

**Is There a Human Right to Democracy?**

by

Karim Abdul-Matin

Bachelor of Science, Biology  
Bucknell University (1996)

Submitted to the Department of Linguistics and Philosophy  
In partial fulfillment of the requirements for the degree of

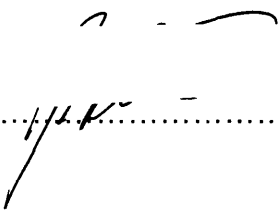
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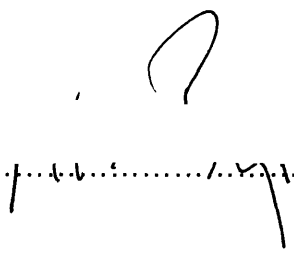
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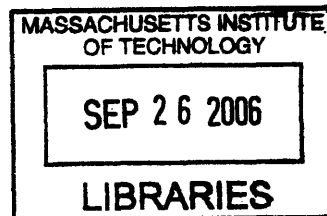
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Author  .....  
Department of Linguistics and Philosophy  
August 18, 2006

Certified by  .....  
Joshua Cohen  
Professor of Philosophy  
Thesis Supervisor

Accepted by  .....  
Alex Byrne  
Professor of Philosophy  
Chair, Committee on Graduate Students



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### **Abstract**

My dissertation asks whether there is a human right to democracy. This is a difficult question, not least because there is no consensus about either what democracy requires or how to interpret human rights. The introduction aims to alleviate these sources of confusion about the question itself, in addition to presenting the main arguments in favor of a human right to democracy, and my rationale to focus more narrowly on a question of toleration. The main discussions are organized around the idea that if democratic peoples should tolerate undemocratic peoples, then a human right to democracy does not exist.

Part 1 uses discussions about corporate agency and the conditions of corporate responsibility to argue that a group's capacity for responsible collective agency depends on four things: its ability to form collective intentions, an internal culture that orients the formation of personal intentions to act in accordance with those collective intentions, agents authorized to act (vicariously) for the group, and an effective internal practice of public accountability. I also suggest reasons why it is sometimes appropriate for a collective entity to authorize the agents acting on its behalf to use coercion. Part 2 uses these ideas of responsible collective agency and the grounds of legitimate coercion to interpret Rawls's idea of a people as a normative conception of collective self-determination. I explain why a people (in Rawls's sense) meets the four conditions of responsible collective agency, why democracy is not necessarily required for collective self-determination, and also why a people's government should possess coercive authority. Part 3 addresses directly whether democratic peoples should tolerate undemocratic peoples. Traditionally, theorizing about toleration tends to focus on the domestic relations of a given society, and is thus not clearly relevant to questions of toleration among peoples. Therefore, the bulk of Part 3 is devoted to developing an idea of international toleration. Based on this idea of international toleration, and the value of the self-determination of peoples, I argue that democratic peoples should tolerate undemocratic peoples. I conclude that a human right to democracy does not exist.

Thesis Supervisor: Joshua Cohen  
Title: Professor of Philosophy

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## INTRODUCTION

Is there a human right to democracy? This is a difficult question, not least because there is no consensus about either what democracy requires or how to interpret human rights. Let's begin with the idea of democracy and turn in a moment to this issue about human rights.

### *Democracy*

Consider the following two conceptions of democratic collective decision-making:<sup>1</sup>

- *Aggregative*: "Decisions are collective just in case they arise from arrangements of binding collective decisions that give equal consideration to...the interests of each person bound by the decisions."
- *Deliberative*: "Decisions are collective just in case they arise from arrangements of binding collective choice that establish conditions of free public reasoning among equals who are governed by the decisions."

These competing ways to conceive democratic collective decision-making disagree most significantly about the importance of participants providing one another with reasons for their preferred outcomes.

The aim of the democratic decision-making according to the aggregative conception is for the preferences of the majority to determine collective decisions so that a majority of participants in the democratic process are subject to laws they prefer. To achieve this, the collective decisions of a democratic society should take the form of a vote designed to give each participant equal opportunities to (a) influence the agenda, (b) to indicate their preferred final outcomes, and (c) to have their vote on the final outcome weighted with the votes of their peers (i.e. "one person, one vote"). This type of collective decision proceeds in three stages. First,

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<sup>1</sup> Joshua Cohen, "Dahl on Democracy and Equal Consideration," (1998). (unpublished)

participants could place items on the agenda. Next, they could announce their preferences and provide supporting reasons. In the decisive stage, each participant votes for the outcome they prefer.<sup>2</sup> Notably, although participants in this form of democratic decision-making are at liberty to give one another reasons for their preferences, they are not required to do so.

Although its general procedures may be quite similar, in contrast, a deliberative conception of the democratic collective decisions requires that participants justify their positions with reasons their fellow citizens, as equals, could accept. Assuming that the citizens of a democratic society are equal because of their shared disposition to reciprocate allegiance to fair terms of social cooperation, according to the deliberative conception, the public political culture of a democratic society should contain two ideas. First, "each member is understood to be entitled to be treated with the same respect (and therefore is to have the same basic rights) regardless of social position."<sup>3</sup> And second, each member is understood to be so entitled in virtue of possessing "a minimally sufficient capacity to understand the requirements of mutually beneficial and fair cooperation, grasp their rationale, and follow them in their conduct."<sup>4</sup>

Given that reasonable ethical pluralism is bound to exist in any democratic society,<sup>5</sup> citizens must adopt special measures to ensure that their collective decisions respect their equal status. For example, because it is unreasonable to expect a democratic people to reach a consensus on substantive religious beliefs, theocratic arguments provide an unsuitable basis for democratic collective decisions. Out of self-respect, a citizen should not, through public enforcement of a moral conception they reasonably reject, be made an author of their own public

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<sup>2</sup> Robert Alan Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989).

<sup>3</sup> Joshua Cohen, "For a Democratic Society," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge University Press, 2003). p. 96

<sup>4</sup> *Ibid.* p. 96

<sup>5</sup> For discussion of this point, see: John Rawls, *Political Liberalism, John Dewey Essays in Philosophy ; No. 4* (New York: Columbia University Press, 1993). Joshua Cohen, "Moral Pluralism and Political Consensus," in *The Idea of Democracy*, ed. David Copp, Jean Hampton, and John Roemer (Cambridge: Cambridge University Press, 1993).

denigration. And out of the mutual respect befitting equal citizens, citizens should not attempt to injure one another's self-respect. They should accept that it is impermissible "to use political power, should they possess it, to repress...[moral conceptions] that are reasonable yet different from their own."<sup>6</sup> The political power of a democratic society should always be exercised in accordance with political values acceptable to each citizen willing to cooperate in their society's political enterprise.

To better understand the difference between these conceptions of democratic decision-making, consider the following question. If a majority of politically active citizens desire to legislate conventional morality, would either of these conceptions of democratic decision-making confirm the democratic legitimacy of that legislation? According to the aggregative conception if a legislative decision does not directly undermine the integrity of the democratic process, the outcome of that decision is democratically legitimate. In contrast, the deliberative conception rejects this purely procedural understanding of democratic legitimacy and limiting the right of the majority to legislate conventional morality. For example, consider legislation in a predominantly secular democratic society that proposes to ban children and adults from wearing religious dress in public schools. In a society that legislates using an aggregative principle of democratic legitimacy, because that legislation does not directly concern the democratic process, it would be legitimate if it passed.

In contrast, a deliberative principle of democratic legitimacy requires us to evaluate the reasons given for the proposed legislation. Suppose the reason given for the legislation is to create a uniform cultural environment within public school classrooms in order to promote national unity and prevent students becoming targets of religious discrimination. Although both these aims, to promote national unity and to prevent religious discrimination might, in themselves, be

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<sup>6</sup> John Rawls, *The Law of Peoples; with, the Idea of Public Reason Revisited* (Cambridge, Mass.: Harvard University Press, 1999). p.176n

unobjectionable, in a democratic society they are questionable as rationales to deny citizens their religious liberties. It is unclear why people of faith should be made to betray their religious convictions. Especially insofar as wearing religious dress does not harm any third party, for the secular majority to demand that religious minorities violate their faith is unreasonable and represents the majority's lack of respect for the equal status of those in the minority. Surely the majority should be more respectful of their peers and agree to mutually acceptable means to promote unity and nondiscrimination. Generally speaking, for the terms of their political association to reflect the mutual respect befitting a society of equals, a people who aspire to govern democratically should endorse a deliberative conception of democratic legitimacy.

This idea of deliberative democracy connects the ideas of a democratic political regime and democratic society. Cohen distinguishes these three ideas of democracy, which together constitute the core of a reasonably complete democratic ideal:

"...A *democratic political regime*, which means a political arrangement with rights of participation, elections, and surrounding rights of association and expression designed to make participation informed and effective; a *democratic society*, which means a society whose members are understood in the political culture as free and equal persons; and *deliberative democracy*, which means a political society in which fundamental political argument appeals to reasons suited to cooperation among free and equal persons, and the authorization to exercise collective power traces to such argument."<sup>7</sup>

On this interpretation of the democratic ideal, practices of deliberative democracy are a means to give practical force to the public opinion of a people concerned to govern together in a manner reflecting their respect for one another as free and equal persons. There are many barriers to achieve this democratic ideal. For one, the quality of a deliberative democracy depends in large part on the nature of the corresponding democratic political regime and society. Democracy is

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<sup>7</sup> Cohen, "For a Democratic Society." p. 87



unsustainable if public opinion is hostile either to the development or maintenance of a publicly accountable democratic political regime or to mitigating gross material inequalities. For another, democracy is difficult to realize in a large polity.<sup>8</sup> A high level of participation in collective decisions is most easily realized in a relatively small political association. It is no surprise then that most, if not all, actual democratic countries would require substantial reforms to realize their democratic potential.

### *Human rights*

It might seem that human rights are the entitlements one possesses merely in virtue of being a member of the species *Homo sapiens*. But this proposal is misleading because it suggests that we possess human rights naturally, independent of any institutional order. In fact, plausible interpretations of human rights are limited by the institutional functions human rights are expected to play and the human rights tradition of toleration inclusion.

The history of the human rights doctrine begins near the close of World War II, with international negotiations to draft the Universal Declaration on Human Rights. To prevent conflict-inducing abuses, the members of the United Nations acknowledged the need to formulate “a common standard of achievement for all peoples and all nations”<sup>9</sup> concerning the treatment of human beings. In formulating that common standard, the authors of the Declaration did not take it upon themselves to “impose a single model of right conduct” on the governments of the world.”<sup>10</sup> Rather, in a respectful nod to the world’s plurality of ethical traditions,

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<sup>8</sup> See: Dahl, *Democracy and Its Critics*, p. 213-218 for discussion of the influence on the practice of democratic governance due to the increase in the size of polities from city-states to entire countries or nation-states.

<sup>9</sup> Universal Declaration of Human Rights

<sup>10</sup> Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001).

they sought “to provide a common standard that can be brought to life in different cultures in a legitimate variety of ways.”<sup>11</sup>

This tradition of tolerant inclusion does not settle the precise role that human rights are expected to play. Despite disagreement on this issue, the following three general points seem to be widely accepted. First, human rights represent an international consensus regarding the limits of a political authority’s internal sovereignty.<sup>12</sup> It is no longer the case that a government is immune from criticism by outsiders concerning the treatment of its population. Unfortunately, at present, human rights are not respected to the point where they actually “constrain the constitutions of states and the fundamental rules of international organizations and regimes.”<sup>13</sup> However, there is little doubt that the advent of the human rights doctrine gave international politics an important ethical dimension.

Second, although human rights are sometimes a source for national laws, international conventions and regional treaties, their role is not so limited. For instance, activist appeals to respect human rights may cause a government targeted by those appeals to change its offensive practices. Sen encapsulates this critical possibility when he says, “Because of the importance of communication, advocacy, exposure and informed public discussion, human rights can have influence *without* necessarily depending on coercive legislation.”<sup>14</sup> And finally, governments are responsible preventing human rights abuses. Although human rights abuses may be caused by a variety of agents, including multinational corporations and rebel militias, as a rule, national governments have an obligation to ensure that no human being is made to suffer abuse of their human rights.

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<sup>11</sup> Ibid.

<sup>12</sup> C. R. Beitz, "Human Rights as a Common Concern," *American Political Science Review* 95, no. 2 (2001); Rawls, *The Law of Peoples; with, the Idea of Public Reason Revisited*.

<sup>13</sup> Beitz, "Human Rights as a Common Concern."

<sup>14</sup> A. Sen, "Elements of a Theory of Human Rights," *Philosophy & Public Affairs* 32, no. 4 (2004).

Even if we disregard the various human rights instruments that have been ratified over the years<sup>15</sup> and look just at the Declaration the diversity of human rights is impressive. The common standard which human rights represent is quite complex, concerning many, if not most aspects of an individual's relation to their government. With this assumption, Charles Beitz says that we must choose between the following two interpretations of human rights:

- Nonpartisan interpretation of human rights – “Human rights represent the common element in a range of views about social justice or political legitimacy found among the world’s cultures. ... Human rights strive to be nonpartisan, nonparochial, or neutral among conflicting political cultures and ideologies.”
- Liberal interpretation of human rights – “Human rights identify conditions that a society’s institutions should meet if we are to consider them legitimate. ... Because there is no general reason to believe that these conditions are included in all the views about social justice or political legitimacy that exist in the world—or even among those that have achieved widespread acceptance in individual societies—there is no claim that human rights are nonpartisan.”<sup>16</sup>

Beitz argues for a liberal interpretation, rejecting nonpartisan interpretations of human rights. He says, “Considerations of ideological and cultural pluralism need not, in themselves, limit the scope of a plausible doctrine of international human rights.”<sup>17</sup> I disagree. Considerations of ideological or cultural pluralism *do* limit the scope of a plausible conception of human rights. I agree in particular with the position taken by Joshua Cohen<sup>18</sup> and (perhaps less obviously) John Rawls<sup>19</sup> that

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<sup>15</sup> UN Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Elimination of All Forms of Discrimination Against Women

<sup>16</sup> Beitz, "Human Rights as a Common Concern."

<sup>17</sup> Ibid.

<sup>18</sup> Joshua Cohen, "Minimalism About Human Rights: The Most We Can Hope For?," *Journal of Political Philosophy* 12, no. 2 (2004).

<sup>19</sup> Rawls, *The Law of Peoples; with, the Idea of Public Reason Revisited*.

an interpretation of human rights must be framed so that it is accessible from within the world's many decent ethical traditions.

This approach (justificatory minimalism) should be distinguished from a different way to accommodate global ethical pluralism. One might suppose that given our shared interests in human survival and bodily security only a conception of human rights narrowly focused on those particular shared interests could be accessible from within a great variety of ethical traditions. The main problem with this view is that it underestimates the possibility of agreement among the world's ethical traditions. Actual ethical traditions are internally complex, with competing interpretations of central tenets, and dynamic, with new interpretations constantly emerging. Where people have a will to cooperate, these reformist tendencies suggest the possibility of the world's actual ethical traditions converging on an interpretation of human rights that is presented autonomously (as described above). Justificatory minimalism accepts this possibility and acknowledges that the substantive requirements of an accessible conception of human rights is likely to be considerably more demanding than mere protections of human survival or bodily security.

