim that I'll call the

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<sup>8</sup> Réaume (1988, 1994) runs both arguments, though her main argument is a version of what I'll be calling the "voluntarist" argument.

*Enjoyment condition:* An individual cannot enjoy a participatory good on her own.

And then it says (this is the second step) that this enjoyment condition entails the

*Holding constraint:* An individual cannot have a right to a participatory good.

And of course, if individuals cannot have rights to participatory goods, it follows that they cannot have actualization rights to those goods!<sup>9</sup>

On a natural interpretation of the enjoyment condition, it should be uncontroversial: it follows straightforwardly from our definition of a participatory good. To enjoy a good is to have one's interest in that good satisfied (or at least, to have one's interest satisfied at a certain time or for a certain period). Given our definition of a participatory good, an individual's interest in a participatory good cannot be satisfied unless others participate with her in the joint activity which constitutes the good. So an individual cannot enjoy a participatory on her own. That is to say: an individual cannot enjoy a participatory unless others participate with her in the joint activity which constitutes the good. I cannot enjoy the participatory good of speaking my native language, for instance, unless others speak my language with me.

So far, so good. But why should we think that that the enjoyment condition entails that individuals cannot have actualization rights to participatory goods?

On this question the literature is unfortunately less clear than one would like; but I think the argument is ultimately meant to be a moral one, which goes like this. Since an individual cannot enjoy a participatory good on her own, actualization rights must impose a special kind of duty upon others, namely, a duty to participate in the activity constituting the good. If an individual member S of the group has an actualization right to G, then at least some other members of the group have a duty to participate with S in the activity constituting G. And the problem, so the argument goes, is that duties of this kind are never justified: there is never a sufficient justification for imposing a *duty* upon someone to participate in the activities which constitute a participatory good. So

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<sup>9</sup> For an explicit statement of this two-step argument, see Réaume 1988, pp. 6–13. Peter Jones repeats the argument (Jones 1999, p. 360).

there are no actualization rights to participatory goods. This is the *moral argument* against actualization rights.<sup>10</sup>

A refinement. One version of this moral argument might claim that an individual cannot have an actualization right to a participatory good because *the interests of a single individual alone* could never justify imposing duties upon others to participate in the activity constituting the good.<sup>11</sup> This is a bad argument for the reasons I pointed out in Section 2. It assumes, wrongly, that the interests of the right-holder alone must be sufficient to justify the right. So we need to interpret the moral argument as making a stronger moral claim: that imposing duties upon others to participate in the activity constituting a participatory good is never justified, *even if we also take into account the interests that people other than the right-holder have in imposing those duties*.

For some participatory goods, this strong moral claim is plausible. Whatever interests are served by me speaking my native language, I suspect they're probably too weak to justify imposing duties upon others to speak my native language with me; and it's therefore unlikely that I have an actualization right to speak my native language.<sup>12</sup> And

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<sup>10</sup> Raz (1986, ch. 7) makes a parallel argument against individual rights to *public goods* (goods which are non-excludable and non-rival in consumption), though his conclusion is hedged. He thinks it merely “unlikely” that individuals have such rights.

<sup>11</sup> Jeremy Waldron appears to make this argument at one point. See Waldron [1987] 1993, Section 5.

<sup>12</sup> Just to ward off a misunderstanding: it's easy to see how you or others might have a duty to speak a certain language with me, and that language might well happen to be my native language. Perhaps, for instance, the law requires us to speak the official language of our country, and that just happens to be my native language; or perhaps you have a duty to communicate something to me, and it just happens that my native language is the only language we have in common. The problem, however, is that these are not *duties to speak my native language with me*, in the sense at issue here. For it's just an accidental feature of our situation that the language you have a duty speak with me happens to be my native language. If my native language hadn't been the official language of our country, or if it hadn't been the only language we have in common, then you wouldn't have had any duty to speak it with me. (To put the point in terms that philosophers sometimes use: it's easy to see how you might have a *de re* duty to speak to me in my native language—a duty to speak to me in a language that, as it so

ditto for the rest of you: it's unlikely that you have actualization rights to speak your native language either. For some participatory goods, it thus seems unlikely that individuals have actualization rights to those goods. On this point, I am in agreement with those who run the moral argument.

