Self Determination and the Human Right to Democracy

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Collective self-determination and democracy seem to have very similar grounds and yet they are sometimes thought to conflict. In particular, some have argued that the human right to democracy conflicts with the right of collective self-determination of peoples. Some have argued that one must decide which of these two rights must be accepted on the international arena.\(^1\) The potential for conflict seems to arise in a number of different ways. One, some have argued that the idea of equality at the root of democracy is a controversial notion and that in some societies equality has little or no resonance as a principle for regulating political life. If these societies are capable of legitimate self-determination then the principle of self-determination seems to conflict with the egalitarianism of democracy. And so one might think that one must decide that either a people should be able to organize themselves in accordance with non egalitarian principles or that they must not have such a right because each must treat all the others as equals.

The idea of self-determination may seem to conflict with the idea of democracy in yet a different way. One might think that the human right to democracy implies a permission on the part of the members of the international community to intervene militarily or by means of highly coercive sanctions on behalf of democracy in non-democratic states. The idea of self-determination, in this case, is a moral barrier to such

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intervention and so it seems to defeat the duties that are supposedly correlative with the right to democracy and thus defeat the idea that there is a right to democracy.

In this paper I will defend the idea that democracy is at the core of the self-determination of peoples, but that this does not imply that only democratic societies can be self-determining. I shall argue that there can be fully self-determining non-democratic societies with rights to collective self-determination. And I will argue that the human right to democracy is at the core of the right of collective self-determination of peoples even though the right may protect some non-democratic societies. In my view they do not conflict for the most part except in a certain kind of context. But in these cases, the conflict is really an instance of a more general conflict between the interests in self-determination of distinct peoples with distinct political systems. Hence, I want to argue that the conflicts between democracy and self-determination do not show that there is a fundamental incompatibility.

I will lay out the conception of the human right to democracy and a very brief account of the different grounds of this right that I have defended elsewhere. Then I will lay out the concept of collective self-determination and the associated rights that are particularly prominent in contemporary thinking. I will then argue that the human right to democracy, understood in a richer way than it is usually conceived of, is the ground of the right of collective self-determination of peoples. And I will show how this enriched conception of the human right to democracy can yield a right to collective self-determination in some non-democratic societies. Finally I will discuss the context and the particular manner in which democracy and self-determination can actually come into conflict.
The Human Right to Democracy: Conceptual Preliminaries

In this paper, I will defend a set of jointly sufficient conditions, which are particularly salient for my argument. These are conditions for a moral human right to democracy and not merely a legal right human right. Two jointly sufficient formal conditions for a moral human right to x are: (1) there is strong moral justification for any state to establish, respect, protect and promote a legal or conventional right to x (or a set of legal and conventional rights that can be usefully summarized as a right to x) and (2) there is moral justification for the international community to respect, protect and promote the above legal or conventional right to x in all persons. By “international community” I mean states other than the one in question, international non-governmental organizations and international organizations.

The institutional structure that effectively implements and enforces the conventional or legal rights has a strong moral justification when it is normally minimally necessary and sufficient for realizing very urgent moral goods. Without it, it is very unlikely that the very urgent moral goods will be realized, with it, it is very likely that the very urgent moral goods will be realized. When I say that the institution is normally necessary and sufficient to realize the urgent goods, I mean more than that the institution is statistically connected with the realization; I mean, in addition, that the normal functioning of the institution explains the realization of the urgent goods. This is compatible with the existence of statistical outliers. An institution or action has a moral

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2 See L. W. Sumner, *The Moral Foundation of Rights* (Oxford: Oxford University Press, 1987) pp. 144-5 for the distinction between weak and strong moral justification of a convention. This account is close to Joseph Raz’s interest theory of rights though it broadens the possible grounds of a right to include other morally very urgent goods that can be possessed by the right-holder. See his *The Morality of Freedom* (Oxford: Oxford University Press, 1986) chap. 7.
justification when it is morally desirable that it be constructed or undertaken in order to realize morally urgent goods.

I will not settle here for a definitive list or a basic account of the very urgent moral goods. Very urgent moral goods can include the protection of human dignity, the satisfaction of fundamental interests, natural rights or not being treated as a moral inferior. Here I will rely on the very urgent moral goods that constitute the basis for a traditional ground for democracy as well as the basic interests that are enshrined in the most important human rights treaties. These are the basic interests that ground democracy and the equality of persons.

To be clear, this account does not require the existence of states or international institutions recognizing the right in question. In the absence of an international institution or even of a functioning state, one may still say that the human right to x exists since one is saying that the construction of institutions that include a conventional right to x is strongly morally justified. And I think one may even say that the right is violated or infringed by those who block the construction of these institutions or interfere with the proper functioning of those institutions.