It is equally problematic to insist that everyone subscribe to a liberal interpretation of human rights. Even if you believe that a liberal interpretation of human rights is correct, this does not necessarily justify imposing that belief on others. The willingness to support such an imposition may represent a failure to appreciate the great importance that people might attach to their religious or ethical traditions. And this failure may serve to legitimize the otherwise false impression that the promotion of human rights is merely an effort by Western peoples to achieve global cultural hegemony. It also represents a failure to recognize that fruitful international cooperation to promote human rights is possible without everyone agreeing on principles of social justice. Instead of insisting that everyone see things our way, liberal peoples should be willing to recognize that resources are available within many ethical traditions to affirm the value of the human rights

doctrine,<sup>20</sup> and to reciprocate the willingness of others to cooperate in promoting respect for human rights.

These considerations indicate a special burden of justification to establish the existence of any particular human right. Accordingly, I will assume for the sake of argument that a judgment about whether a particular human right exists should be based on the following three criteria:<sup>21</sup>

- *Determinacy*: Whether the substance of the proposed right is sufficiently clear;
- *Validation*: Whether it is plausible that the proposed right could be acceptable to the fully cooperating members of the international community;
- *Fit*: Whether the proposed right is coherent with the established human rights doctrine, and consistent with the peremptory norms of the international community.

Briefly, the requirement of determinacy concerns a right's communicability; it refers to the degree to which the substantive requirements of proposed human rights are meaningful to those to whom they are addressed. Concerning the requirement of validation, the basic idea is that analogous to how principles of social justice should be reasonably acceptable to individuals, the agents expected to act in accordance with those principles, human rights should be reasonably acceptable to peoples, the collective agents on whose authority governments act.

Furthermore, judgments of whether a particular human right exists should also reflect due respect for the underlying principles of the international community and the existing human rights doctrine. This requirement is similar to the principle of constitutional law that precedent must be duly respected when making new legal decisions. This does not mean that all the elements of the existing human rights

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<sup>20</sup> This possibility is demonstrated in: Cohen, "Minimalism About Human Rights: The Most We Can Hope For?."

<sup>21</sup> These criteria are modeled on Thomas Frank's criteria for international political legitimacy. See: Thomas M. Franck, *The Power of Legitimacy among Nations* (New York: Oxford University Press, 1990).

doctrine are set in stone, or that the peremptory norms of the international community are beyond criticism. Rather, the idea is to acknowledge the collective commitment they represent and the important role they play in structuring a relatively stable, and hopefully, increasingly fair, international order.

### *Arguments for a human right to democracy*

In light of the foregoing characterizations of human rights and democracy, I will assume that to assert a human right to democracy is to assert that:

- Every human being is entitled to participate in a democratic political regime
- Every human being is entitled to membership in a society with a public political culture that views him or her as a free and equal person
- Each national government, as an ultimate guarantor of human rights, has an obligation to ensure that every member of their society enjoys the entitlements of democratic citizenship
- There is an appropriate justification for these entitlements

To focus this issue of appropriate justification, there are at least three ways one might argue for a human right to democracy:<sup>22</sup>

- *From equality* – a human right to democracy is justified given the equality of persons
- *Instrumental* – a human right to democracy is justified as necessary for the realization of other human rights<sup>23</sup>
- *From collective self-determination* – a human right to democracy is justified as necessary to give effect to the principle that “the will of the people shall be the basis of the authority of government.”<sup>24</sup>

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<sup>22</sup> See, Buchanan (2004), p. 142-143

<sup>23</sup> Article 28 of the Universal Declaration of Human Rights states, “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

<sup>24</sup> Universal Declaration of Human Rights, Article 21

Of these, the argument from equality is most interesting and will be the main focus of my attention. Cosmopolitans would characteristically advance the argument from equality. In general, cosmopolitanism combines a belief in the universal scope of morality with a liberal conception of the human individual. By extending his scope of moral concern to all humans, the cosmopolitan hopes to identify universal political principles unsullied by the influence of our attachments to particular places, things or people.

Cosmopolitans believe that all humans intrinsically are equal. Roughly speaking, cosmopolitans believe that all humans are equal in the sense that we each possess, to some minimal degree, the moral and deliberative powers necessary to be free. But there is disagreement about what this means. In particular, there are spiritual and secular routes to affirm cosmopolitanism, and hope for the universal fellowship of humanity that it suggests. Although it is conceivable that a cosmopolitan might believe that all humans are equal “in the eyes of God”, much of the cosmopolitan literature is secular, distinguishing the universalism of cosmopolitanism from, say, the universalism of Catholicism or Islam.

Although there is no consensus among cosmopolitans about precisely how to interpret the idea that all humans are equal, cosmopolitan justifications for a human right to democracy are readily available. One such justification could be that given the intrinsic equality of persons and the undesirable consequences (i.e. for freedom) of placing decisions about one’s interests in the hands of others, each person must be guaranteed rights of democratic political participation. To be fair, however, there are more moderate forms of cosmopolitanism that do not identify norms of social justice with norms of global justice, and so would allow that if principles of democracy necessarily are norms of social justice, then it is not necessarily true that those principles are appropriate as norms of global justice.<sup>25</sup>

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<sup>25</sup> Samuel Scheffler, "Conceptions of Cosmopolitanism," *Utilitas* 11, no. 3 (1999).

*Some practical implications of a putative human right to democracy*

According to Thomas M. Franck, a self-styled cosmopolitan, a human right to democracy would justify enforcement of what he calls “the democratic entitlement.” He defines this entitlement as the right of each person to democratic political participation, the correlative duty of each government to develop and maintain the institutions of a democratic political regime, and the right of the international community to intervene (as it may when faced with other human rights violations) to remove threats to democratic political participation. As Franck conceives it, this enforcement would take the form of domestic interventions by the international community to monitor elections, coupled with a refusal by the international community to recognize the legitimacy of any government that undermines the access of its citizens to democratic political participation.

Franck’s characterization of this practical implication of human right to democracy, is reinforced by his account of the emergence of the democratic entitlement, beginning with the use of plebiscites and national elections by the United Nations to decide cases of self-determination, followed by the International Covenant on Civil and Political Rights, and most recently, refusals by the international community to recognize governments that oust democratically elected governments. The first track, beginning in 1945, concerns the United Nations’ practices concerning the conduct of plebiscites and national elections that first evolved as the direct result of internationally supervised decolonization, and were later refined, beginning in 1989, as the United Nations was on occasion invited by sovereign authorities to monitor elections that did not concern colonial powers. The second track began with the 1945 Charter of the United Nations, which presents the self-determination of peoples as a guiding principle, continues with the moral consensus represented by the 1948 Universal Declaration of Human Rights, and culminates with the Convention on Civil and Political Rights which entered into force in 1976. The third track, beginning in the 1970’s, is the so-called “third wave” of democratization wherein relatively democratic political regimes



came to power in dozens of countries. Franck adds, "Governments...now accept that the international community not only has the power to respond to occasional invitations to monitor national elections, but has an interest in seeing that free and fair elections are held everywhere at regular intervals."<sup>26</sup>

Current international legal practice dictates that electoral monitoring by agents of the United Nations can only be conducted on a voluntary basis. Election monitors must be invited by the domestic authorities, which is typically done in cases where domestic conditions are such that, absent independent validation, the legitimacy of an electoral outcome would be thrown into question. This limited practice of validating electoral outcomes by invitation is in tension with full acknowledgment that the international community has an interest "in seeing that free and fair elections are held everywhere at regular intervals", where this "seeing" presumably refers to monitoring as the means by which the United Nations, as representative of the international community and subject to independent verification, is able to cognize demonstrations of popular consent. That is, while the International Covenant on Civil and Political Rights represents some commitment by signatories to conduct free and fair elections, enforcement of this convention has not been compulsory.

Franck complains that unless all states (including relatively stable democracies) submit to compulsory electoral monitoring, the legitimacy of the democratic entitlement would suffer. The international community would not subject all states to the same standards of evidence to demonstrate consent of a people to a given government.<sup>27</sup> The practical consequence is that different governments would be subject to different conditions of recognition by the international community. The complaint is that a rule for the international community only to monitor national elections by invitation would be a rule of the international community only to validate the legitimacy of a government by invitation. It would be more coherent for

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<sup>26</sup> Thomas M. Franck, *Fairness in International Law and Institutions* (Clarendon Press; Oxford University Press, 1995). p. 109

<sup>27</sup> *Ibid.* p. 134

the international community to validate the legitimacy of all governments irrespective of whether they have been invited to do so.

The tension here is between the international obligations of states to conduct free and fair elections and the obligation of the United Nations not to interfere in matters “essentially within the domestic jurisdiction of states.”<sup>28</sup> Keeping in mind qualifications in practice of the principle of non-intervention (i.e. to prevent genocide, to undermine apartheid, and to mediate claims of collective self-determination) Franck appreciates that it remains an open question whether a right to democracy in principle trumps the presumption in favor of non-intervention. He admits, lamenting deleterious consequences for legitimacy of the democratic entitlement, that powerful liberal democracies in addition to states that are not liberal or very powerful, or historically have suffered foreign domination, will resist compulsory electoral monitoring as undue interference in their domestic affairs.

In addition to its negative impact on the integrity of international law, a problem with the absence of universal enforcement of electoral entitlements is that some states may, unilaterally or in coalition, act to enforce a right to democracy without the approval of representatives of the international community. Such enforcement would in effect require democratization to validate governance not as a rule of international law, but rather as a rule dictated by the powerful under the pretense of law. This possibility, insofar as it is actualized, would justify weaker states to fear that interference in domestic affairs justified by enforcement of a right to democracy reflects (imperialist) ambition and not an authoritative application of international law.

Despite these reasons for concern, Franck is encouraged by the overall trend in favor of democratization. He says,

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<sup>28</sup> UN Charter

“...The [International Covenant on Civil and Political Rights] transformed the [Universal Declaration of Human Rights] moral obligations into legal ones. In more recent years, with the balance now heavily tilted by the substantial new majority of states actually practicing a reasonably credible version of electoral democracy, the treaty-based legal entitlement began to approximate prevailing practice and may therefore be moving rapidly towards a customary legal norm, applicable to all.”<sup>29</sup>

In short, despite the absence of compulsory enforcement of electoral rights by the international community, and whether because of international agreements or not, the balance of states are beginning to bring domestic political practice in line with their international commitments vis-à-vis political participation. By defending an emerging right to democratic governance Franck does not claim that a universal legal entitlement of individuals to democracy is in force. Rather, his argument suggests that the legitimate enforcement of said entitlement, though not inevitable given the strength of the forces that undermine it, is a realistic possibility given present institutional and cultural circumstances. In light of these developments, to ask whether there is a human right to democracy is in one sense to ask whether this trend should be reinforced.

#### *Inspiration to reject cosmopolitan intolerance*

The argument from equality for a human right to democracy is an argument that undemocratic governments should not be tolerated. Rawls takes a different view. He dismisses a human right to democracy and argues for toleration of some undemocratic societies. In particular, even though undemocratic peoples by definition reject that democracy is necessary for social justice, Rawls believes that as peoples they have the moral qualities that merit toleration by democratic peoples.<sup>30</sup> First, every people, whether democratic or not, has a capacity for self-determination. And second, a people restrains its conduct in accordance with the requirements of peace and other norms necessary for the sustainable coexistence

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<sup>29</sup> Franck, *Fairness in International Law and Institutions*, p. 109

<sup>30</sup> It is important to recognize that ‘people’ is used here in a technical sense, to distinguish political societies that possess these moral characteristics from those that do not.

of separate peoples. Because all peoples possess these qualities, Rawls says that liberal peoples should:

“...Not only...refrain from exercising political sanctions—military, economic, or diplomatic—to make a people change its ways. To tolerate also means to recognize these non-liberal societies as equal participating members in good standing of the Society of Peoples [i.e. the international community]...”<sup>31</sup>

Rawls’s appeal for toleration of decent peoples has two basic characteristics. First, it rests on the idea that in the context of international affairs the fundamental interests of peoples are on a par with the fundamental interests of free and equal persons in the context of the domestic affairs of a liberal people. And second, it gives expression to the requirement to accommodate a limited degree of ethical pluralism by holding that public political principles “should be presented autonomously: that is, independent of particular philosophical or religious theories that might be used to explain and justify its content.”<sup>32</sup> Analogous to the unreasonableness of expecting all members of a democratic people to endorse a liberal ethic to guide their personal lives, is the unreasonableness of expecting all peoples to endorse some liberal conception of social justice. The hope is that despite their potentially profound disagreements, say about whether social justice requires democracy, all peoples should agree, and be held responsible to act accordingly, that as peoples they share certain fundamental interests, such as territorial integrity, peace, and the protection of human rights.

This appeal to tolerate undemocratic peoples seems plausible because it seems to reflect a correct understanding of the importance of collective self-determination. My initial intuition was that whether they are democratic or not we expect the peoples of the world to act responsibly (e.g. to cooperate with the reasonable requirements of the international community). The plausibility of this expectation

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<sup>31</sup> Rawls, *The Law of Peoples; with, the Idea of Public Reason Revisited*. p. 59

<sup>32</sup> Cohen, "Minimalism About Human Rights: The Most We Can Hope For?." p. 193

rests on the fact that, even if undemocratic, a people can be collectively self-determining (i.e. it can structure and control its basic institutions). If a people could not be collectively self-determining, it would make no sense to expect it to act responsibly. So, unless we intend to give up the expectation that non-liberal peoples act responsibly we should do nothing to undermine its capacity for collective self-determination. Arguably, this requires, as Rawls directs, that we tolerate non-liberal peoples. But this requirement of toleration is inconsistent with the idea that every human being is entitled, as a matter of human right, to democratic political participation. In short, if democratic peoples should tolerate undemocratic peoples, then there is no human right to democracy.

Even though I believe that democracy is necessary for social justice, my chief aim in the chapters to follow will be to show that considerations of international toleration require that we reject the (cosmopolitan) argument from equality as an appropriate justification for a human right to democracy. The main sections are devoted to the proposition that because democratic peoples should tolerate undemocratic peoples, there is no human right to democracy. In Parts 1 and 2, I provide background for my argument about toleration by developing an idea of collective action and responsibility, which I then apply to the case of a specific type of collective: a people. In Part 3, I develop an idea of international toleration, which may take either the form of respect for a people's sovereignty or grants of recognition legitimacy to a people and its government. I then show why democratic peoples should tolerate undemocratic peoples.