However, I can see no general reason to think that all participatory goods are like this. Whether a particular actualization right can be justified will surely just depend on the particulars of the case—on how strong people's interests in the participatory good are, and on how widespread and onerous the correlative duties would be. These variables can take a wide range of values, and it's very hard to see what grounds there could be for thinking that, as a matter of principle, it is impossible for such any right to be justified.

#### ***4.2 The voluntarist argument***

The second argument against actualization rights again starts with a claim about the nature of participatory goods. This time the claim is that participatory goods are constituted not merely by joint activities, but by joint activities in which those who participate do so *voluntarily*. Call this the *voluntarist condition* on participatory goods.

Consider the case of friendship. According to the current suggestion, the joint activities in which x and y are engaged are an instance of the participatory good of friendship only if x and y both participate voluntarily in the activities. Lose the voluntariness and we lose the participatory good. Of course, even if x and y don't participate voluntarily in the activities, the activities might still have value; they might even still constitute a friendship. But they won't be an instance of the participatory good of friendship.<sup>13</sup>

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happens, is also my native language. What I think is unlikely is that you or anybody else has a *de dicto* duty to speak to me in my native language—a duty to speak to me in my native language, whatever that happens to be.)

<sup>13</sup> Those who run the voluntarist argument needn't quibble over the definition of friendship. Many friendships are (or have parts which are) instances of a distinctive participatory good—what I'm calling “the participatory good of friendship”. But perhaps it'll turn out on inspection that only some and not all friendships are (or have parts which are) instances of that good.

Why is this supposed to be a problem for actualization rights? Well, if participatory goods are subject to the voluntarist condition, then in order for someone to have an actualization to a participatory good, she would need to have a right that others participate voluntarily in the activity constituting the good; and so those others would need to have a duty to participate voluntarily in that activity. But, so the argument goes, they cannot have such a duty, for no-one can have a duty to do something *voluntarily*. (The claim here is not that one's having a duty to F entails that one doesn't voluntarily F, for that is false: one's having a duty to F is quite compatible with one's voluntarily F-ing. The claim is rather that one cannot have a duty to voluntarily F.) This is the *voluntarist argument* against actualization rights.

Unlike the first argument against actualization rights, this voluntarist argument is conceptual rather than moral. The thought here is that it's conceptually impossible to have a duty to do something voluntarily, and so the very idea of an actualization right to participatory goods is conceptually out of order.

Note also that, unlike the moral argument, this voluntarist argument (if it succeeds) would also show that it's impossible for individuals to have *legal* actualization rights to participatory goods. If the moral argument succeeds, it will follow that we are never justified in giving an individual a legal actualization right to a participatory good. But it wouldn't follow that granting such legal rights is impossible. Unjustified legal rights are still legal rights; and they are, unfortunately, an all-too-familiar phenomena. By contrast, if the voluntarist argument succeeds, then it *would* follow that it is impossible to give an individual a legal actualization right to a participatory good. In order for a legal system to give an individual a legal actualization right to a participatory good, it would need to give the individual a legal right that the activity constituting the good take place; and so it would need to give the individual the power to bring it about that the activity take place. But if all participatory goods are subject to the voluntarist condition, then it's impossible for a legal system to do that. Try as it might, there is no way for a legal system to give an individual the power to bring it about that other people participate *voluntarily*. (Consider: Could a legal system give you an actualization right to the participatory good of friendship? If the activities constituting that good require voluntarily participation on all sides, then the answer is "no". Try as it might, there is no way for a legal system to give you the power to bring about voluntary participation by others. At best, a legal system might give you the power to bring it about that others participate in activities with you which *would* have constituted a friendship, if those others had participated voluntarily.)

So, the voluntarist argument is an interesting and important argument, and if it succeeds it shows that it's impossible for individuals to have either moral or legal actualization rights to participatory goods.<sup>14</sup> But *does* it succeed?

The following claim seems plausible: *if* a participatory good is subject to a voluntarist condition, *then* an individual cannot have an actualization right to that good. But even if we grant that first claim, the further claim that all participatory goods are subject to a voluntariness condition is too strong.