The human right to democracy that I will argue for asserts that there is a strong moral justification for states to adopt or maintain the institutions of minimally egalitarian democracy and it is morally justified for the international community to respect, protect and promote the right of each person to participate in minimally egalitarian democratic decision-making concerning their society. By “minimally egalitarian democracy” I mean a democracy that has a formal or informal constitutional structure that ensures that persons are able to participate as equals in the collective decision making of their political
society. A paradigm instance of it can be more precisely characterized in terms of the following three conditions. (1) Persons have formally equal votes that are effective in the aggregate in determining who is in power, the normal result of which is a high level of participation of the populace in the electoral process. (2) Persons have equal opportunities to run for office, to determine the agenda of decision-making and equal opportunities to influence the processes of deliberation. Individuals are free to organize political parties and interest group associations without legal impediment or fear of serious violence and they are free to abandon their previous political associations. They have freedom of expression at least regarding political matters. In such a society there is normally robust competition among parties so that a variety of political parties have a significant presence in the legislature. (3) Such a society also acts in accordance with the rule of law and supports an independent judiciary that acts as a check on executive power. This cluster of rights can be characterized simply as a right to participate as an equal in the collective decision-making of one’s political society. I will refer to it here on out as a right to democracy.\(^3\)

Such a society need not be fully just by any means nor need it live up fully to the ideals of democracy. For that reason I call it minimally egalitarian. Such a society may in effect limit some opportunities to participate due to inequalities of wealth. It might have a suboptimal system of representation. It need not be fully liberal since it may restrict non-political activities and violate liberal rights that are not connected to the democratic process. But it is not merely majoritarian with universal suffrage and

\(^3\) I use the expression “paradigm instance of democracy” here because, though I think representative democracy is the main instance of what I have in mind, I want to leave room for some forms of democracy that are not representative but that are recognizably egalitarian. See Jeremy Webber, “The Grammar of Customary Law,” *McGill Law Journal* 54 (2009): 579-626.
elections. Minorities must have the protections of the rule of law, free association and expression as well as equal opportunities for organizing politically effective groups and there must be free and fair competition for power among a variety of groups that compete on an equal footing. Normally this will result in minorities having a significant place in the legislature.

This conception of a human right to x as entailing a strong moral justification for a legal or conventional right to x first at the state level and then a moral justification to protect and promote those rights at the international level is supported by four considerations. One, it implies that we are talking about rights because it supports a legal or conventional right to x in order to protect and promote the very urgent moral goods. The very urgent moral goods are sufficient to ground duties in each to protect the minimally egalitarian democratic rights of each. And the protection of the urgent moral goods justifies putting a break on the pursuit of the common good. Two, the proposed conception implies that we are talking about universally held rights. Three, the rights are pre-institutional in the sense that they do not depend for their existence on actual institutions. Four, the moral structures of these rights correspond to the structure of moral justification that is common for many if not most of the human rights we observe in contemporary international human rights practice. Contemporary moral justifications of human rights law impose upon states the moral duties to realize certain fundamental moral goods by instituting and protecting various legal rights and they impose on the international community the duties to help states do this. If we can successfully show that there is strong moral justification for states to be minimally democratic and that the

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4 See Charles Beitz, *The Idea of Human Rights* chap. 5 for a defense of this conception. Unlike Beitz, I do not insist that these conditions are necessary for human rights and I do not insist on an interest theory of human rights.
international community is morally justified in promoting and protecting democracy then we have an argument for a human right to democracy that fits within the mainstream concept of human rights.

*The Two Grounds of the Human Right to Democracy*

I will briefly sketch here two arguments for a human right to democracy that I have made in more detail elsewhere. Each of these arguments makes use of the basic schema for a human right that I have elaborated above. Each is composed of two sub-arguments: one for the domestic level and the other for the international level. I call these two arguments the instrumental argument and the egalitarian argument for a human right to democracy.

The instrumental argument proceeds from the premise that democracy in the sense described above is normally necessary and reliable in protecting basic human rights of an uncontroversial kind: the human rights not to be tortured, not to be killed by the state, not to be disappeared by the state and not to be arbitrarily imprisoned by the state. The protections of these rights are the morally very urgent goods for which democracy is normally necessary and reliable.

There is a very large body of data and statistical analysis that supports this contention. The normal necessity claim is supported by statistical analyses of data that support the idea that societies that are not very democratic or not democratic at all normally do not protect these rights and societies that meet the criteria of minimally

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egalitarian democracy normally protect these rights quite well. There is indeed a threshold effect here that supports the strong differentiation between minimally egalitarian democracies and other kinds of societies. This threshold effect shows up using different measures of democracy, so it is robust. And it shows up in correlation studies as well as multivariate regression analyses that control for other variables. Moreover there is strong support for the thesis that democracy is the cause of the protections since the onset of minimally egalitarian democracy seems to precede by a number of years the full realization of the protections. Furthermore, we have a reasonable model for explaining how democracy can protect these rights. That is democracy protects these rights because citizens, even if they are only mildly concerned with the human rights of others, tend to vote out officials who are clearly responsible for the violation of these rights.\(^6\)

As with any instrumental argument, we must be modest in our claims. I think the evidence above gives us good reason to think that democracy is normally necessary and reliable in protecting the basic human rights of physical integrity. It allows for outliers and it is possible that the reasoning will be defeated at some time in the future, but for the moment we can claim with justification that democracy has these remarkable effects.