## PART ONE: GROUP ACTION AND COLLECTIVE RESPONSIBILITY

A few years ago, the U.S. Government accused Arthur Andersen (a now-defunct commercial accounting firm) of intentionally impeding a federal criminal investigation.<sup>33</sup> The U.S. Government claimed that Arthur Andersen intentionally destroyed documents material to a federal criminal investigation. No one disputed that employees of Arthur Andersen complied with orders issued by their managerial superiors to shred certain documents, and that these actions had deleterious consequences for a federal criminal investigation. Arthur Andersen argued that it never intended to impede that investigation, and that the shredding was in accordance with an unobjectionable policy of the firm that predated the investigation. The pivotal challenge in this case was to determine whether Arthur Andersen indeed acted with criminal intent.

There are two strategies jurors might use to make that determination. Using an "individual-first" strategy to assign group responsibility for harm, if no member of a group can be proven to have acted with criminal intent then the group (as a whole) cannot be shown to have acted with criminal intent. So, a jury deciding this case would seek to identify an individual agent of the firm who acted with criminal intent. If jurors could not identify such an agent, then the firm should not be judged guilty of a crime. And even if they could identify such an agent, jurors would still have to decide whether or not the agent was acting under the firm's direction. In contrast, using a "group-first" strategy to assign group responsibility for harm, jurors would first seek to assign responsibility to the group as a whole; they would treat the group itself as a distinct moral agent. The jury would first determine whether the firm demonstrated (i.e. by its policies) an intention to act criminally. If yes, then the firm would be found guilty of the crime, even if jurors could not identify an individual agent of the firm whom they could prove acted with criminal intent.

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<sup>33</sup> Kurt Eichenwald, "Andersen Jury Startles Court with Question," *New York Times*, June 14, 2002 2002, Kurt Eichenwald, "Judge's Ruling on Andersen Hurts Defense," *New York Times*, June 15, 2002 2002.

Notably, neither Arthur Andersen nor the U.S. Government disputed the possibility that Arthur Andersen is the sort of entity that could have acted intentionally and responsibly. It might seem odd to some that it should be necessary to defend the possibility of responsible group agency. After all, it is commonplace to assign moral responsibility to different kinds of groups. For instance, we expect governments and businesses to observe certain internally and socially generated standards of appropriate conduct, such as official policies or rules dictating acceptable accounting practices, or treaties governing the conduct of war, the treatment of prisoners, and obligations to international institutions. In addition, our economy relies upon the limited liability corporation, by which a corporate entity, as a legal person, can enter into contractual relationships, thereby intentionally assuming certain rights, obligations, risks, and liabilities independently of its constitutive individuals. Nevertheless, and perhaps especially because these practices play such an important role in our lives, it is important to understand the conditions of responsible group agency.

The case described above illustrates a puzzle of corporate responsibility, which is but one of three possible variants of group-based responsibility. The other two variants concern collectives and masses (which, in their more destructive manifestations are sometimes called mobs). I will have little to say about masses. For the sake of argument, I will assume two things. First, a collective is an organized group of agents who, among themselves, consider each member of the group to be equally valuable with respect to the definition and achievement of their common good. Peoples, co-ops, and some industrial organizations are all examples of collectives. Second, a corporate entity is an organized group of individuals, each of whom occupies a distinct functional position, and who, among themselves, accept disparities in how valuable each member of the group is with respect to the definition and achievement of their common good. Governments, universities, banks, and manufacturers are all examples of corporate entities. Furthermore, I agree with the conventional wisdom that collectives have a capacity for direct action that is limited to decision-making. And just as a corporate or

collective entity may authorize individuals to act on its behalf, so too might a collective entity authorize a corporate entity to act on its behalf. For example, a collective group of citizens (e.g. the People of the United States) might authorize a corporate group of officials (e.g. the U.S. Government) to implement their collective intentions (e.g. as contained in the U.S. Constitution).

In the discussion to follow, I will first defend the possibility of group intentionality and describe the means by which groups, as a whole, are able to act. Building on these accounts of group intentionality and action, I will then focus specifically on collectives, describing conditions for the assignment and distribution of collective responsibility.

*On the possibility of intentional group action*

A core feature of the Arthur Andersen case is the accusation that a corporate entity intended to impede a federal criminal investigation. But can corporate entities have intentions? In his book *Collective and Corporate Responsibility*<sup>34</sup> Peter French that when formed for the right reasons and in the right context, individual intentions should count as the intentions of a corporate entity. He says that a corporate entity's internal decision [CID] structure "licenses the predication of corporate intentionality."<sup>35</sup> He explains, "When operative and properly activated, the CID structure accomplishes a subordination and synthesis of the intentions and acts of various biological persons into a corporate decision."<sup>36</sup> For example, suppose the executives of Arthur Andersen met to decide what to do with certain documents. So long as their deliberations followed the appropriate protocols and corporate policies, the individual intentions formed at the meeting about what to do with the documents in question would be supplanted by the intentions of Arthur Andersen about what to do with those documents.

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<sup>34</sup> Peter A. French, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984).

<sup>35</sup> *Ibid.* p. 39

<sup>36</sup> *Ibid.* p. 41



Skeptical of the need to posit the existence of corporate intentions, Seamus Miller criticizes French's account on the grounds that if true, it would mean that the actions of the individual members of a corporate entity are causally overdetermined.<sup>37</sup> If we suppose that intentions to act cause actions, then French's account implies that when an agent of a corporate entity acts, his actions would be caused by two sets of intentions, both individual and corporate. Miller says, "But surely employees' intentions are not redundant with respect to their own actions. Rather, it is the shadowing corporate intentions that are redundant."<sup>38</sup> Miller concludes that because we can explain the causes of joint actions without resort to the intentions of corporate entities, we should reject the possibility of corporate intention.

Critical of both Miller and French, Larry May notes that by affecting the intentions of those who participate in it, a corporate entity's decision-making structure precludes a "complete reduction of the corporate intention to the individual, isolated intentions of the members."<sup>39</sup> However, he adds that we should not therefore believe "that the intentions of the board members become intentions of some other entity instead of remaining the intentions of individual moral agents."<sup>40</sup> Although May believes that corporate-regarding intentions are possible, he rejects the possibility of distinct corporate intentions.

What then should we believe about the possibility of corporate intention? Consider again the case of the Arthur Andersen executives meeting to decide what to do with certain documents. French would claim that their intentions to act formed at the meeting are supplanted by the intentions of Arthur Andersen to act. Miller and May, in turn (though in different ways), would claim that their intentions remain their own, and that 'Arthur Andersen' is mere shorthand for a group of cooperating

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<sup>37</sup> Seamus Miller, "Against Collective Agency," in *Social Facts and Collective Intentionality*, ed. Georg Meggle (Dr. Hansel-Hohenhausen AG, 2002).

<sup>38</sup> *Ibid.* p. 281

<sup>39</sup> Larry May, *The Morality of Groups: Collective Responsibility, Group-Based Harm, and Corporate Rights* (Notre Dame, Ind.: University of Notre Dame Press, 1987), p. xx. See also: Larry May, "Vicarious Agency and Corporate Responsibility," *Philosophical Studies* 43 (1983).

<sup>40</sup> May, *The Morality of Groups: Collective Responsibility, Group-Based Harm, and Corporate Rights*.

individuals. In contrast to all of the above, my suggestion would simply identify the decision about what to do with the document as the corporate intention. The idea is to affirm the possibility of corporate intentions while accepting the odd dependence of corporate intentions on individual intentions.

Corporate intentions depend upon personal intentions for their existence. However, corporate intentions, like constitutional principles, corporate policies and institutional missions, oddly are potentially independent of the intentions of particular individuals. There are two ways that collective intentions depend on the intentions of particular individuals. First, through their participation in collective decisions individuals can agree new corporate intentions. And second, only if individuals internalize them can corporate intentions have any practical force. However, corporate intentions can persist independently of the individuals that help give rise to them. A corporate intention can outlast all the individuals that participated in its formation. All the original individual members of a corporate entity might change, and yet the specific corporate intentions they agreed upon could persist.

The key to the internationalization and persistence (and thus, the practical force) of a corporate intention is the culture of the organization in question. Generally speaking, it is difficult to imagine any group intentions having practical force where the members of the group do not share a basic understanding of the group's identity and purpose. Three elements of an organized group's culture seem to be particularly critical to its group agency. First, through the symbolism that is partially constitutive of their group identity, they have a clear means to refer to the group as a whole. Second, the intentions of the group provide a set of common expectations toward which all members can orient their behavior. And finally, by identifying with the group's culture, the members of the group may experience a sense of solidarity that motivates them to ensure that their individual actions really do reflect the group's intentions.

You might be concerned that a corporate intention, if not identified with any individual intention, is an odd sort of intention. After all, personal intentions are mental states, and corporate intentions are not mental states at all. Whereas about humans it makes sense to speak of their mental states (and not the mental states of its constitutive parts), it is implausible to say that corporate entities have such things. Nevertheless, I do not believe it is necessary to accept the anthropomorphic bias implied by the concern about the metaphysical status of corporate intentions. Why assume that corporate intentions must be mental states? Consider the capacity for flight. Although helicopters, airplanes, bats, pigeons and locusts all can fly, they each do so by different mechanisms. Perhaps the capacity to form intentions, like the capacity for flight, can be produced by a variety of underlying mechanisms.

So far, I have only discussed corporate intentions. You may be wondering what's the relation between corporate intentions and other forms of group intention. I do not believe there is any essential difference between corporate intentions and other forms of group intention. Recall that French says, "When operative and properly activated, the CID Structure accomplishes a subordination and synthesis of the intentions and acts of various biological persons into a corporate decision." And when French clarifies what he means by a corporation's internal decision structures, he clearly has in mind the bureaucratic organization of collective decision-making. On this view, for a decision to be a corporate decision, it must not only reflect official corporate policy, but it must also be validated by the appropriate managers or officers. The general idea is that in the absence of effective internal authority, the possibility that the various office-holders might not cooperate is such that the only way to effect rational decision-making is to create a legalistic regime which transfers the locus of deliberation from each individual to their superiors, with the highest officers responsible for setting and ensuring compliance with corporate policy.

I have two worries about this way to conceive the formation of corporate intentions. First, corporate entities can be effectively organized in a variety of ways, only some of which rely heavily on bureaucratic subordination. However corporate decisions are reached, what is important is that the group intentions thereby formed are in compliance with the appropriate procedural norms. So it seems unnecessary for French to emphasize bureaucratic decision-making. Second, if a bureaucratic decision-making structure really is necessary to the formation of group intentions, then this would preclude generalizing this account of corporate intentions to other types of group. Recall the other types group besides corporate entities, namely, mass entities and collectives. Mass entities cannot form group intentions because they are unorganized. They lack the internal decision structures necessary to form group intentions. True, a mass entity (e.g. a crowd raucously celebrating a Red Sox victory in the World Series) might be characterized by a great deal of solidarity and its members may even cooperate with one another (e.g. to turn over cars), it is implausible to say that their actions are guided by anything as coherent as a group intention. Collectives on the other hand do have the ability to form group intentions. Although a collective's internal decision structure might not be as complex or formalized as that of a corporate entity, it is nevertheless true that group intentions may be formed when the members of a collective assemble to make binding decisions for the group.

In the case I've been considering, the U.S. Government did not simply claim that Arthur Andersen intended to impede a federal investigation; it claimed that Arthur Andersen *acted* intentionally to impede a federal investigation. This implies that a corporate entity not only can have intentions, but also that a corporate entity can act on its intentions. To elaborate this connection, essential to intentional group action, between group intentions and individual actions, I turn once again to Larry May. He says correctly that when an organized group acts, it does so vicariously, through the actions of its individual members.<sup>41</sup> The basic idea is quite simple: organized group decisions can authorize certain individuals to act for the group,

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<sup>41</sup> May, "Vicarious Agency and Corporate Responsibility."

and so long as the actions of those individuals are within their mandate, through the device of vicarious agency the group is said to act intentionally.

*Assignments of corporate and collective responsibility*

Group intentions have practical force only if they are internalized by the individual members of the group, and direct the formation of their personal intentions to act. And personal actions, so directed, should be interpreted as the vicarious intentional actions of the group. But even if we have reason to believe that intentional group action is possible, because all group action is vicarious, we face the following difficulty when trying to assign group responsibility: When is the member of a group acting for the group and when is the member of a group acting merely for him or herself?

Larry May believes that because a group can only act vicariously through its members, it is only in cases of harm caused by negligent omission, when all the members of a group have failed to act appropriately, that we can say with certainty that the group (as a whole) is liable. He says, "If a [group]<sup>42</sup> is said to act the question always remains: wasn't that merely an act of an individual person who only happened to be a member of that [group]? With negligence, though, if it is said that the [group] failed to perform an action (which was required by a duty it had), the question does not arise."<sup>43</sup> But why should May believe that we cannot say with certainty when an individual action should count as a collective one? His idea seems to be that if we see an individual act, to know whether it should count as group action, we must know what the individual intended by his action. And here we have a problem: Even though an individual action's may seem to have

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<sup>42</sup> He actually uses the word 'collectivity', but to avoid confusion in the present context, I have replaced it with 'group'. There does not appear to be any significant loss of meaning.

<sup>43</sup> May, "Vicarious Agency and Corporate Responsibility." P. 76-77. To explain this fault condition, May says, "Since the corporation can only act through one of its members, a failure of every one of the members to act will become a failure of the corporation to act; whereas, an action of a member of a corporation does not necessarily become that corporation's action." I am unsure how to interpret this suggestion, unsure, that is, why the absence of action should automatically be considered a group action.

been done with a group intention in mind, only the individual, with her privileged access to her mental states, can know for sure whether that was in fact the case.

But there is a way to address this evidentiary barrier to identifying group actions. Whereas an organized group's internal decision structure alone is insufficient to license attributions of group agency, when that structure is supplemented by an effective internal practice of public accountability, members of the group, and outsiders, would have sufficient evidence, one way or another, to validate (or invalidate) claims that individual actions vicariously are group actions. For example, it is commonplace for the most highly placed executives to be responsible for supervising their subordinates to ensure that their subordinates act according to the appropriate corporate intentions. But because the highest officers are themselves unsupervised, it is nearly impossible to distinguish corporate intentions from the personal intentions of executives. Through the appropriate supervision of compliance with corporate intentions, a group can make it difficult, if not impossible, for negligence or abuses of executive authority to go unnoticed.

To be effective a group's internal practice of accountability must meet three conditions. First, it must be public. Some right to participate in that practice must be extended to all members of the organization, and not just to those occupying senior executive positions. In other words, regardless of whether the group is ultimately organized as a corporate entity or as a collective, for the purposes of internal accountability, the group should operate as a collective. To do otherwise would seriously undermine the plausibility of a group's claim to internal accountability. Second, that practice of accountability must be oriented to some shared collective identity. Although a group's internal practice of public accountability might take a variety of forms, it is difficult to imagine any such practice being effective where the members of the group do not share an understanding that each member of the group has an essential role to play to ensure the effectiveness of the group's internal practice of public accountability. And finally, persons authorized to act for the group must provide reasons for the

actions they claim to be the vicarious actions of the group. This might seem obvious, but all too often, persons are, in virtue of occupying positions of authority, exempted from having to provide reasons for their actions, forcing others to guess whether that action was done for the right reasons. This creates opportunities for corruption and other forms of abuse of authority. Inevitably, there will be those hard cases where group intentions underdetermine which actions are called for in some particular instance. But this does not mean that members of a group therefore have discretion to act however they wish and still have their actions count as group actions. It seems that in such cases, unless they have been expressly authorized to exercise such discretion, the individual in question should be understood to have acted of their own accord, and not for the group.