Consider joint musical improvisation. Stephen is a musician who is part of a jazz trio. He doesn't want to play in the improvisation session that the trio have scheduled for this evening. He has good reasons not to play, including that he's very tired from weeks of hard work and late nights, and that he'd have to play on a borrowed trumpet, which might affect the quality of his playing. If he didn't have obligations to the other members of the trio and to his recording label, he definitely wouldn't play; but since he does have these obligations he decides, somewhat reluctantly, to take part. The session is a success. What happens when the trio plays is exactly what always happens when they improvise together: they engage in a spontaneous, dynamic, joint activity, full of mutual adjustment and borrowing and responding and enabling, all in the service of together creating an original new musical work.

Joint improvisation of the sort that the trio engage in during their session is a participatory good. Note, however, there is a natural sense of "voluntary" in which Stephen's participation wasn't voluntarily: he played because and only because he had a duty to play. If he hadn't had a duty to play, then he wouldn't have played. And yet they *did* improvise together, and their joint improvisation *was* a participatory good. So there is a natural sense of "voluntary" in which the participatory good of joint improvisation doesn't require voluntary participation.

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<sup>14</sup> Indeed, if the voluntarist argument succeeds, then it also shows that *groups* cannot have actualization to participatory goods! For a group to have such a right it would again need to be the case that some person or group of people have a correlative duty to participate voluntarily in the activity constituting the participatory good; and that is precisely the kind of duty that (according to voluntarist argument) it's impossible for anyone to have.

More positively, it seems clear that one could have a duty to participate with others in joint improvisation, and that someone could have a right that one participate in joint improvisation—that is, someone could have an actualization right to joint improvisation. We might argue about whether, in the circumstances described above, Stephen had duty to participate in the joint improvisation session, and about whether anybody else (say, another member of the trio) had a right that he participate. But it's surely not in doubt that, in appropriate circumstances, Stephen could have such a duty and someone else could have such a right.

Although I won't wade through examples, it seems extremely unlikely that joint improvisation is the only participatory good of this sort. Think about (some cases of): singing in a choir concert; attending a village ceremony; the children's weekly telephone conversation with their grandparents...<sup>15</sup>

There may of course be participatory goods that *do* require participation to be voluntary in the sense in which Stephen's participation is not (friendship may be such a good); and perhaps, in that sense of "voluntary", one cannot have a duty to participate voluntarily. If that's so, it will follow that one cannot have an actualization right to those participatory goods. Furthermore, there may be other senses of "voluntary" which are such that (i) there are participatory goods that require participation to be voluntary in those other senses, and (ii) in those other senses of "voluntary", one cannot have a duty to participate voluntarily. If that's so, it will follow that one cannot have an actualization right to those participatory goods either.

But the case of joint improvisation assures us that none of these versions of the voluntarist argument, individually or combination, will rule out the possibility of actualisation rights to participatory goods. At best, they will narrow the range of participatory goods that one can have actualization rights to.

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<sup>15</sup> What makes a participatory good a good of this sort? I suspect it's got something to do with the fact that the value of the activities which constitute some participatory goods are relatively independent of the reasons why the participants engage in the activities. The activities can tolerate participation for a wide range of different reasons while still continuing to have the value that they have—and these can include reasons which entail that participation wasn't voluntary (again, in one natural sense of "voluntary"). But I'll leave the full analysis for another time. For now, having an example is enough.

The voluntarist argument can be thought of as an instance of a more general kind of argument against actualization rights. The general form of the argument is this: for each joint activity which constitutes a participatory good, the nature of the activity is such that one cannot have a duty to participate in that activity; so, there cannot be an actualization right to a participatory good. The voluntarist argument focuses on one (alleged) feature of the activities which might be thought to rule out duties to participate, namely that participation in the activities must be voluntary. But we can imagine parallel arguments that focus on other features. Once again, however, the case of joint improvisation assures us that no arguments of this general kind, individually or in combination, will rule out the possibility of actualisation rights to participatory goods. At best, they will narrow the range of such rights.