The international dimension of the human right to democracy is established first on the grounds that if the international community is morally justified in attempting to protect the human rights to physical integrity, then it is morally justified in promoting, protecting and respecting those institutions that are normally necessary and reliable for

\(^6\) The evidence we have gives us good reason to think that hierarchical regimes normally do not protect basic human rights. My argument implies that what John Rawls calls a decent hierarchical society is at best an anomaly that is highly unlikely to be stable over time. See John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999) pp. 71-85 for a discussion of decent hierarchical societies.
protecting those rights. Moreover the international community has a number of related reasons for promoting, protecting and respecting democracy in contemporary political societies. First, the democratic peace argument establishes that democracies do not go to war with one another and war is one of the chief causes of the violations of human rights to physical integrity.\(^7\) Second, democratic states tend to comply with international law to a significantly greater extent than do non-democratic states.\(^8\) To the extent that peace and the development of institutional institutions are morally important aims, the international community has an important moral justification for promoting, protecting and respecting democratic states.

These two arguments support the thesis that there is a strong moral justification for states to be democratic and that there is a moral justification for the international community to promote, protect and respect democracy in contemporary political societies. Hence, they support the thesis that there is a human right to democracy.\(^9\)

The egalitarian argument for a human right to democracy proceeds from premises that support the standard defenses of the intrinsic value of democracy. I will invoke my own account of these premises but I do not think it is necessary to the argument. Other accounts can work here as well.

The basic principle from which my argument here starts is the idea that it is a requirement for establishing justice in a society that the society publicly realize the equal advancement of the interests of the members of society. The fundamental argument for

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\(^8\) See Beth A. Simmons, “Compliance with International Agreements,” 1 *ANN. REV. POL. SCI.* 75, 77, 83–85 (1998).

\(^9\) For a more complete elaboration of this argument and an account of the empirical evidence for all these claims, see my “An Instrumental Argument for a Human Right to Democracy,” *Philosophy and Public Affairs* (Spring 2011).
democracy at the domestic level is that it is necessary to the public realization of the equal advancement of the interests of the members of society. Persons have fundamental political interests in shaping the society they live in. They have interests in correcting for the cognitive biases of others in determining how to shape the society. They have interests in being at home in the world they live. And they have interests in being recognized and affirmed as equals. Against the background of conflict of interest, disagreement, cognitive bias and fallibility on how best to organize society, the only public way of realizing the equality of persons in a society is to give each an equal say in how to shape the society. The idea, in brief, is that each person can see, once she acknowledges the facts of disagreement and conflict and the interests involved, that the only way to realize the equal advancement of interests in a society in a way that every other person (who also acknowledges these facts and interests) can agree on, is to make collective decisions democratically. Hence, democracy is a public realization of equality.

To allow a society to be shaped by a certain group of elites or by an obviously inegalitarian process favoring elites is to set back the fundamental interests above in a publicly clear way. Others, with all their cognitive biases, can be expected to shape the

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10 One might worry, with Andrew Altman and Christopher Wellman (in A Liberal Theory of International Justice [Oxford: Oxford University Press, 2009], chap 2, that the principle of equality cannot support democracy in the way I have suggested here because equality is compatible with lack of publicity and it is compatible with no one having power (while outsiders impose their will). Aside from the fact that imposition by outsiders is a clear violation of equality, this misses an essential feature of the principle of equality that I have defended. The principle is welfarist and thus is opposed to leveling down. In other words, it is contrary to the principle of equality as I understand it, to prefer, morally speaking, a situation in which everyone is worse off but equally so to one in which everyone is better off even if there are inequalities. The reason for this rejection of leveling down, I claim, is that there is an internal connection between the value and point of equality and the promotion of the good that is equalized. If the promotion of the good to be equalized were not important, there would be no significance to equalizing it. For this argument, see Thomas Christiano and Will Braynen, “Inequality, Injustice and Leveling Down,” Ratio (December 2008). The defense of publicity in my work is grounded in equality and an account of the particular fundamental interests persons have in society. See The Constitution of Equality: Democratic Authority and Its Limits (Oxford: Oxford University Press, 2008) chap. 2.
society in accordance with their own interests even if they do not intend this. They will likely make the world a home for themselves and make the world an alien place for others. And this will clearly undermine the public recognition of persons as equals.

The public equality at stake here is necessary to the realization of equality in a society, though it may not be sufficient since the protection of basic liberal rights are also necessary. Because of the facts of fallibility, disagreement, conflict and cognitive bias, any attempt to achieve equality in some substantive way by a small elite in non-democratic ways will have the necessary consequence that the fundamental interests of many described above will be set back in a publicly clear way. Because of the facts enumerated above the only public way to realize equality is to ensure that persons have equal opportunities to shape the society in accordance with their judgments. This is not to say that the other substantive forms of equality are not important but it is to say that they cannot achieve the public realization of equality under the normal circumstances of political societies if the democratic realization is not present. Democracy is indispensable for this. Thus the right to democracy normally and reliably secures the very urgent moral good of treating persons publicly as equals. Hence there is a strong moral justification of democracy at the domestic level.  

The argument for the thesis that there is a moral justification for the international community to concern itself with democracy at the domestic level of each society proceeds from the increasing influence of global processes of pollution, trade, communication, finance and investment for the interests of persons throughout the world and the increasing significance of international law in regulating these. To the extent that international law is impinging on persons’ lives either directly or through requirements to

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11 See *The Constitution of Equality*, chaps 2-3, for a fuller elaboration of this argument.
make domestic law conform to international law, and to the extent that the increasingly important global processes need to be regulated by international law, persons have interests in having a say in the making of international law. These interests are the same as those that ground the concern with domestic democracy. Indeed the interests in many ways may be more strongly at stake given the greater degree of disagreement at the international level, which results from the diversity of types of society, cultures and histories that exist in the global arena.