In summary, only when all members of a group are conceived as having some essential role to play in their group's practice of internal accountability, and only when that practice is effective is there evidence for the claim that individual actions that purport to be group actions are in fact so.

#### *The distribution of collective responsibility*

Suppose we determine that a collective is to blame for some harm. Who (or what), if anyone (or anything), should we punish? In this section I respond to a criticism of collective responsibility that in such cases, we must either punish no one, or punish some unfairly. I argue that just because we blame an entity for some harmful outcome does not mean that we should therefore seek to punish. If blaming an agent for causing harm is a reason to restrain and penalize the agent, this is because we are justified in acting to prevent further harms.

Jan Narveson argues that defenders of collective responsibility face a dilemma: When faced with some harm for which a collective is to blame, a defender of collective responsibility must recommend either punishing no one or punishing

equally all members of the collective.<sup>44</sup> The irreducibility of collective responsibility suggests punishing no one. But, he thinks this is unacceptable because strictly speaking, all nominally collective actions are, in fact, individual actions, meaning that even “when groups are said to be responsible for this or that, the implication has to be that we may blame (or praise) members of the group, insofar as they are members, for the action(s) in question.”<sup>45</sup> And punishing equally all members of the collective is unacceptable because if the assignment of praise or blame to individuals should be a function of the level and intentionality of their individual contributions to some state of affairs, then assuming asymmetrical individual contributions to some purported collective action, individuals will be mistreated because the degree to which they are punished will not reflect their actual contributions.

May seems to accept the terms of this dilemma, suggesting that if a collective is to blame for some harm, we should not punish the collective. . Instead, May accepts Narveson’s contention that we must find someone to punish. He says that we should punish the executives, the members of the collective with an obligation to supervise the actions of the others. May rejects punishing the collective, say, through fines or public shaming. He believes that “the corporation does not have the kind of full-blown personality structure that could conscientiously reflect on itself and feel shame for what it has done.”<sup>46</sup> In addition, levying a fine on the corporation “distributes the punishment to the members of the corporation in such a way as to have no connection with the benefits or roles that these members had in the commission of the crime.”<sup>47</sup> In effect, fines bring about the unfairness of the second horn of Narveson’s dilemma. Although the collective as a whole is to blame for some harm, May argues that it is only by the actions of its members, and the negligence of those with supervisory duties to prevent harm, that the collective (and not merely its members) is really responsible for producing harm. According

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<sup>44</sup> Jan Narveson, "Collective Responsibility," *Journal of Ethics* 6 (2002).

<sup>45</sup> Ibid.

<sup>46</sup> May, "Vicarious Agency and Corporate Responsibility."

<sup>47</sup> Ibid.



to May, there are two merits to punishing executives for harms caused by a collective. First, since executive authorization and negligence are essential enablers for the misdeeds of subordinates (insofar as those subordinates are acting for the corporation), we would then mete out punishment in proportion to causal responsibility for the harm. And second, as a strategy to prevent further harm, it makes most sense to penalize those with supervisory responsibilities. May says, "The fear of personal punishment will weigh much more heavily on the minds of corporate officers than would the other strategies. This would make it more likely that they will prevent further harms."

Although I believe that by accepting the terms of Narveson's dilemma May has given up too much, vis-à-vis genuine collective responsibility, I believe that Narveson presents us with a false dilemma because I do not accept that there is a necessary connection between blame and punishment. Let me explain.<sup>48</sup> There are two ways we might conceive the purpose of blame. Normally, the purpose of blame is to placate some retributive sentiment by punishing those whom we feel deserve it, where agents are understood to deserve punishment for causing harm in virtue of their ability to have acted otherwise. By assuming that an agent had a choice of whether to cause harm, in addition to whatever negative sentiment we direct at the harm itself, we traditionally also disapprove of the agent, for being the sort of person who would choose to cause harm.

There are two problems with this conception of the purpose of blame, one problem associated with the value of acting on retributive sentiments, and another problem associated with the value of desert. First, the retributive conception of the purpose of blame relies on the fiction that agents deserve punishment because they normally have control of their dispositions to act in certain ways. Often, there are features of a mature agent's environment or circumstances that either limit or completely undermine their ability to control their actions. For instance, no agent can have full control of their character or personality or circumstances. But what

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<sup>48</sup> This discussion draws on: Erin Kelly, "Doing without Desert," *Pacific Philosophical Quarterly* 83 (2002).

should we make of this state of affairs? On the one hand, it does sometimes seem wrong to hold people responsible for things outside of their control. Then again, if we suppose that we have so little control, that makes our various life experiences that much more remarkable, whether in the form of choosing to exercise to overcome a propensity to anxiety, removing oneself from a commercial to an academic environment to stimulate one's intellectual development, or taking steps to minimize the harmful risks of one's actions. Although it is true that we have insufficient control over enough aspects of our lives to undermine claims of desert, it does seem plausible that we either have or could develop sufficient control to underwrite less ambitious assignments of responsibility.

The second problem with the retributive conception of blame is that although it may feel like the right thing to do to seek an eye for an eye, especially when the victim is someone you hold dear, from the standpoint of wanting to minimize harm, it is often counter-productive to act on retributive sentiments. The example most vivid in my mind is the Israeli-Palestinian conflict. Aiming to punish, when one side attacks, the other responds, not simply in kind, but when possible, in greater measure. In the process, whatever resources of reconciliation there might be are squandered by an escalation of conflict legitimated on both sides by the importance of punishment. Of course, there are numerous other examples, where instead of ameliorating the original harm, punishment merely compounds it. The point is that all too often, our desires to punish lead us to lose sight of what seems most important: the minimization of harm.

This constitutes the alternative to believing that the purpose of blame is to punish (or to legitimate punishment): When engaging in blaming behavior the purpose should be to minimize harm. On this conception, it is never appropriate to blame an agent for the purpose of retaliation. When it is appropriate to blame an agent, it must be for their causal contribution to some harm, and we are justified in restraining or penalizing the agent either to prevent them from causing further harm or, if it is unlikely that the agent in question will cause further harm, to reduce

the general risk of such harm being caused. But why believe that the purpose of blame should be to minimize harm? That is, why assume that by assigning responsibility for a fault or wrong, ultimately, the concern should be either to ameliorate the harm caused or to prevent the future of occurrence of a similar harm? The basic idea is that instead of using blame to assuage our reactive attitudes in response to wrongdoing, "we have grounds for expressing our negative moral judgments, because and insofar as doing so furthers aims that mutually concerned parties could endorse."<sup>49</sup> Unlike retribution, the dictum not to do harm must be endorsed by any decent moral perspective. Whether this extends to the prevention of harm might be a separate matter, but if we are not to cause harm, it seems that should all also do what is in our power to prevent harm.

*The role of collective agency in addressing the problem of common harm*

Before concluding this chapter, I would like to consider how this understanding of collective responsibility might help us to address group-based harms for which it is inappropriate to blame any particular agent. To illustrate, consider the common harm of pollution caused by the consumption of fossil fuels in an advanced industrial economy. A troubling aspect of this pollution is that since no individual produces enough emissions to cause the harms in question, it seems unfair to hold individuals personally responsible for causing those harms. Though some (e.g. automobile owners and operators) seem more to blame than others for causing this pollution, if we acknowledge that a population's economy relies on the distribution of goods (e.g. food) using transportation systems that employ internal-combustion engines, it does not seem fair to single out automobile owners and operators for blame. Further complicating matters, simply forcing all automobile operators to cease and desist would be a disaster for any contemporary society, causing more harm than it would avoid.

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<sup>49</sup> Ibid. p. 194

Interestingly, this common harm is at best attributable to some sort of mass entity. Although the set of regulations, market mechanisms, and other institutional factors that combine to structure individual actions so that gasoline is produced, distributed, and consumed, might be accurately described as an economic system of cooperation, it lacks the intentional coordination characteristic of collective or corporate agency. That is, this common harm might exist even in the absence of an organized group with the sort of internal decision structure or practice of public accountability necessary to say that the group intended the outcome in question.

What would make it problematic to blame individuals for the common harm illustrated above? For any given individual, a mix of blameworthy and praiseworthy attitudes may account for their actions that contribute to the risk of increasing pollution. Although some potentially blameworthy attitudes, like a widespread inclination among members of the population not to prioritize environmental concerns, might contribute to an increased likelihood of pollution, some praiseworthy attitudes, like a desire to ensure that one's children have a balanced diet including fruits and vegetables, might also increase the risk of pollution.

The point is that we should recognize that although the actions that contribute to common harm are intentional or negligent, they might in fact originate with agents making trade-offs between competing obligations. Such trade-offs might be necessary because an agent's self-chosen ends may conflict with the interpersonal norms to which others hold him accountable ("Should I do what I feel is right or what my family and friends think is best?"). They might also arise from conflicts among those interpersonal norms ("Should I donate my surplus to relieve suffering overseas or should I provide the best possible standard of living for my extended family?"). In such cases, it seems unfair to say that the individuals involved intended to cause harm. And even if we were able to calculate each individual's contribution to the harm in question, that list would undoubtedly include quite a few dead. So, although most, if not all, present members of the group could be said to contribute to the common harm, we would then face the apparently

intractable problem of figuring out how to fairly distribute blame between past and present individuals. This problem is intractable because we run up against the impossible tasks of trying to understand the intentions and causal contributions of entire populations long dead.

So, it would be unreasonable to blame either individuals or collectivities for causing the harm illustrated above. However, unlike the individualist, who rejects the possibility or value of collective responsibility, the defender of collective responsibility has a way around this difficulty. In essence, the difficulty is that a group of unorganized individuals is not the sort of thing that can be responsible. However, even if they would be justified in rejecting personal liability for common harms, they should recognize that as a group they are causally responsible. And if the members of a group that causes common harm recognize that the severity of common harms merit their elimination, then they should be willing to organize for that task; they should be willing to institute a collective agent, to decide how best to address that harm, and with sufficient authority to compel individuals and organized groups to comply with the appropriate counter-measures.

### *Collective self-determination*

In summary, I have tried to show, first, that a group's capacity for collective action and responsibility depends on four things: its ability to form collective intentions, an internal culture that orients the internalization of collective intentions, agents authorized to act (vicariously) for the group, and an effective internal practice of public accountability. And second, that collective agency is indispensable. Corporate entities must organize as a collective to develop the internal practices of public accountability necessary to validate ascriptions of corporate responsibility. But this dependence is mutual. While a corporate entity depends on a collective agent to reach decisions pertinent to its internal accountability, collective agents are limited in their capacity for action to decision-making. Collective intentions, formed as a result of collective decision-making, are practically inert without the

authorized involvement of other agents, whether individuals or corporate entities, to act vicariously for the collective. In other words, the process by which a collective directs or controls the resources at its disposal necessarily involves the participation of other agents. A second reason why collective agency is indispensable has to do with common harms. The existence of common harms illustrates that even if a group does not intentionally cause harm, it may nevertheless still be appropriate to blame the group of individuals involved. But the purpose of this blame is not necessarily to fault them as individuals, but rather to motivate them, as a group, to develop their capacity for collective action to ameliorate that harm. But given the ubiquitous presence of common harms, and the absence of personal liabilities for them, a group, acting as a collective, may appropriately decide it is necessary to vest a corporate agent with coercive authority to ensure that members of the group comply with measures designed to ameliorate those harms. In this case, with the addition of legitimate coercion, we move from generic collective action and responsibility, to something distinctively political: collective self-determination. In the next chapter I will explore the self-determination of a people, a type of collective that, among other things, has the authority to govern.

## PART TWO: THE SELF-DETERMINATION OF PEOPLES

In this section I interpret Rawls's idea of a people as a normative conception of collective self-determination. I explain why peoples (in Rawls's sense) satisfy the four conditions of responsible collective agency, why democracy is not necessarily required for collective self-determination, and also why a people's government should possess coercive authority.

### *Need for a normative conception of collective self-determination*

A stated purpose of the United Nations is, "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."<sup>50</sup> Unfortunately, the principle of the self-determination of peoples has been subject to such variable interpretation that it almost seems disingenuous to speak of *the* principle of self-determination. This tangled state of affairs is evident even in international legal practice, which provides no clear conception of either peoples or self-determination. In practice, sometimes peoples are conceived culturally, as nations. Other times, they are conceived territorially, as states.<sup>51</sup> Where peoples are understood to be states, claims of self-determination have emphasized the relative importance of territorial integrity, in opposition to claims of minority groups to secede or outside powers to intervene. In contrast, and more so in the literature than in practice, where peoples are understood as nations, the importance of maintaining the territorial integrity of states is subordinated to the value of preserving the integrity of national cultures or accommodating the secessionist claims of oppressed minorities. As if this weren't confusing enough, there is also a great deal of ambiguity with respect to collective self-determination. Especially when the concern has been to advance decolonization or to evaluate the justifiability of claims to secession, sometimes self-determination just means

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<sup>50</sup> United Nations Charter, Article 1, Para. 2

<sup>51</sup> Margaret Moore, "On National Self-Determination," *Political Studies* 45, no. 5 (1997).

political independence. Other times, the concern is with more than mere political independence, such as when the issue has been a people's capacity to be governed in accordance with normative principles.

I point out these ambiguities about our public understanding of the self-determination of peoples to show not only what issues are involved, but also to underscore the practical need for a coherent normative point of reference. It is in the context of this search for a normative ideal of collective self-determination that I turn to Rawls's idea of a people.

### *Rawls's idea of a people*

In his *Law of Peoples* John Rawls directly names peoples, rather than nations or states, as the bearers of rights of collective self-determination. But what are peoples? Although public references to peoples abound, such as in the United States Constitution which begins, "We the People of the United States" or the Charter of the United Nations begins, "We the Peoples of the United Nations" Rawls does not seem primarily concerned to rationalize conventional references to peoples.<sup>52</sup> Rather, the idea of a people is a normative idea, representing the possibility that political societies can be disposed both to respect human rights and to desire peace. Unfortunately, Rawls does not give a single, unified, presentation of his idea of a people.