Where does this leave us? I have argued that neither the moral argument nor the voluntarist argument rule out the possibility of actualization rights to participatory goods. More positively, I have argued by way of example (using the participatory good of joint improvisation) that individuals *can* have actualization rights to participatory goods. I conclude that the holding constraint is false.

Nevertheless, the moral and voluntarist arguments do narrow the scope for actualization rights—and so much so, one might worry, that actualization rights to participatory goods will end up being of only minor significance in the broader normative landscape. Even if that were so, however, it wouldn't follow that individual rights to participatory goods were of only minor significance. For there is another category of such rights to consider.

## **5. Conditional Rights**

Suppose that a participatory good *G* is constituted by the joint activity *J* of a group *M*. A right *R* held by an individual member *S* of *M* is a *conditional right to G* just in case: (a) *R* is a right to participate in *J* if the members of *M* choose to participate in sufficient numbers to make *J* viable (and *R* is also a right to refrain from participating in *J*—though I usually won't mention this); but (b) *R* is not a right that any other member of *M* participate in *J* (and *R* is also not a right that any other member of *M* refrain from participating in *J*—though I usually won't mention this).

For example, a right of mine is a conditional right to speak my native language just in case (a\*) it is right to speak my native language *if* someone else chooses to speak it with me, but (b\*) it is not a right that anybody else speak my native language with me.

Conditional rights are weaker than actualization rights. Whereas an actualization right to G is a right that the activity constituting G place, and hence a right that others participate in the activity, a conditional right to G is neither of these things. Even if S has a conditional right to G, whether the activity constituting G takes place will depend on whether others choose to participate in the activity, and those others don't owe any duties to S with respect to those choices. (Strictly, they don't owe any such duties *in virtue of S's having a conditional right to G*. They might owe duties, to S or to others, which stem from other sources.)

Like actualization rights, conditional rights to participatory goods are a counter-example to the holding constraint. But they also fare much better than actualization rights against the moral and voluntarist arguments that we discussed in the last section.

On the moral argument: since a conditional right to a participatory good doesn't impose duties upon others to participate in the activity constituting the good, justifying conditional rights will typically be easier than justifying actualization rights. On the voluntarist argument: since a conditional right to a participatory good doesn't impose duties upon others to participate in the activity constituting the good, there's no danger of it falling foul of any voluntarist condition on the good.

Of course, conditional rights do impose duties upon others—at the very least, duties to refrain from interfering with certain of the right-holder's choices. So they do need to be justified; they aren't normatively trivial. Still, it's easy to imagine cases in which conditional rights to participatory goods would be justified. Indeed, we all surely have many such rights. We all have conditional rights to speak our native languages, to improvise with our fellow musicians, to play team games, to spend time with our families and friends, and so on and so on. (Or at least, we all have conditional rights to do these things in some circumstances.) Far from being impossible, individual conditional rights to participatory goods are a common and important feature of the normative landscape.

A final worry about conditional rights: Is it really correct to call them “rights to participatory goods”? Aren't they really rights to something else, namely, to participate

in the activity constituting the good if others also choose to participate? Perhaps we should reserve the description “rights to participatory goods” for actualization rights?

I can’t see that anything much turns on which form of words we use to refer to conditional rights; but in any case, I don’t think the worry is well-founded. When we say that John has a “right to marry”, we surely don’t mean that he has the analogue of an actualization right to marry: that someone else has a duty to marry him, or to see him married! What we mean, roughly, is that he has a right to marry if someone else chooses to marry him. Similarly, if Jane has a right to speak her native language if others choose to speak it with her, it sounds to my ear perfectly in order say that she has a “right to speak her native language”.<sup>16</sup>

## 6. Summary

According to the holding constraint, individuals cannot have rights to participatory goods. I have argued that there are two kinds of counter-examples to the constraint: actualization rights and conditional rights. Although the scope for individual actualization rights to participatory goods may be relatively narrow, individual conditional rights to participatory goods are both common and important: they are one of the main vehicles that the realm of rights has for protecting and promoting the interests that individuals have in participatory goods.

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<sup>16</sup> For an account of rights which is sympathetic to this view, see Raz 1986, pp. 170–171 (“Many rights ground duties which fall short of securing their object... A right to personal security does not require others to protect a person from all accident or injury”).

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