To the extent that the global arena cannot now be ruled by globally democratic institutions, international law will for now and the foreseeable future be made by states or the international institutions they create on a fairly short leash.\textsuperscript{12} Hence, the process of making international agreements will have to satisfy democratic norms to the greatest extent possible. In my view this can only be achieved through a process of fair negotiation among democratic states. So in order for international law to gain any kind of reasonable democratic credentials it is necessary for the states that create international law to be democratic. Of course, this is not sufficient; it must also be the case that the process of treaty making be one that is done through fair compromise among the different states. But democracy does seem to be a necessary condition for the whole process to treat persons publicly as equals.

We can see now that the urgent moral good of treating persons publicly as equals gives strong moral justification for a state to be democratic but it also provides a moral justification for the international community to promote, protect and respect democracy.

\textsuperscript{12} For the arguments for this claim, see “Democratic Legitimacy and International Institutions,” in \textit{The Philosophy of International Law} ed. Samantha Besson and John Tasioulas (Oxford: Oxford University Press, 2011).
in particular societies. Only then can international agreement making satisfy democratic norms. Hence we have a second argument for the human right to democracy.¹³

These arguments for a human right to democracy are independent and complementary. The first, instrumental argument points to the effect democracy has on protecting basic rights and the second, more intrinsic argument points to the importance of democracy in the process of making ordinary legislation in domestic societies and in international society.

Collective Self-Determination

Here, I want to define the notion of collective self-determination that I will be working with. It is meant to capture important values within the international system, but it is not meant to capture all the uses of the term self-determination that are in use. First I lay out the conception of collective self-determination and the associated rights of collective self-determination. Then I will contrast this notion of the right to collective self-determination with a notion that establishes the right of a people to an independent territory.

The basic notion of collective self-determination I will work with is the freedom of a community to organize itself politically as it sees fit. Many thinkers have thought that this implies democratic decision-making since they see this seems to be the main interpretation of the idea of a community organizing itself.¹⁴ While this is not an implausible way of elaborating the idea of a collectively self-determining community, I

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don’t think it is conceptually necessary. And this is why there is a potential for conflict between the human right to democracy and a right to collective self-determination.

I will interpret the idea of a community organizing itself politically as it sees fit in an individualistic manner. The fundamental idea is that the community is self-determining to the extent that its members see it as organized politically in accord with basic political norms they genuinely accept. In cases where there is not unanimous agreement on the basic political norms, there is either a strong reason for breaking up the community or it must be democratically ruled. Another way of putting this is that a community is self-determining if it is democratically ruled unless there is unanimous agreement on some non-democratic form of governance.

Before I defend the democratic default condition I want to discuss two elements that are potentially worrisome in this account. One is the question of membership and community. What is the community of persons referred to? This is where the boundary problem of democracy and the territorial notion of self-determination come in. In this paper, I am working with a notion of collective self-determination that assumes a well-defined group with a territory over which it has jurisdiction.

The second worry is the issue of genuine acceptance. Under what conditions do we say that a person has genuinely accepted a set of norms? People often say that genuinely to accept a set of norms requires that there be some alternative that can be implemented. But, in my view, though this is often a plausible empirical test of genuineness it cannot be a conceptual requirement. This is because such a test would preclude the genuine acceptance on the part of individuals of the basic norms of a society, whether democratic or non-democratic. It is simply beyond the capacities of individuals
to be able to transform the basic norms of their societies. And this holds whether the society is democratic or non-democratic. The basic political norms of a society are deep coordination points that require the simultaneous conformity of large numbers of persons to maintain. They also require the simultaneous coordination of large numbers of people to change. No one, at least normally, is in a position to change such coordination points on his or her own or even with a group of like-minded persons.

But it does seem plausible to think that people can genuinely affirm and accept the basic norms of their society. And this is a feature of their attitudes towards the society. As long as the basic norms of the society are approved of by a person on the basis of reasoned reflection (including reflection on alternatives) and not on the basis of fear of reprisals or ignorance of the alternatives one can say that a person genuinely accepts the basic norms of the society. The genuine acceptance of political norms does not require that the norms are fully or even adequately justified to the possessor of the attitudes. And it certainly does not require that the norms are morally valid norms. But they do require that the norms have satisfied some kind of test of reasoned reflection on alternatives. No doubt some civil and political rights are normally empirically necessary to achieve such genuine acceptance, but I am not convinced that they are conceptually necessary.

If all of this is correct, one can see that a group of people can be self-determining even if it is not democratic. The members of the group can accept a set of basic political norms that are non-democratic and the group can thereby constitute itself in accordance with the norms. The members take the internal point of view, as Hart called it, on the basic institutions of the society.
Strictly speaking, I think a group can constitute itself in many different ways if it accepts the basic norms and still be self-determining. Some, however, require the further condition that at least all the members of the society do participate in some way in the processes of collective decision making.\textsuperscript{15} John Rawls’s conception of a consultation hierarchy involves not only the genuine acceptance of all the members but the ongoing participation of all the members in the collective decision-making processes. Their participation is not on an equal basis in Rawls’s conception so it is not democratic but there is universal inclusion and participation.\textsuperscript{16}

I am not sure I see the necessity of this further condition on self-determination but I will take no stance on it since the difficulties raised are similar for the more expansive notion of self-determination as for the narrower conception.