Rawls's main point of departure is his description of a liberal people. Rawls says that a liberal people would have three basic features: institutional, cultural and moral. Institutionally, a people would have a reasonably just constitutional government, meaning "that the government is effectively under their political and

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<sup>52</sup> For instance, the reference to peoples at the beginning of the Charter of the United Nations presumably refers to a number of entities that Rawls might categorize as other types of society. Nevertheless, it does not seem implausible that Rawls's *Law of Peoples* is an attempt to develop normative guidelines to help us achieve the promise of Article 1, paragraph 2 of the Charter of United Nations which states that it is an aim of that organization "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."



electoral control, and that it answers to and protects their fundamental interests as specific by a written constitution and its interpretation.”<sup>53</sup> Culturally, the members of a liberal people are united by bonds of associative obligation or reciprocal attachment that might be based on a “common language, history, and political culture”, and which support their common desire to be governed democratically. Morally, “liberal peoples are both rational and reasonable, and their rational conduct, as organized and expressed in their elections and votes, and the law and policies of their government, is... constrained by their sense of what is reasonable.”

In contrast, a non-liberal people does not possess a reasonably just constitutional government, nor do most of its citizens demand to be governed democratically. Nevertheless a non-liberal people is in certain key respects similar to its liberal counterpart. For instance, although its government is not democratic and its members do not identify democratization as a common aim of their political association, this does not mean that the government of a non-liberal people is not accountable to its citizens. Rawls says,

“Persons as members of associations, corporations, and estates have the right at some point in the procedure of consultation (often as the stage of selecting a group’s representatives) to express political dissent, and the government has an obligation to take a group’s dissent seriously and to give a conscientious reply.”<sup>54</sup>

So, although the members of a non-liberal people do not enjoy the same robust rights of political participation as the members of a liberal people, they are by no means excluded from participating in binding political decisions. That is, liberal and non-liberal peoples are alike in that the members of each are provided a meaningful role in binding political decisions.

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<sup>53</sup> Rawls, *The Law of Peoples; with, the Idea of Public Reason Revisited*. Sect.2.1

<sup>54</sup> Ibid. p. 72

Furthermore, and this becomes most evident when considering all peoples in contrast to other forms of political society, non-liberal peoples, like peoples, are both rational and reasonable. Although non-liberal peoples do not share with liberal peoples a form of government, or norms of what constitutes appropriate political conduct, both liberal and non-liberal peoples are well-ordered by common good conceptions of justice which reflect their respective political cultures, and which direct official respect for human rights and other requirements of peace. In other words, all peoples, whether liberal or not, are at least decent. Rawls says,

“...A decent people must honor the law of peace; its system of law must be such as to respect human rights and to impose duties and obligations on all persons in its territory. Its system of law must follow a common good idea of justice that takes into account what it sees as the fundamental interests of everyone in society. And, finally, there must be a sincere and not unreasonable belief on the part of judges and other officials that the law is indeed guided by a common good idea of justice.”<sup>55</sup>

Despite that liberal and non-liberal peoples will conceive differently the fundamental interests of their respective citizens, both recognize that these interests, properly framed in terms of welfare, and civil and human rights, serve as guides to the rational exercise of political authority. But all peoples recognize as well that these same interests, as well as the importance of reciprocal good will amongst peoples, serve as side-constraints on what is a reasonable foreign policy.

*The idea of a people as a normative conception of collective self-determination*

In this section I interpret Rawls’s idea of a people to be a normative conception of collective self-determination. I will assume that whether it is a population’s capacity to govern itself in accordance with some normative collective self-conception or its capacity to control its resources (including, quite possibly, a territory) free from

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<sup>55</sup> Ibid. Sect. 9

inappropriate outside interference, the purpose of a population organizing as a people is to be self-determining, to be collectively responsible for developing and maintaining its basic social, political and economic institutions. In Part 1 I suggested that a group's capacity for collective self-determination depends on five things: its ability to form collective intentions, an internal culture that orients the formation of personal intentions to act in accordance with those collective intentions, agents authorized to act (vicariously) for the group, an effective internal practice of public accountability, and, in addition to these four conditions of responsible collective agency, to be self-determining a people's government must be justified in its exercise of coercive authority.

A people would satisfy these five conditions and thus could be collectively responsible for developing and maintaining its basic institutions. Let's consider each of these five conditions:

- A capacity for collective decision-making

To be self-determining, a people must possess a reliable means, either formal or informal, for all of its members to help shape the outcome of fundamentally important binding collective decisions. Those decisions are collective with respect to both their content and the mode of citizen participation. In the last chapter, I defined a collective as an organized group of agents who, among themselves, consider each member of the group to be equally valuable with respect to the definition and achievement of their common aims. How this "equally valuable" clause should be interpreted for any given people depends on the internal culture of that people. So, for instance, although the content of a people's collective decisions will always concern the common good of its citizens, the way that common good is understood will depend on how the citizens regard one another. For example, where the members of a people regard one another as free and equal persons, that common good will include the rights and liberties of democratic citizenship. Furthermore, as I argued in the course of defining a human right to

democracy, when the members of a people regard one another as free and equal persons, their collective decisions must be made democratically, in accordance with a deliberative principle of democratic legitimacy.

In contrast, where the members of a people do not regard one another as free and equal persons, but instead regard one another primarily as members of different groups, as would be the case with a decent hierarchical people, it is not clear that collective decisions must be democratic. In this case, it is sufficient for group decisions to be collective if the members of these various groups are free to consult on official decisions, and when appropriate, to dissent. For example, consider an undemocratic society organized on religious grounds according to the convictions of the majority religious sect. Even if rights of participation in government are determined by one's religious affiliation, the obligation of members of minority groups to cooperate with their government depends on officials taking seriously the status of minority groups as members of their society. Minority claims to be accorded their due place in considerations of the common good must be recognized, and their input into the political process must be taken seriously in order for binding decisions to be collective decisions.

- Agents authorized to act vicariously for a people

Although in unusual cases specific individuals might be authorized to act directly for people, it will typically be the case that the persons who act for a people do so indirectly, by acting as agents of a people's government. This government must be a government of the people. A people's self-determination is precluded when an occupying foreign power or colonial master governs it.

- A people's culture

The idea of a people outlined above takes for granted that a population has the internal culture necessary to sustain itself as a people. However, there are two

questions concerning the development of such a culture. First, is it necessary in advance of organizing as a people that a population's popular culture includes the symbolism of a unifying collective identity? And furthermore, what is the basis of such an identity? These are difficult questions to address, and I do not pretend to have definitive answers. The relevant historical evidence is indecisive. A population might, in advance of organizing as a people, be unified by their shared belief in either an ethnically or territorially defined national identity. On the other hand, a population could be divided by multiple national identities and nevertheless be unified by an attachment to common political institutions (e.g. former Soviet Union or the present United States). It is even possible that by a population could become unified by the act of organizing as a people. That said, although some sources may seem preferable to others (the less violently divisive the better), the possibility that the required common culture could exist even if these specific sources either are absent or at work simultaneously suggests that the specific source of the culture that sustains a people is less critical than that some such culture should exist.

- A people's internal practice of public accountability

Assuming a population possesses the administrative and legislative resources and practices required to act as a people, there is the separate issue of whether they have the practices of public accountability necessary for collective responsibility. In this context, a functional practice of public accountability requires three things: (1) citizens are able to (and for the most part do) participate in practices whereby they are at liberty to publicly criticize their government's policies and practices, (2) through either formal or informal means, citizens are at liberty to help shape the outcome of fundamentally important binding political decisions, and (3) there is a set of public standards or principles, that both government and citizens recognize to be politically authoritative and which express their shared commitment to their common good. Different peoples, with their different political cultures, ideas of personal responsibility, and moral or religious traditions, will have different ideas of

what their common good requires. This suggests that there is no universally appropriate way to operationalize public accountability.

In particular, it is important to recognize that depending on the context, democracy may not be necessary to achieve the level of public accountability needed for a people's collective responsibility. What is crucial for public accountability is that opportunities for political participation are sufficiently meaningful and governance is sufficiently transparent so that citizens are able to articulate their basic interests and confirm that government officials are acting in accordance the people's intentions. Some believe that democracy is necessary to achieve this. For instance, Amartya Sen argues that in light of humanity's historic struggles with corruption and the mismanagement of public resources, it is vital that those who govern are democratically accountable to those whom they govern. The idea is that democratic institutions allow citizens to routinely inform political elites of their economic needs and concerns, and to hold those elites accountable (perhaps by removing them from power), if appropriate policy responses are not forthcoming.<sup>56</sup> Sen is right that the democratic accountability of government officials is sufficient to meet the relevant requirement of collective responsibility. And where the political culture of the people in question is democratic, democratic accountability is also necessary to meet that requirement. However, where the political culture of a people is undemocratic, other institutions of public accountability may be appropriate. For instance, in some societies, it may suffice for government to be publicly accountable via transparent procedures of consultation coupled with the political freedoms citizens need to engage in peaceful activism, free from threat of retaliation, when it seems that government officials have violated their people's trust.

- Justifying the coercive authority of a people's government

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<sup>56</sup> Amartya Kumar Sen, *Development as Freedom* (Oxford ; New York: Oxford University Press, 2001).

Something mentioned in passing which demands elaboration is Rawls's assertion that a people's system of law is such as "to impose duties and obligations on all persons in its territory." This reference to territory is not essential. It could be replaced with some more general reference to jurisdiction, but the basic point is the same: Peoples possess the authority to coerce. In a world of angels, this authority would be unnecessary. Persons would acknowledge and act to satisfy their duties, and there would be no need for coercive tools like law enforcement to compel compliance. However, we live in a human world, a world in which coercion is an unfortunate, though necessary part of political life. But what justifies a people empowering its government to coerce?

Traditionally, either of two justifications, to achieve justice or to achieve security, are given to legitimate a government's coercive authority. On the one hand, it is tempting to dismiss the legitimacy of all non-liberal governments and answer that a population should act as a people to achieve social justice. On the other hand, it is also tempting to prioritize physical security and to accept the legitimacy of any effective political authority. Now, although it is indisputable that the achievement of justice and security are important aims of any political society, Rawls's suggestion that non-liberal peoples deserve equal standing alongside liberal peoples indicates a different threshold of justification, both less demanding than what justice requires and more demanding than what is required to achieve security. In this section, I assume that no one can have serious disagreement with restraining themselves or others in order to prevent serious harm, and explore the idea that the prevention of serious harm is the basis of a people empowering its government to coerce.

Rawls's contrast between peoples and other possible forms of political society suggests two classes of serious harm that a population could cause by not organizing as a people.

Rawls distinguishes peoples from societies that are burdened by unfavorable conditions and those that are outlaw states or benevolent absolutisms. Unlike a

people, a benevolent absolutism does not give its members “a meaningful role in making political decisions.”<sup>57</sup> Also unlike a people, a burdened society does not possess the necessities of collective self-determination. And finally, in contrast to the moral disposition shared by all peoples, an outlaw state is aggressive and domineering, seeking by its power and not by reason to bend other societies to its will.

The first class of serious harm that a population might cause by not being organized as a people is suggested by the contrast between peoples and burdened societies and underscores the value of the rational collective action. There are many potential consequences of concern, including inattention to a population’s welfare and neglect of the environmental integrity of the population’s territory. However, persistent conflict is perhaps the most problematic among the collective harms engendered by the absence of effective political authority.<sup>58</sup> Deliberative errors, incompatible desires, and differences in how any given state of affairs would influence the satisfaction of desires, may lead to conflicts between individuals and groups, which in turn may spawn controversies, and worse, violent conflict. The only way to avoid the insecurity, mistrust, and hopelessness that would otherwise characterize social life is to create a regime of law and order to insure against insecurity by “transferring the locus of deliberation from each individual to an agreed arbitrator [i.e. political authority], [so that] rationality supplants the resort to force in the resolution of conflicts.”<sup>59</sup> In short, anarchic circumstances, weak states, persistent conflict and the importance of their prevention suggest the fundamental value of empowering a government to provide the incentives, coercive and otherwise, necessary for humans to live in peace. However, a people should beware, lest by erecting the effective government they need, they create a power too formidable to be held publicly accountable, thus undermining their ability to take collective responsibility for themselves, their

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<sup>57</sup> Rawls, *The Law of Peoples; with, the Idea of Public Reason Revisited*. p. 4

<sup>58</sup> The current situations in Iraq, Sudan, Somalia, Afghanistan, Haiti and others come to mind as illustrative examples.

<sup>59</sup> Gauthier, p. 27 D. Gauthier, "Public Reason," *Social Philosophy & Policy* 12, no. 1 (1995).



territory (including its environmental integrity) and the pursuit of their common aim(s).

The second class of serious harms that a population might suffer by not being organized as a people underscores the importance of public accountability collective responsibility and is suggested by the contrasts between peoples and outlaw states, and between peoples and benevolent absolutisms. Like both outlaw states and benevolent absolutisms, peoples possess effective governments. However, the moral personality of a people is unlike that of either an outlaw states or a benevolent absolutisms. The collective harm caused by the existence of an outlaw state is akin to that caused by the absence of effective political authority. Through their actions, outlaw states demonstrate contempt for the value of fair dealings with other societies. For this reason, they cannot be trusted either to reciprocate the good will of other societies or to recognize reasonable limits on the use of force in pursuit of their rational interests. Sometimes this means sacrificing its own citizens, and sometimes it means sacrificing the lives of others. Either way, because of their warlike posture and willingness to discount the value of human rights, outlaw states have the greatest potential to engender insecurity in international relations. Of course, outlaw states are most problematic when they have a supportive citizenry; at the most extreme, the officials of an outlaw state are held publicly accountable to their citizens for pursuing a militaristic agenda. Rather, like the rational egoist in interpersonal relations, the outlaw state lacks the sense of justice required to be a responsible member of the international community.

As opposed to outlaw states, which are aggressive and expansionist, both peoples and benevolent absolutisms recognize that there are reasonable limits to their rational pursuits. However, because benevolent absolutisms do not give their citizens a meaningful role in processes of political decision-making, they lack the public accountability necessary to support attributions of collective responsibility. The harm caused by this situation may not be apparent on the surface. The

citizens of a benevolent absolutism may be relatively content, and the neighbors of such a society may not feel at all threatened. Nevertheless the vacuum of collective responsibility can be very harmful, perhaps most notably to the self-respect of citizens who know themselves to be competent guardians of their own interests.<sup>60</sup>

*Reply to the objection that democracy is necessary for a people's self-determination*

According to the idea of a people under consideration, it is not necessary for a population to be governed democratically for it to achieve collective self-determination. You might object that the quality of a population's practice of self-determination is directly a function of the autonomous agency of its individual members. The idea is that if a people ultimately is a collection of individuals, then a people is self-determining only if the individual members of the people are self-governing, and they can be self governing only if they are accorded the civil liberties of democratic citizenship. Charles Beitz expresses this criticism when he says, "States qua states do not think or will or act in pursuit of ends; only people (or perhaps sentient beings), alone or in groups do these things ...it is only considerations of personal autonomy, appropriately interpreted, that constitute the moral personality of the state."<sup>61</sup> He adds that unlike persons, who are naturally entitled to respect as autonomous sources of ends, a state is only entitled to respect as an autonomous source of ends if its "institutions satisfy appropriate principles of justice," meaning that it does what it can, given the resources at its disposal, to treat its members as autonomous persons. That is, Beitz does not claim that the state is incapable of having a moral character, only that its moral character depends entirely on whether it is just.

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<sup>60</sup> I understand this interpretation to be supported by Rawls's assertion that "it is surely a good for individuals and associations to be attached to their particular culture and to take part in its common public and civic life. In this way belonging to a particular political society, and being at home in its civic and social world, gains expression and fulfillment." Rawls, *The Law of Peoples; with, the Idea of Public Reason Revisited*. p. 111

<sup>61</sup> Charles R. Beitz, *Political Theory and International Relations* (Princeton, N.J.: Princeton University Press, 1999).

So really, there are two criticisms here. The first rejects a basic premise of the discussion so far, namely, that a collective entity (e.g. a people) can have moral powers that are not irreducible to the moral powers of its constitutive parts. I take it this is the force of the individualist assertion that “states qua states do not think or will or act in pursuit of ends.” Although it is true that a people can only act and intend as a function of the actions and intentions of its members, this does not imply that it does not possess any independent moral character. In particular, irrespective of whether it is democratic, a people can assume collective responsibility for preventing or ameliorating harms that it would be unreasonable or unfair to expect persons to bear, either singly or en masse. The second criticism is that a people deserves respect only if it is just. If true, the implications would be profound.

There are two implications of the claim that a people deserves respect only if it is just. First, if true, then we should not respect any society that is not at least nearly just. But it seems that even if a society is not just, it can merit respect due to its sincere intentions to act responsibly. There is something deeply admirable about a society’s effort to develop and exercise its capacity for collective responsibility. And even where we disapprove the mode of that capacity, we should respect the effort. Second, if true, then the members of a society that is not nearly just should not respect their own society. For example, if a people deserves respect only if it is just, then the citizens of an undemocratic people should not respect their own political institutions. Furthermore, where those citizens, perhaps as government officials, identify with their people’s collective identity, they should not respect themselves. When the members of a people lose self-respect through the disrespect of their collective identity as a people, we should expect their institutions for responsible collective agency to become ineffective. At least to avoid the grave harms discussed earlier, we should all respect a people’s responsible collective agency. Even absent the threat of those harms, whatever form it takes, the capacity to act responsibly is itself worthy of respect.

### **PART THREE: SHOULD WE TOLERATE UNDEMOCRATIC GOVERNMENT?**

Should a liberal people tolerate undemocratic government? You should say, “yes” only if you believe that a liberal people should tolerate both domestic and foreign undemocratic government. So, taking the question one part at a time, should a liberal people tolerate domestic undemocratic government? Even using a limited understanding of toleration as holding oneself back from interfering with something of which one disapproves, it is clear that a liberal people should not tolerate domestic undemocratic government. The reason is that it is only by its own democratic government that a liberal people could ever hope to realize its public conception of social justice. However, and this issue is the focus of this chapter, it is far less obvious whether a liberal people should tolerate foreign undemocratic government. I argue that in some cases, they should.

In defending the position that liberal peoples should tolerate certain undemocratic governments, I will use an understanding of toleration that extends beyond mere non-interference. Whereas it is uncontested that an agent refraining from interfering with some other agent may be an act of toleration, it is a matter of recent controversy whether toleration may also take the form of an agent recognizing some other as their political equal (i.e. equal recognition). In the first section, I take sides in that debate, arguing that toleration may take the form either of non-interference or equal recognition. I first present what I consider to be an orthodox conception of toleration according to which toleration necessarily takes the form of non-interference. I then consider the merits of a view that challenges that orthodox conception on grounds that it is irrelevant to democratic society and that it unreasonably precludes the possibility of a socially necessary form of toleration. I conclude that depending on context toleration may take the form either of non-interference or of equal recognition. In the second section, I interpret that conception of toleration for the global context, for the relations amongst peoples and other classes of political society.

And finally, I present my case that liberal peoples should tolerate the undemocratic governments of non-liberal peoples. I argued in the preceding chapter that all peoples, whether democratic or not, possess a capacity for collective self-determination that enables them to act responsibly. In addition, each people possesses a moral nature, leading it to support a domestic government that respects human rights and cooperates with the governments of other peoples for such eminently reasonable ends as preserving international peace and stability. The value of not undermining a people's capacity for collective self-determination suggest that liberal peoples should refrain from interfering in the governance of non-liberal peoples. Also, non-liberal peoples possess the moral powers necessary to act make good their collective intentions to be reliable cooperating members of the international community. And since the development of those powers should be encouraged, and a people's collective intention to be a responsible member of the international community should not be frustrated, every people should be equal status as a member of the international community. To deny a people this equal recognition communicates an unreasonably humiliating lack of faith in its intention to be a responsible member of the international community.

#### *Toleration as non-interference*

In his useful recent analysis of toleration Andrew J. Cohen says, "An act of toleration is an agent's intentional and principled refraining from interfering with an opposed other (or their behavior, etc) in situations of diversity, where the agent believes she has the power to interfere."<sup>62</sup> To reconstruct that analysis I distinguish the preconditions, acts, and justifications of toleration as non-interference.

There are three preconditions of toleration as non-interference. The first is a situation of diversity. A situation of diversity is when an agent acknowledges some salient difference between himself and another, differences inherent in the agents

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<sup>62</sup> A. J. Cohen, "What Toleration Is," *Ethics* 115, no. 1 (2004).

themselves or in their practices or beliefs or behavior. The second precondition is disapproval. The tolerating agent must not only acknowledge some salient difference between himself and another, he must also disapprove the difference. An agent considering toleration must actually dislike or morally disapprove of the agent or belief or behavior or practice to be tolerated. In other words, it is impossible to tolerate something that one approves, endorses, or towards which one is indifferent. And finally, the agent considering toleration must believe they have the power to hinder, reform or otherwise to interfere with the object of toleration.

All acts of toleration are intentional. You cannot tolerate something without intending to do so. This means that an unreflective habit of permissiveness does not count as toleration. Furthermore, Cohen contends that all acts of toleration are omissions, involving a decision not to interfere with some disapproved other (or their behavior, etc.). Cohen admits, however, that when coupled with some form of non-interference, some forms of interference may actually be consistent with toleration. For instance, suppose that one refrains from forcibly interfering with some disapproved other. It is sometimes consistent with toleration to use dialogue in an attempt to persuade the disapproved other to change their ways.

In addition to being intentional, all acts of toleration are done for the right reasons. These do not include prudential reasons merely to endure a proposed object of toleration. Positively, there are two possible justifications for toleration. First, you might choose to tolerate a person, their beliefs, or their behavior because, on some level, you respect that person. Or second, the tolerating agent, might simply value non-interference itself.

#### *An argument for toleration as public recognition*

Sometimes toleration requires, in addition to non-interference, the public recognition of a group's cultural identity. The classic circumstances of toleration

involve differences between individuals that give rise to disapproval and competing reasons for interference and restraint. Anna Galeotti argues that there may be circumstances of toleration where non-interference is not an issue. She believes these circumstances obtain when a majority group in a democratic society disapproves of the mores or beliefs of a minority group and the question arises whether public authorities, under the direction of the majority group, should tolerate the practices or beliefs of the minority group. In a democratic society, where “everyone is granted the right to entertain and to pursue his or her own conception of the good and its corresponding lifestyle, as long as no harm to any third party is produced,” official interference is not a legitimate option. This is because if a conception of the good passes the harm test it is inappropriate for political authorities to act from dislike or disapproval of that conception; the political authorities of a democratic society should be neutral or impartial with respect to competing conceptions of the good.<sup>63</sup>

According to Galeotti, this does not mean that the public authorities of a democratic society should never exhibit toleration. Other demands for toleration arise, she says, when there are “conflicts concerning the assertion and the recognition of (usually ascriptive) collective identities linked to the excluded, marginalized or invisible groups inhabiting contemporary democracies.”<sup>64</sup> Galeotti argues that when there is pluralism, when a society is divided between a culturally dominant majority and minorities, contests will arise over the social acceptability of beliefs, practices, etc. that are, at once, constitutive of a minority group’s cultural identity,<sup>65</sup> and at the same time objects of dislike or disapproval by members of the majority group. If the minority group asserts the legitimacy of their cultural identity a question of toleration arises: Should public authority be used to reinforce the cultural dominance of the majority, thus perpetuating the social exclusion of the

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<sup>63</sup> For another interesting discussion of the relevance of toleration to democratic society, see: Ingrid Creppell, *Toleration and Identity: Foundations in Early Modern Thought* (New York: Routledge, 2003).

<sup>64</sup> Anna E. Galeotti, *Toleration as Recognition* (Cambridge, UK ; New York: Cambridge University Press, 2002). p. 86

<sup>65</sup> Although Galeotti uses the phrase ‘collective identities’, it seems it would be more accurate for her to use the phrase ‘cultural identities’. So, in discussing her view, where she would use the former phrase, I will use the latter.

minority group, or should that authority make a symbolic “public gesture intended to legitimize the existence of differences and place them on the same footing as the habits and practices of the majority”?<sup>66</sup> Galeotti claims that fairness demands the symbolic public gesture.

She says, “Public exclusion of differences is unfair because it treats minority members differently from members of the majority, whose identity is openly visible for everyone in the political domain. It unjustly keeps minorities in a marginal position of second-class citizenship.”<sup>67</sup> To be fair, minority demands for public acceptance of their cultural identities should be accommodated, not to promote diversity, but rather for the effect that acceptance would have to bolster the self-respect of those in the minority group. The collective identity of the minorities should be recognized, “not for their intrinsic value, which it is not up to political authorities to determine, but instrumentally, for the value they have for their bearers.”<sup>68</sup>

#### *Jones's critique of Galeotti's argument for toleration as public recognition*

In a recent paper, Peter Jones argues that we should stick to the traditional notion of toleration and reject Galeotti's claim that toleration may take the form of the public recognition of otherwise excluded collective identities. He says,

“We seem to have a choice. We can call for the unmediated recognition of specific identities, which seems inescapably to entail calling, in some form, for the approval or endorsement or validation of each specific identity that we wish to be recognized. But, in that case, it is hard to see what room is left for the disapproval that would make these acts of recognition exercises in toleration. Alternatively, we can recognize someone under a description other than, and more general than, their specific identity, and that general form of recognition can give us reason to show respect and consideration for the specific identity, even though it is an identity of which we disapprove. But, in that case, our recognition is directed first and foremost not at the specific identity but at a more general identity and it is the

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<sup>66</sup> Galeotti, *Toleration as Recognition*. p. 10

<sup>67</sup> Ibid.

<sup>68</sup> Ibid. p. 14



generality of that recognition that gives us reason to tolerate the specific identity of which we disapprove."<sup>69</sup>

But really, Jones is uncomfortable with even the more modest version of toleration as recognition he proposes. He continues,

"The language of toleration of identity sinks people's particularities into their very being. Their particularities become hallmarks of who they *are* rather than merely manifestations of what they believe or what they do. Thus tolerating someone's identity becomes tantamount to tolerating their very existence. But that someone's mere existence should be the object of toleration is a proposition that we rightly find disconcerting."<sup>70</sup>

The critique, in short is that toleration cannot take the form of recognition because, on the one hand, the sort of recognition that Galeotti has in mind would communicate public endorsement of specific cultural identities, and on the other hand, by treating a person's identity as so constitutive of who they are, we are lead to the absurd conclusion that it is appropriate to tolerate someone's existence.

Is it true that the public recognition Galeotti defends amounts to public endorsement of specific cultural identities? If one insists, as Galeotti sometimes seems to do, that the purpose of recognizing minority collective identities is to put them on the same footing as the collective identities of the majority (i.e. as equally "normal"), it is unclear how to avoid the conclusion that such recognition communicates approval. It is one thing to institute measures that aim to guarantee that one's collective identity is not in itself a source of disadvantage, and possibly quite another to institute measures to persuade the majority to accept minority collective identities as normal. Admittedly, however, actual circumstances may be such that popular acceptance of minority collective identities as normal is necessary to eliminate the disadvantage associated with that identity. And if this popular acceptance is what's called for, and it is the actions of political authorities that are at stake, then it would seem necessary, on Galeotti's account, for public

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<sup>69</sup> Peter Jones, "Toleration, Recognition, and Identity," *Journal of Political Philosophy* 14, no. 2 (2006). p. 139

<sup>70</sup> *Ibid.* p. 140

authorities to laud minority identities. This is problematic as a view about toleration because this praise would preclude toleration.

But sometimes Galeotti does not frame the recognition she believes toleration may require in terms of minority identities gaining public acceptance as normal. Rather less substantially, she sometimes claims that it is sufficient if they are simply acknowledged publicly to be legitimate. The idea, roughly, is that although the decision that something is legitimate does confer some approval, it does not necessarily require approval strong enough to counter sentiments of disapproval. For instance, suppose the majority are religious conservatives who disapprove homosexuality, and the minority are members of a gay rights movement. The majority might retain their convictions, and yet symbolically acknowledge the right of that movement to advocate their cause publicly, and even the illegitimacy of discrimination against members of the movement. That is, they may acknowledge the legitimacy of the movement, and the culture associated with it, all the while retaining their strong sentiment of disapproval. So, equal recognition may confer legitimacy which is consistent with the disapproval essential to toleration.

The plausibility of Jone's second criticism seems to depend upon the importance to the agent in question of the collective identity to be tolerated. If the agent is a person and the identity in question is their collective identity, then whether or not tolerating the identity amounts to tolerating their existence depends on how strongly they subscribe to that collective identity. For some people, their collective allegiances either are transient or more constant but very weak. For others, the opposite is true. For instance, the loss of a national identity can be debilitating for individuals who consider their national identity to be essential to their self-conception.<sup>71</sup> So, even if it seems analytically that we ought to distinguish between a person and their beliefs, where the latter, but not the former, is an appropriate object of toleration, in practice, when it comes to a person's collective identity that

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<sup>71</sup> For a discussion of this point, see: David Miller, *On Nationality*, *Oxford Political Theory* (Oxford: Clarendon Press; Oxford University Press, 1995).

distinction may lead us to miss the point. To the extent that the collective identities in question are weak, it seems that Galeotti has overstated the need for recognition toleration. In contrast, assuming there is a prima facie case for not injuring one's self-respect, her case is strong where the public legitimation of the collective identity in question is essential to the maintenance of a person's self-respect.

In sum, Jones' criticisms help to focus on two aspects of recognition toleration that Galeotti fails to emphasize. First, although the public recognition of an otherwise excluded cultural identity does communicate some level of public approval for that identity, so long as this recognition takes the form of legitimation, and not some intentional transformation of public standards of normalcy, that recognition may be consistent with the basic requirements of toleration. And second, the importance of taking into consideration the self-respect of persons who share a specific cultural identity has an important implication for the toleration of certain collective agents. However, we must always be sensitive to the consequences of such intolerance for the self-respect of individuals who identify with the collectivity in question.