The Rights of Collective Self-Determination

The right to collective self-determination possessed by a group protects a group’s self-determination. There are two classes of rights of self-determination. The first is a right of non-interference of other communities in the affairs of the self-determining community. This is a right against military intervention. It may also be a right against highly coercive economic sanctions. It protects the community from other communities. It is a right against those other communities.

The second class of rights is the class of rights of inclusion in the activities of the international community. This involves minimally a right to recognition by other states and the international community. It involves a right to participate voluntarily in treaty


\textsuperscript{16} See Rawls, The Law of Peoples, pp. 72-78.
making in all of its complexity (as specified for example in the Vienna Convention on Treaties) as well as a right to register persistent objections to evolving rules of customary international law. It involves a right to participate in international institutions such as the Committees and Councils of the United Nations, the WTO, IMF and World Bank. It can involve the right to be included without reservation in international trade and cooperation. And it can involve the rights to be treated as members in good standing for the purposes of receiving loans and other forms of non-essential assistance from the international community.

To say that there is a full collective right to self-determination in the international community is to say that there is a strong moral justification for the international community to accord legal or conventional rights of non-interference and inclusion to collectively self-determining communities and that there is no such strong moral justification for non self-determining communities.

One can define weaker rights of collective self-determination in terms of the possession of just a right of non-interference or that right plus just a few others of the rights of inclusion.

The right of self-determination as I have defined it does not include rights of self-determination in the sense of the right of a people to a territory that they do not currently have jurisdiction over. The right I am describing refers exclusively to actually existing political communities. I do not mean to say that it is illegitimate to use the term “collective self-determination” for the right of a group of persons to form a state with territory and jurisdiction of its own or even to form an autonomous political community within a larger state. These are important rights within the international community but I
do not discuss them here. My discussion may have implications for how to structure these rights insofar as the fact of self-determination I described above may be relevant to the formation of new communities.

The strong moral justification for the extension of these rights derives from the fundamental interests of persons normally protected by the right of self-determination. And I want to argue that the interests that are normally protected by this right are the very same interests, though modified in some important ways, as those that underpin the right to democracy.

It is important to note at the outset that we are looking at these rights from the standpoint of political communities in relation to each other and not from the standpoint of individuals within the political community. Recall the facts of fallibility, disagreement, conflict of interest and cognitive bias, but think of them now in the context of an international political society. Now we can think of them as characterizing relations between persons across political societies. People can disagree with each other about what political system is best and there may be some degree of cognitive bias towards their own interests in these disagreements.

At the same time we can see that the interests in correcting for cognitive bias, in being at home in the world and in being recognized and affirmed as an equal can apply in the case of the structure of political decision-making as well as other issues. And we can see that these interests can attach to persons in part as members of particular political communities, which can be threatened by other political communities. So individuals in

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different societies can have interests in correcting for the cognitive biases of others in the contexts of these disagreements. The interests of those who have lived and developed under democratic institutions and the ideals of equality that characterize them could be distinct in a variety of ways from those who are educated in non-democratic societies and who internalize non-democratic norms. As a consequence the imposition of democratic modes of organizing the political society on a people that is non-democratic comes with costs that may not be fully visible to members of the democratic society. Furthermore, the interest in being at home in the world is at stake here as well. Insofar as a non-democratic mode of organization is familiar and makes sense to a people, the democratic norms may engender a feeling of alienation and disorientation in persons who are members of the non-democratic society. The interest in being at home in the world can be set back. Finally the interest in being recognized and affirmed as an equal is at stake here as well. To be sure the people in question do not look upon each other as equals, but they nevertheless have an interest in having their community and the people in it recognized and affirmed as equals vis-à-vis other communities and the members of other communities and in the international community as a whole.

Recall that one can have interests in having one’s judgment respected even in those cases where one’s judgment is mistaken. Here we have already argued that there is a right to democracy so we must think that the views of those who prefer non-democracy are mistaken but we can nevertheless have an attitude of respect for those persons and the judgments that they reflectively endorse.

The idea then is that there is a collective right of self-determination to the extent that there are important interests that are protected by the right to self-determination
within the international political community. There can be a strong moral justification for establishing a legal or conventional right of self-determination within the international community.

A Qualification to the Right of Collective Self-Determination of Non-Democratic Peoples

There is nevertheless a weakness in the idea of a non-democratic people having a right of collective self-determination. This weakness can be appreciated by comparing the rights of self-determination of non-democratic peoples with the toleration of the intolerant in a liberal society. For the most part, the intolerant in a liberal society are extended the same liberal rights as the tolerant. They are extended the same equal rights to expression, association, conscience and private pursuits that others are. This is despite the fact that they reject certain norms that are taken as justified in a liberal society. Indeed they reject the very norms that are the basis of their freedom and equality. In part because of this there is a certain weakness in the rights they possess. This weakness is expressed in the following ways. First, the state does no wrong in expressing publicly its disapproval of their views. This is in contrast to the normally appropriate restraint of the state regarding the views of those who do accept the freedom and equality of their fellow citizens. Second, while a liberal society permits expression and association by these persons, it does not permit them to realize their aims in collective decision-making. A society may permit ultra right wing militias to exist and even flourish but it imposes constitutional constraints that prohibit the legislative imposition of the ultra right wing norms on the rest of society. Third, a democratic society properly tends to accept a lower degree of risk of harm from these groups. It is appropriate for such a society to keep a watch on
these groups in case they might act in ways that threaten the society. In some respects, the attitude towards these groups in a liberal society is one of toleration and containment at the same time.