### *The contribution of toleration to democratic equality*

Before moving on to consider how the implications of these considerations about toleration for relations amongst peoples, there are two more things I would like to clarify about the idea that toleration may require public recognition. First, Galeotti defines the circumstance of recognition toleration too narrowly, as a contest between majority and minority groups. For Galeotti, a minority group is any social group "which is comparatively small in size and in a disadvantaged social position within the larger society."<sup>72</sup> Her aim is to pick out those members of a society who shape that society's cultural identity or understanding of what is acceptable, and this is a function both of sheer numbers and unequal capacities for effective social and political influence. But although the two often are often linked, they are not

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<sup>72</sup> Galeotti, *Toleration as Recognition*. p. 89 (fn 9)

necessarily so, and it seems better to focus, not on numbers, but on what is really at issue: the different capabilities of groups to shape what is acceptable within society. For example, though comparatively small in size, a ruling elite would not count as a minority, because it is not in a disadvantaged social position; but clearly, such an elite might have effective control over public norms. Power, or the capacity for influence, is most important in determining who is in a position to shape public understandings of what behavior or sub-cultures are publicly acceptable.<sup>73</sup>

And second, despite Galeotti's effort to sharply distinguish the circumstances of recognition toleration from the circumstances of non-interference toleration, the former are really a special case of the latter. Recall that according to the orthodox account of toleration, toleration has a place only if one recognizes salient differences between oneself and another, where one dislikes or disapproves the difference and one feels they have the power to interfere. The circumstances to which Galeotti draws our attention are similar in that: (a) the salient differences (over identity) are acknowledged, (b) those who have adopted the mainstream cultural identity disapprove the expression of the alternative or competing cultural identities of less powerful groups, and (c) those who adopt the mainstream cultural identity surely have the power to interfere with the expression of those alternative or competing cultural identities. You may then wonder why, if the circumstances are so similar, that non-interference is not the only appropriate form of toleration.

This is where it is particularly important to be clear on our assumptions about democracy. Recall that according to a deliberative conception of democracy it is impermissible for citizens use their collective power as a people to enforce tenets of conventional morality that some citizens could reasonably reject. But even absent interference, popular sentiment against a group may be so strong that formal measures against their exclusion might be ineffective against concerted

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<sup>73</sup> For example, witness the influence of the religious right on American politics. They are a minority by numbers, but giants in terms of their ability to influence public opinion.

campaigns in the popular culture to marginalize that disapproved group. From one citizen to another, it will seem incoherent and insulting if out for respect for me as your equal, you refrain from calling for the use of public power to actively interfere with my lifestyle, but then you use every other available means publicly to marginalize my cultural identity. Furthermore, the failure of public authorities to interfere with such campaigns of exclusion will symbolize to excluded groups the complicity of public officials. I do not mean to suggest that such incoherent and insulting behavior should be censored. Rather, it is precisely when popular sentiment against a group is most strong that it is imperative that public officials, especially those who are known personally to share that sentiment, publicly confirm their accountability to all members of society by affirming the legitimacy of the cultural identities threatened with exclusion.

In light of the preceding discussion, I propose the following: An act of toleration is an agent's intentional and principled refraining from interfering with another (or their identity, behavior, etc.) in situations of diversity, where the agent believes she has the power to interfere. However, if the agent and the opposed other are members of the same political society of equals, and the object of disapproval is the opposed other's cultural identity and the agent believes she has the power to interfere with the expression of that cultural identity, then an act of toleration might take the form of an agent's intentional and principled public acceptance of that disapproved cultural identity.

### *International toleration*

So far, my discussion of toleration has followed the literature on toleration by focusing on the domestic relations of a democratic society. It is far from obvious how the understanding of toleration developed there should bear on the (international) relations between peoples. In this section I reinterpret that idea of toleration for global politics. The main difference between the global and domestic contexts that necessitate a special idea of toleration for relations between peoples

is that all the agents of interest are collective agents, agents that rely for their very existence upon the maintenance of their distinctive collective cultural identities. As such, it is *prima facie* implausible that the same norms that apply to the relations between the citizens of a democratic society should equally apply to the relations between peoples. In light of these contextual differences, I define international toleration as follows:

Some acts of international toleration take the form of a people's intentional and principled refraining from intervening in the domestic affairs of an opposed people where the tolerating people surmises that it has the power to intervene. Other acts of international toleration take the form of a people's intentional and principled support for granting recognition legitimacy to an opposed people where the tolerating people surmises it has the power to obstruct that grant of recognition legitimacy. So, full international toleration requires two things: respect for sovereignty, or non-interference in the domestic affairs of non-liberal peoples, and the extension to recognition legitimacy. The connection between this definition of international toleration and the preceding definition of toleration may not be clear. So, before I go on to present my case for why liberal peoples should tolerate the undemocratic governments of decent non-liberal peoples, I will say a bit more about this idea international toleration.

- Respect for sovereignty

The idea of sovereignty I use is a modification of the traditional idea of sovereignty to account for the permissibility of certain humanitarian interventions. This idea was suggested in connection with the International Commission on Intervention and State Sovereignty. Rather than conceive sovereignty so that it is in conflict with humanitarian intervention, the Commission understood "sovereignty as the responsibility of a state to protect its vulnerable populations. If—but only if—it fails,

the broader community of states must shoulder that responsibility."<sup>74</sup> To be clear, while this understanding of sovereignty rejects an absolute prohibition against humanitarian intervention, it also rejects the prima facie permissibility of humanitarian intervention.

It should be obvious why we should reject an idea of sovereignty that includes an absolute prohibition against humanitarian intervention. History provides too many instances where governments have abused their populations to the point where it was unconscionable for those with the means to intervene not to do so. It is perhaps less obvious why we should reject the prima facie permissibility of humanitarian intervention. I believe that one's stance on this issue ought to turn on what value, if any, one assigns to the political boundaries between peoples. One reason you might not believe in the moral significance of internationally recognized international borders is that these borders are artificial. To some, the contingent nature of the boundaries between peoples means that they are irrelevant from a moral point of view. But just because the boundaries between peoples are artificial does not mean they should be considered insignificant from a moral point of view. In particular, internationally recognized national boundaries (i.e. boundaries between peoples) are morally significant because they are essential to a people's collective responsibility. They provide a people with a well-defined, and therefore potentially manageable, domain of collective responsibility.

### *Recognition legitimacy*

It is virtually impossible for a people to be collectively responsible without public recognition of its legitimacy by other peoples. Conceptually, recognition legitimacy concerns: "Judgments about the status of entities in the international legal system. The judgment that a political entity is legitimate in the recognitional sense confers the status of being a member in good standing of the state system on that entity,

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<sup>74</sup> Evans International Commission on Intervention and State Sovereignty., Gareth J., Sahnoun, Mohamed, "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty," (Ottawa: International Development Research Centre, 2001).

with all the powers, liberties, claim-rights, and immunities that go with that status."<sup>75</sup> These include, but are not necessarily limited to: rights to territorial integrity, collective self-defense, and non-interference in internal affairs; rights to promulgate, adjudicate, and enforce legal rules with that territory; and powers to make treaties, alliances, and trade agreements.

Even if these rights and powers are conferred upon a people, unless its government is recognized to be legitimate, the people in question will be unable to make use those rights and powers. But it is not only a people's capacity for responsible collective agency that would be affected by a denial of recognition legitimacy. When the international community stigmatizes or humiliates a people or its government, either its citizens or government officials (as the case may be), as individuals, could suffer a potentially harmful loss of self-respect.

#### *Justification for international toleration*

For liberal peoples to tolerate these undemocratic governments first of all would require that liberal peoples respect the sovereignty of non-liberal peoples. This means, for example, that it would be inappropriate, in the name of spreading democracy, for the government of a liberal people to intentionally undermine the government of a non-liberal people. In addition, international toleration would require that liberal peoples recognize the legitimacy of non-liberal peoples and grant them equal status as members of the international community. Now, this is not to say that liberal peoples would be barred from developing their own, more exclusive federations that limited membership to peoples with democratic governments. Unlike a global federation of peoples, the jurisdiction of federations like the European Union would be limited, and peoples would have no prima facie entitlement to membership.

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<sup>75</sup> Allen E. Buchanan, "Recognitional Legitimacy and the State System," *Philosophy & Public Affairs* 28, no. 1 (1999).



By definition, liberal and non-liberal peoples affirm irreconcilable collective intentions regarding the development of a just social order. It is therefore inevitable that liberal peoples will disapprove of how non-liberal peoples are governed.

Therefore, there is at least the possibility of international toleration. However, this disapproval might be too strong. History suggests that whether reasonably or not, in addition to their disapproval of undemocratic governments, liberal peoples might fear that accepting the existence of undemocratic governments would threaten to undermine their democratic ways of life. Many also worry that for liberal peoples to recognize undemocratic governments makes liberal peoples complicit in perpetuating injustice. So, why believe that liberal peoples should overcome their disapproval, worry and fear to tolerate their non-liberal counterparts?

There are two sets of reasons that argue in favor of liberal peoples fully tolerating (the undemocratic governments of) non-liberal peoples. A people may respect another people and its government and therefore choose to tolerate them. Or a people may choose to tolerate another people because it believes it is especially important not to interfere in another people's domestic affairs.

The second set of reasons is sufficient to justify international non-interference toleration. There are two reasons a liberal people might choose to respect the sovereignty of a non-liberal people. One reason is that a liberal people might be committed to an isolationist foreign policy, and whatever its demerits, there need not be anything unprincipled about isolationism. A stronger reason for liberal peoples to respect the sovereignty of non-liberal people is out of respect for the self-determination of peoples. Refraining from intervening in the domestic affairs of their non-liberal counterparts does not necessarily mean that liberal peoples actually have respect for non-liberal peoples. However, liberal peoples at least ought to acknowledge that all peoples share an interest in collective self-determination. And if a non-liberal people would not seek to undermine a liberal people's self-determination, in the spirit of reciprocity, liberal peoples should offer the same in return.

But why should liberal peoples recognize the legitimacy of a non-liberal people's government? The reason for liberal peoples to recognize non-liberal peoples as their equals is that to do otherwise would communicate an unreasonably humiliating lack of faith in the intentions of non-liberal peoples to be responsible members of the international community. Denying equal recognition to a people is humiliating because it relegates a people to second-class status. My assumptions are that, on the one hand, it is humiliating when an agent strives for equal status and is denied because of an inherited feature over which the agent has limited control. And on the other hand, it is insulting, and possibly humiliating when an agent learns that it must give up its identity before other agents will reciprocate its sincere intentions to be cooperative.

Humiliating a people has a number of potentially problematic consequences. First, when a people is made suffer collective humiliation because it chooses to govern itself in accordance with its own traditions, either of three things might happen. For one, its members could lose confidence in their identity as a people, with the symbols of their unity as a people becoming sources of popular derision or shame. Or, that humiliation could breed contempt, causing the people in question to reject cooperation with the international community. When a people is humiliated despite its clear intentions to act responsibly, we should expect either or both of the first two alternatives. And you might believe that these potential outcomes provide no reason for a liberal people to extend equal status to non-liberal peoples. Perhaps you believe that undemocratic peoples should be humiliated until they revolutionize their political culture, or that it is no fault of ours if non-liberal peoples choose to remain undemocratic and therefore isolated. But, unless your intention is to inspire ineffective governance or militant radicalism, you may want to think twice about choosing to humiliate a people.

Consequences aside, if a people clearly is trying to be cooperative, it is simply wrong to humiliate it by denying it equal recognition. There are two intuitions at

work here. The first is that the capacity to act responsibly is itself worthy of respect. People should take responsibility for themselves in ways that are meaningful for them. The second is that a people's self-respect is a basic good. When a people respects itself it will honor its collective intentions and safeguard the integrity of its basic institutions. The people itself will be a source of pride and solidarity for its members, and those who act for the people may draw on that pride and solidarity to affirm the meaningfulness of their work. For many, it is empowering to know that you are contributing to the collective enterprise which structures and sustains your way of life. And it is hard to imagine how it would be wrong for citizens to take pride in their common enterprise to respect human rights, to maintain a commitment to peace, and more generally, and to govern according to their shared understanding of their common good.

You might object that I have drawn too heavily on an analogy between peoples and persons, assuming that peoples will mirror in their own way the psychological tendencies of human individuals. What I have tried to emphasize is that insofar as the members of a people identify with it, humiliating a people means humiliating its members. And when people feel humiliated they tend to get either angry or depressed, and either way, they often act irresponsibly. Although a people is not a person, a people's intentions are decided upon by persons, and if those persons are feeling insulted and humiliated, we should expect that this to be reflected in their collective actions.

## CONCLUSION

In the introductory chapter I identified the following three considerations that factor in the justification of a human right.

- *Determinacy*: Whether the substance of the proposed right is sufficiently clear
- *Validation*: Whether it is plausible that the proposed right could be acceptable to the cooperating members of the international community
- *Fit*: Whether the proposed right is coherent with the established human rights doctrine, and consistent with the peremptory norms of the international community.

How does a purported human right to democracy fare with respect to these criteria? The determinacy of a human right to democracy is limited by the absence of a “one size fits all” way to translate the abstract institutional guidelines of deliberative democracy into an effective practice of democratic governance. Even if it is relatively clear to a liberal people which norms are or are not democratically legitimate, this does not mean this understanding is easily transferred to institutional environments with undemocratic political cultures. I do not mean to suggest that it must be perfectly clear to all peoples what democracy requires in order for there to be a democratic entitlement. This would go against the force of the idea that human rights are standards of achievement for which all peoples should strive. However, it is important to acknowledge that different political cultures have different resources and potentials for democratization. For some, the cultural necessities are present for citizens to treat one another as free and equal persons. For others, nothing short of a sustained reformation of the political culture would be required for democratic institutions to take root.

It should also be clear that it would be incoherent for undemocratic peoples to validate a human right to democracy. Unless there is some compelling countervailing reason to exclude undemocratic peoples from equal status in global public reason (a possibility which I will consider shortly), the importance of

ensuring the international basis of each people's self-respect supports democratic peoples granting recognition legitimacy, and thus equal standing, to undemocratic peoples. Just as in a democratic society the terms of political association should reflect the mutual respect befitting a society of equals, so too should the common standards of a society of equal peoples reflect the unwillingness of powerful democratic peoples to make undemocratic peoples authors of their own public denigration. This does not mean that democratic peoples must refrain from promoting democracy. It does mean, however, that they may not use the shared resources of the international community to do so. This does not take away as much as one might suspect, mainly because the argument to exclude democracy as a common standard of achievement for all peoples is in effect an argument that all peoples must develop effective practices of public accountability. If all societies developed to the point where they could act as peoples, with the requisite practices of public accountability, this would represent a positive revolution in how the vast majority of humanity is governed.

Even if there are strong reasons to believe that democratic peoples should tolerate undemocratic peoples, you might be heartened by the possibility that all undemocratic societies will not necessarily remain so. Even without efforts to this end by government officials, a liberal-democratic worldview might gain increasing acceptance around the world, aided perhaps by the sort of cultural exchanges coincident with economic globalization. However, defenders of a human right to democracy may resist my conclusion, arguing that toleration of undemocratic peoples would itself be incoherent with the established human rights doctrine or inconsistent with the peremptory norms of the international community. A critic might believe, for instance, that either undemocratic governments are a threat to international peace and security or that undemocratic government necessarily is oppressive. In conclusion, I would now like to address these two challenges to my view that a human right to democracy does not exist.