I think the weakness in their rights can be explained in part by a weakness in the interests that these persons have. The interests in correcting for cognitive bias are real but they are weaker than those of others because a significant part of the particular views that are protected by their rights are regarded as false from a public standpoint in the society that is from a standpoint that is meant by its nature to correct for cognitive bias.\textsuperscript{18} The interest in being at home in the world is weaker as well to the extent that it is an interest in being at home in an unjust world. There is a genuine interest present here because there are concomitant effects of injustice, which are not themselves unjust but that are nevertheless part of what makes the world a home for these persons.\textsuperscript{19} And the interest in being recognized and affirmed as an equal is obviously a weakened interest for the intolerant because, by hypothesis, the intolerant does not recognize the equality of persons. This weakness in the interests of the intolerant are part of what play a role in explaining the diminished and somewhat hedged versions of the liberal rights that they possess.

I think there may be something similar in the case of the right of collective self-determination of non-democratic societies. The interests in participating in such a society

\textsuperscript{18} The public standpoint is not merely the view of the majority in the society. It is the standpoint that each person occupies once she takes into account the facts of disagreement, cognitive bias, conflict of interests and fallibility and the interests and she considers, in the light of these facts, what everyone can agree on as a way of realizing equal advancement of interests in the light of these facts. The thesis is that democracy, equal basic liberal rights and a basic minimum are the basic conditions under which people can see that they are being treated as equals under the epistemic and moral conditions I describe. Hence the public standpoint is a standpoint every conscientious, informed and egalitarian person occupies.

\textsuperscript{19} Interests are qualified when they involve wrongs or bads. I have argued that all interests, being parts of a person’s well-being, are states of a person in which they have a genuine appreciation of a good. The injustice of situation detracts from its goodness. See \textit{The Constitution of Equality} chap. 1.
and in non-interference as well as inclusion will be somewhat weakened in strength for roughly the same reasons in the case of the intolerant as in the case of non-democratic societies. If we take democratic forms of organization as minimally just, then we must view the genuine acceptance of non-democratic organizations as mistaken and thus thought the interests that are bound up with such mistakes can be real interests they are not as robust as the interests that conform with justice.

*The Nature of the Right of Collective Self-Determination*

With these observations in mind, I now want to say what I think the collective right of self-determination is. My thesis is that the right of collective self-determination is derived from the human right to democracy. But it comes with an interesting complication in order to deal with the special case of a society of persons who genuinely prefer non-democratic modes of decision-making to democratic ones.

The basic idea is that a people have the full rights to collective self-determination when the human rights to democracy of its members are fulfilled. Thus the international community has a strong moral justification for extending legal or conventional rights of non-interference and inclusion to societies that respect the human rights to democracy of their members. Thus minimally egalitarian democracies have collective rights of self-determination.

A further specification of the human right to democracy must be introduced in order to accommodate the possibility that non-democratic peoples can have rights to self-determination. The idea is that the human right to democracy includes a moral power on the part of each person to waive the right to democracy. The power to waive is a
common feature of many rights, though I do not insist that it is a feature of all rights. Thus a person may waive a right to receive a promised obligation. A person may waive at least some aspects of his rights to liberty and to avoid harm. These are powers that persons have that put them in command in part of the kinds of obligations others hold towards them.

Normally it is only one’s own right that one may waive. One may not waive others’ rights. For example, if one shares with another in the right to receive some treatment from a third person, one cannot waive the obligation of the third person to the other person in the arrangement. Let us call this the restriction to self-regarding waivers.

I think it makes sense to think that there is a power to waive one’s right to democracy because this power can be grounded in the same interests in asserting control over one’s political world that the claim right to democracy is grounded in. That is, a person may decide that she is not at home in a democratic world, say, because the principle of equality has no resonance for her, and that such a world reflects the interests of others and not her own. And respect for the power to do this may express respect for the interests of the power holder. But one cannot waive one’s claim right to democracy just on one’s own (except in the special case of exiting a society). The reason for this is that one’s waiver can actually have adverse effects on the equal rights of others in a quite direct way.

This may depend on the character of the waiver. If I simply choose not to vote in elections, the exercise of others’ rights need not be affected. On the other hand if I agree to waive my right to vote in favor of another, who now acquires my right, this may affect other people’s equal vote. For example, vote selling is usually forbidden in democratic
countries. Essentially it involves not only one person giving up their right to vote in a particular election, it also involves another person (the one to whom the vote is sold) having more than an equal vote. This exchange has the external effect on third party voters of making their votes less than equal to the votes of the vote buyer. Thus the third party’s right to participate as an equal is diminished by the seller’s waiver. The same can happen in single member district representation schemes. Single member districts are supposed to be of equal size so that in elections for representatives, the principle of one-person one-vote is satisfied. If a substantial number of the voters in a particular district give up their votes or transfer them to one person in that district, the system will lose the character of one-person one-vote and the rights of persons in other districts to equal participation will be violated. We will see that cases like these have relevance later in the paper.

To see how the right to collective self-determination is connected to the human right to democracy in the particular case of non-democratic peoples, we should first envision an isolated society the members of which genuinely accept the non-democratic political form they have. These persons have, we have argued, human rights to democracy. Now let us remember that these persons genuinely accept some non-democratic form of collective decision-making and they express this acceptance in their compliance with the decisions of the authorities in the society.

One question is whether this acceptance-expressing compliance is a real waiver of the democratic claim right. Strictly speaking, there is no mention of such a waiver. The persons involved may not think of themselves as having a right to democracy, though they have, by hypothesis, thought about a democratic form of political organization and
reflectively prefer the one they have. And it is the case that if one asks them if they waive a right to democracy they would actually say yes. There is still something puzzling about saying that they have waived their rights, when they have not done anything and do not even believe they have the right in question.

I want to say that there is something like, or analogous to, waiver here and that this has the same moral effect. What we see here has the most important earmarks of a waiver since the actions express a reflective preference for non-democracy and may genuinely express the kinds of interests that are usually expressed by a waiver, or interests in asserting a kind of control over their social world. If we were to try to promote democracy in their country, we would be interfering with something they are committed to on the basis of something they oppose.

Consider an example. Suppose that I have promised you that I will come over and paint some part of your house for you. You have a right that I do this. But you have since forgotten about this and have developed new and incompatible plans for the redecoration of your house. At the moment when I must fulfill my promise to paint your house, you are nowhere to be found, though your new incompatible plans are plainly in evidence. Now I have to decide what to do. If I do as I promised, I directly disrupt your plans for your house. Yet, you have done anything that signals your waiver of your right that I paint your house. I reflect that you would waive the right were you asked. Or you might say that if you had the right you would waive it. I want to say that in this case, you have done something like waived your right with the same moral effect of such a waiver. This is because I would directly disrupt your current plans by fulfilling my promise to
you in a way that is obvious to both you and me. Even though you have not said anything to me, I must assume that you have done something to waive your right.

I think the presence of a genuinely accepted political structure that is preferred over democracy by a people, and clearly incompatible with it, can have the same effect of waiving the claim right or those persons to democracy in much the same way that your incompatible plans for your house waive your right that I paint it. So I want to conclude that the actions of compliance that express genuine acceptance can stand for an exercise of the power to waive the claim right to democracy.

So here we can see the full conception of the right to collective self-determination. The idea is that a society has the rights to non-interference and inclusion when it is democratically organized or when its members have collectively waived the right to democracy in favor of some other form of organization that they genuinely accept.

The primacy of democracy in this conception of the nature and grounds of the right to collective self-determination is based on the arguments for the human right to democracy. Democracy is shown by these to be a form of political organization that is uniquely capable of protecting certain basic rights as a consequence of the participation of its members in collective decision-making. Democracy also uniquely enables citizens to advance their interests in shaping the social world they live in and thus uniquely serves the purposes of the right to collective self-determination. A democratic form of organization is uniquely designed to enable citizens to advance their interests in shaping the social world while protecting their fundamental rights. But a full right of collective self-determination must be assigned only to those peoples that realize a kind of minimum

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20 I thank Massimo Renzo for pressing me on how to justify this notion of a waiver.
of justice. Democracy enables citizens to pursue their interests in shaping the social world while at the same time ensuring the citizens are treated publicly as equals in the process of collective decision-making, which we have supposed here to be a fundamental principle of justice.

A minimally egalitarian democratic society is not a fully just society; it need not even live up fully to the ideals of democracy. It satisfies a minimum standard only. The satisfaction of the standard of minimally egalitarian democracy is compatible with many different forms of democracy. And the processes of collective decision-making in democracies bring about very different legal and social structures in different societies as a consequence of the different views and interests of the citizens in those societies.

One might wonder why the minimal egalitarianism of democracy is in effect the default position for the international community. Why not simply require that the collective decision-making be inclusive in the case of collective self-determination? Drawing on the arguments for the human right to democracy, there are two considerations that suggest that equality is the appropriate default. One, the instrumental argument for the human right to democracy suggests that the minimally egalitarian character of democracy is normally necessary and reliable for the protection of the basic human rights of physical integrity, which are generally accepted throughout the international community (though not generally respected). The evidence gives us good reason to think that Rawls has called a consultation hierarchy normally does not protect basic human rights. The egalitarianism of democracy has a special place for this reason alone. It is at least the default instance of the right to collective self-determination.
Second, the egalitarian argument for a human right to democracy suggests another argument. I think we can take it as a given that the international community is committed to regarding persons from different societies as equals. Mere inclusion would not be acceptable from the standpoint of international society. If the international community tended to protect the human rights of persons from one proper subset of countries in the international community with greater effort than those of the members of another distinct proper subset of countries in the international community and this discriminatory tendency were intentional, the international community would be in for severe criticism. If the response were that all were included though not equally so, I do not think the criticism would be much dulled. Equality of persons across societies is a generally accepted norm of the international community, however poorly this norm is respected. But if this is so, then consistency demands that the international community regard persons generally, at least initially, as equals within each society. The reasoning is simple. If the international community must regard individuals from different societies as equals, then any member x in country A must be regarded as the equal of any member y in society B. But if some member y in society B is regarded as the moral superior of some other member z in society B, then either x in A is the superior to z in B or y in B is the superior to x in A. Both of these possibilities are inconsistent with our initial, widely accepted premise. Hence the international community must regard any members z and y in any society as equals.