*On the Democratic Peace hypothesis*

Thomas Franck argues that peace requires us not to tolerate undemocratic governments. According to Franck the peremptory norms of international law are the secondary rules of international law (rules by which other rules are validated or invalidated) and include, for example, that treaties are binding, that internationally recognized states are equal in terms of their international legal rights, and perhaps most fundamentally, that a purpose of the international political order is to maintain peace and security.<sup>76</sup> However important the protection of human rights, the maintenance of peace and security has a privileged status as necessary for any rights to be secure. All rights are least secure during war. So, the strongest position he could defend, and the one which he does in fact defend, is not merely that enforcement of the democratic entitlement is a good means to promote peace, but rather, following Kant's idea of perpetual peace, that enforcement of the democratic entitlement is a necessary means to peace.

The argument for this claim proceeds in two steps. He begins with the idea that "the denial of democracy creates a well-founded presumption that a breach of the peace will be caused by the gross denial of this basic human right."<sup>77</sup> This assertion may be understood to suggest either that totalitarian regimes have a penchant for inciting conflict or that totalitarian regimes, by rejecting democracy, thereby encourage other states to aggress against them. Franck says, "A fundamental causal factor in states' non-aggression...is the condition of domestic democracy."<sup>78</sup> Franck appears to mean both that liberal democracies are not disposed, in general, to aggression, and in particular, to war upon one another. Evidence that liberal democracies do not fight each other is given by recent history. Unfortunately recent US foreign policy suggests that relatively democratic societies are not inherently disposed to be peaceful. Despite this Franck advances the idea that a society whose political leaders are democratically accountable "will

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<sup>76</sup> Franck, *Fairness in International Law and Institutions*. p. 42

<sup>77</sup> *Ibid.* p. 134

<sup>78</sup> *Ibid.* p. 134

be reluctant to engage its members' lives and treasure in causes espoused by leaders deluded by fantasies of grievance or grandeur."<sup>79</sup>

Kant held that a permanent peace amongst all peoples would require, first, that "The civil constitution of every state shall be republican", second, that "The right of nations...be based on a federation of free states", and third, that "Cosmopolitan right...be limited to conditions of universal hospitality."<sup>80</sup> The requirement that each state should have a republican constitution would seem to separate Kant's idea from contemporary work on the so-called democratic peace hypothesis, which takes Kant's idea of perpetual peace as its starting point. A closer look at what qualifies a constitution as republication (i.e. a common legislation for all, legal equality, social freedom, and a political leadership who are citizens and thus subject to the law) reveals that Kant's idea of a republican constitution is more concerned with conditions for maintaining the rule of law and a liberal social order than it is with democracy. However, Kant believed that the great physical and financial risk of war would lead citizens of a republic to be very reluctant to approve a decision to go to war and presumably, the citizens of contemporary democracy share this reluctance.

Kant's idea that "the right of nations...be based on a federation of free states" reflects his conviction that "Each nation, for the sake of its own security, can and ought to demand of the others that they should enter along with it into a constitution, similar to a civil one, within which the rights of each could be secured", and that given the "will of the nations", a world republic, unlike a federation of peoples, is not a practical possibility.<sup>81</sup> In general, as a matter of right, the lawless freedom of agents in a state of nature should be traded for a circumstance where the lawful rights of each are protected by a common power. Although it might seem appealing for some republic to govern the interpersonal

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<sup>79</sup> Ibid. p. 136

<sup>80</sup> Immanuel Kant, "Perpetual Peace: A Philosophical Sketch," in *Kant: Political Writings*, ed. Hans Siegbert Reiss, *Cambridge Texts in the History of Political Thought* (Cambridge [England] ; New York: Cambridge University Press, 1991).

<sup>81</sup> Ibid. p. 102-105

relations of all humanity, there are two arguments against it. First, unlike discrete individuals, who have personalities, but no cultures all their own, peoples possess distinctive languages, religions, and other cultural properties that make it impracticable to expect that they might submit themselves to be governed by the authority of a single world republic. The second reason is that, if “laws progressively lose their impact as the government increases its range”<sup>82</sup> then universal civil legislation is doomed to be ineffective. So, whereas a world republic is in one sense preferable, given actual human mores, such a republic is impossible. Therefore, hopes for peace lie in a second-best option: a relatively loose federation of peoples, which, although lacking the unified civil institutions of a world republic, must nevertheless have sufficient authority to enforce the requirements of peace.<sup>83</sup>

For Kant, the conditions of cosmopolitan right appear to be shaped by this practical limit of global political authority. If a world republic were a practical possibility, then presumably cosmopolitan right would be coextensive with republican right. However, with a federation of peoples, cosmopolitan rights are limited to rights of hospitality. Kant says first, that “In this context, hospitality means the right of a stranger not to be treated with hostility when he arrives in someone else’s territory,” second, that “the stranger...may only claim a *right of resort*, for all men are entitled to present themselves in the society of others by virtue of their right to communal possession of the earth’s surface,” third, that “this right...does not extend beyond those conditions which make it possible for them to *attempt* to enter into relations with native inhabitants,” and finally, he suggests that this right would be limited reasonably in circumstances where the visitors have displayed a willingness to abuse it.<sup>84</sup> And how should we interpret this right of resort? Though it could be understood as a right of foreigners to attempt to engage culturally with the inhabitants of a country they visit, given Kant’s idea of the

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<sup>82</sup> Ibid. p. 113

<sup>83</sup> The European Union, with its push to greater integration and popular rejection of a European constitution, is a contemporary example of this sort of limited federation.

<sup>84</sup> Kant, “Perpetual Peace: A Philosophical Sketch.” p. 105-108



guarantee of perpetual peace, it seems that this cultural reading would only be a supplement to a commercial one. After commenting on humanity's natural propensity for war, he notes that humans are more powerfully motivated by material (i.e. financial) self-interest, which would cause commercial relations, which "cannot exist side by side with war" to link all peoples, and "in this way, nature guarantees perpetual peace by the actual mechanism of human inclinations."<sup>85</sup>

Franck invokes Kant's idea of perpetual peace, but how does his statement of the conditions necessary for peace compare to Kant's? Franck says, "A fundamental causal factor in states' non-aggression...is the condition of domestic democracy." The obvious point of convergence between Kant and Franck is on the idea that citizen oversight of a decision to go to war would make a declaration of war unlikely. However, Kant and Franck diverge on the cause of this oversight. Kant would point to the rule of law, which is essential to constitutional democracy but not constitutive of it. In contrast, based on the idea that democratic self-government is necessary to protect the rule of law, Franck would extend this to include the requirement that political leaders are chosen through free and fair popular elections. In addition, it is less obvious that Kant would assert the converse claim about the absence of citizen oversight actually making war more likely to occur. Although Kant says,

"Under a constitution where the subject is not a citizen, and which is therefore not republican, it is the simplest thing in the world to go to war. For the head of state is not a fellow citizen...[and] can thus decide on war, without any significant reason."<sup>86</sup>

This must be qualified by his assertion that a natural desire to make war must compete with a contradictory desire for the material benefits of commercial trade. And where the desire for wealth competes with the desire for glory, it is by no means obvious that the latter will outstrip the former.

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<sup>85</sup> Ibid. p. 114

<sup>86</sup> Ibid. p. 100

That said, how does the idea of a democratic peace fare empirically? The democratic peace proposition, might be interpreted to mean, first, that a democratic society is unlikely to declare war at all, or second, that democratic societies are unlikely to make war upon one another. If understood in the first sense, the democratic peace proposition is false, since democratic societies appear to be as prone to interstate violence as non-democratic societies.<sup>87</sup> Where political realists would claim this reflects the influence of balance of power politics, Habermas attributes this more or less equal propensity of states for interstate violence to the influence of nationalism.<sup>88</sup> But if understood in the second sense, then that proposition seems to have some empirical validity, since, in fact, and especially since WWII, democracies do not war on one another. However, it isn't clear why this is so. For one, it might just be that similar types of political regime are in general unlikely to war on one another. Chan, citing Hermann and Kegly notes, "wars between countries with different regime types are more likely than expected by chance, whereas wars among countries with similar regime types are less likely than expected by chance."<sup>89</sup> For another, perhaps there really is something about their allegiance to democratic norms that makes democratic societies prone to settle their disputes with one another peacefully.

As for other aspects of Kant's idea of perpetual peace, so far the United Nations, a federation of at least nominally constitutional political regimes, has contributed to the maintenance of international peace. But the influence of the United Nations in preventing interstate violence is qualified by the important role also played by disincentive to the escalation of interstate violence created by the possession of nuclear arms by major powers. And although globalization does create powerful financial incentives to maintain international peace, the exacerbation of inequalities, both within and between nations, has engendered conditions that

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<sup>87</sup> See: Michael E. Brown, Sean M. Lynn-Jones, and Steven E. Miller, *Debating the Democratic Peace, International Security Readers* (Cambridge, Mass.: MIT Press, 1996).

<sup>88</sup> Insert citation

<sup>89</sup> Steve Chan, "In Search of Democratic Peace: Problems and Promise," *Mershon International Studies Review* 41, no. 1 (1997).

enable other forms of violence, including civil war and transnational terrorism. And as democracies are the greatest force driving globalization, it seems best to reserve judgment on the overall contribution of democratization to global peace. So, at best, the jury is still out on whether the democratic peace proposition has empirical validity.

*On the claim that undemocratic government is necessarily oppressive*

Consider this short argument for why the international community must not tolerate undemocratic governments:

1. The only alternative to the enjoyment of political freedom by the citizens of a democratic government is the oppressive denial of political freedom to the subjects of an undemocratic government.
2. It is unconscionable to tolerate oppression.
3. Therefore, the international community must not tolerate undemocratic governments.

If correct, this implies that the international community should use the following principles to judge the legitimacy of a government:

1. In circumstances where the democratic authorization of government is possible, an agent (or agents) is morally justified to govern only if it has received democratic authorization
2. In circumstances where the democratic authorization of government is not possible, an agent or agents is morally justified to govern only if it is demonstrably committed to developing "a regime of law and order that protects basic rights and at the same time facilitates, or at least allows for the development of, democratic institutions."<sup>90</sup>

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<sup>90</sup> Allen E. Buchanan, "Political Legitimacy and Democracy," *Ethics* 112 (2002).

Why would someone believe that undemocratic governments are necessarily oppressive? The thought is that undemocratic forms of government frustrate the exercise of personal autonomy by not allowing its subjects a meaningful role in the political decisions that shape their life prospects. In the best case, by taking upon itself the responsibility to decide what is best for its subjects and not allowing those subjects a fair opportunity for effective influence over those decisions, undemocratic governments are paternalistic. What makes this paternalism unjustified is that in the absence of a compelling reason not to, we should presume that each adult human is the best judge of his or her own interests. Although this provides a strong reason in favor of allowing each person some meaningful role in their society's arrangements designed to ensure the public accountability of their government, it does not counter the argument to tolerate undemocratic peoples.

In addition, there are two reasons to believe it would be self-defeating for the international community to insist that all non-liberal peoples democratize. The first, admittedly more speculative, reason is that democracy is not something that can be established via outside intervention. Democracy requires a political culture in which individual citizens are understood to be free and equal moral persons. Without a democratic political culture there is little reason to expect that choosing leaders through democratic procedures will accord citizens any significant control over the shape of their civil society. To elaborate, if political leaders chosen via popular elections are not constrained by a democratic political culture (and thus, for example, are able to enforce policies that give the people little to no influence on actual political decision-making), great damage might be done to the good will toward democratic norms of citizens already inclined by their history and existing political culture to be skeptical of liberal institutions.

One could respond either that the absence of a liberal political culture is not necessarily a threat to the stability of democratic institutions or that the steadfast imposition of democratic institutions would eventually liberalize a people's political culture. Both arguments are compelling, up to a point. The plausibility of the claim

that the absence of liberal political culture is not necessarily a threat to the stability of democratic institutions depends in large part on its interpretation. We might follow Schumpeter and insist that democracy consists in little more than the popular selection of democratic leaders through competitive elections, and that culturally this is not terribly demanding.<sup>91</sup> However, a presumption that the social prerequisites of Schumpeterian democracy are not demanding seems incorrect.

Consider Dahl's general model of the causal connection between an advanced economy and demands for competitive politics.<sup>92</sup> A hegemonic regime would cause the economic development of a society, economic development would cause the development of a pluralistic social order, and the pluralistic social order would cause demands for competitive politics. The demands for a competitive political system would arise directly in response to the inevitable tension between a pluralistic social order and the hegemonic regime's monopoly on socioeconomic sanctions. These tensions mount because "an advanced economy and its supporting social structures automatically distribute(s) political resources and political skills to a vast variety of individuals, groups, and organizations."<sup>93</sup> With the dispersal of political capability characteristic of a pluralistic social order a hegemonic regime grows increasingly incapable of coercively settling internal conflict. The independent political resourcefulness of social actors relative to the regime is sufficient to allow them to insist that political conflict be settled via bargaining and negotiation. Such an insistence constitutes the weakest form of a significant demand for more competitive politics.

However, if stability is understood merely as a balance of competing interests, then it is true that democratic institutions could be sustained in a non-liberal political culture if either no party is powerful enough to affect lasting changes to those institutions or those institutions represent, not the preferred form of basic

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<sup>91</sup> Joseph Alois Schumpeter, *Capitalism, Socialism, and Democracy*, 3rd ed., *Harper Torchbooks ; Tb3008m* (New York: Harper & Row, 1962). Chapter 22

<sup>92</sup> Robert Alan Dahl, *Polyarchy: Participation and Opposition* (New Haven,: Yale University Press, 1971).

<sup>93</sup> *Ibid.* p. 77

structure for any party, but an arrangement that each supports as an acceptable alternative, given fickle public opinion. Alternatively, stability could be, as Rawls might say, for the right reasons, meaning that a democratic basic structure is endorsed not as an expedient arrangement, but because those institutions represent collective action toward the social ideal to which the people aspire. So, though not necessarily a threat, the absence of a liberal political culture is certainly a risk to the stability of democratic institutions. A liberal political culture makes democratic institutions more robust and resistant to abuse.

Presumably, this risk of abuse could be mitigated through the steadfast oversight of the development of people's democratic institutions. The experience of the American people is evidence that a very illiberal people can, after generations of living under more or less democratic political arrangements, develop a political culture that reflects a sincere appreciation for the value of democracy. But what seems important about that cultural development is that it has been internally generated. The American people became more liberal in response to the tensions between the promise of our constitution and the iniquitous aspects of our political practice; brave people fought hard to bring our practice in line with that promise. We did not become more liberal by being humiliated or forced by outsiders to deny our cultural heritage.

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