Now, it may be that z and y have the power to change this relationship at least towards each other, but the starting point at least from the international vantage point
must be equality. Hence I think we can say that equality is the default principle from the standpoint of the international community. Therefore, I think we have another reason for thinking that democracy must be the default position with regard to the right to collective self-determination.

These reflections show that a democratic society is the primary case of a self-determining society. This explains the intuition that democracy and self-determination are very closely associated.

Now that we have established the primacy of democracy in a conception of the nature and grounds of self-determination we need to say more about a society that waives of democratic rights. We are supposing here that the society is a hierarchical society of some sort. It is important to see that the waiver of the democratic claim right is a kind of grant of authority to a non-democratic way of making decisions. But if this is so, it is important that all or at least nearly all the persons in the society waive their democratic rights. If some minority does not waive their democratic rights, the consequence of the others waiving their democratic rights will be that they undermine the democratic rights of those who do not waive their rights. This will be the case because the waivers of the majority will transfer authority to a non-democratic group and they will consequently have more power than the members of the minority, thus undermining the right to equal participation.

This is not just a conflict of interests between the majority and the minority. Democracy has primacy with respect to self-determination because it is a minimally just way in which citizens can advance their interests in shaping their social world together while protecting certain basic rights. The waiver provides an escape hatch from such a
system for those who cannot find a home in it. The escape hatch makes sense because it is based on interests of a similar kind to those that are advanced by democracy though they are significantly weaker. Though it legitimizes the non-democratic form, it cannot make it just. Thus if one person’s waiver undermines the rights of others who do not wish to waive their democratic rights, the waiver cannot be permitted.

Therefore because of the interdependence of the rights in collective decision-making among members, the only kind of waiver that can be permissible is one that is exercised by the whole community together.

In sum I have argued for a conception of the grounds of the right of collective self-determination and for a conception of the basic structure of the right. The right of collective self-determination can be seen as grounded in the individual right to democracy. At the same time the right to collective self-determination leaves room for the possibility that a non-democratic society whose non-democratic character is genuinely accepted by its members can possess this right. And the right to collective self-determination is not, strictly speaking, an individual right, it is a right of a community to non-interference from the international community and to inclusion in the activities of the international community. It is nevertheless based on the human right to democracy and a power that each possessor of the right has to waive the right as long as the possessor does not waive the rights of others. Given the interdependence of the individual rights to democracy, the power to waive can only be legitimately exercised by all the members of the community together.

_A Tension between the Right to Democracy and the Right to Self-Determination_
Conceptually, at least, we have a reconciliation of the human right to democracy with the right of collective self-determination of non-democratic political communities. But there is a potential for conflict in the account I have given, though it is a practical conflict. And we need to explore this difficulty.

The problem arises from the combination of the interdependence of political communities in the modern international community and the self-regarding waiver principle. Recall that the right of collective self-determination of a non-democratic people can arise when all the members of the people waive their rights to democracy collectively. The unanimity is necessary because of the self-regarding waiver principle. But we have observed that the international system is an interdependent system of states. These states interact with each other, in many cases, to pursue morally mandatory aims such as the reduction of globally threatening pollution, a decent system of international trade, the maintenance of peace and the protection of human rights. And states have long embedded themselves in a system of international institutions, international trade and communications. The international system pursues these aims through the negotiation and bargaining involved in creating treaties.

But here’s the rub. First, negotiation and treaty making between democratic and non-democratic societies makes the democratic societies partly complicit in the non-democratic decision making of the other societies. Second, it also partly compromises the democratic decision-making of the democratic societies.

To illustrate with a highly simplified example, suppose a democratic society is negotiating with an autocratic society of roughly the same size and wealth. They negotiate to create treaties that will then have the force of law in each society.
Complicity with non-democratic rule arises because in effect democratic citizens collude with the autocrat to impose law on the members of the non-democratic society. Even if the members of the non-democratic society have waived their rights, complicity with the autocrat in imposing law on the other members of the non-democratic society is problematic because the basis of the exercise of the waiver of the right to democracy is a set of convictions that democratic citizens regard as mistaken. Though the members of the non-democratic society have, by hypothesis, genuinely accepted the non-democratic norms, there is still something problematic for democratic citizens in dealing with them. They seem to be treating the members as unequals themselves, even though they have not agreed that the members are unequals.

The more serious and straightforward problem is that compromise of democratic principles occurs in much the same way as the cases of vote selling in the discussion above. The compromise of democratic principles occurs because the autocrat in effect has more power than the democratic citizens over the creation of the law that is to go into force in the democratic society. The autocrat has a kind of veto over the treaty making and the democratic citizens have a veto over the treaty, but only collectively. So, with regard to the domestically enforceable law in the democratic society that derives from the treaty, the autocrat exercises much more power than any of the citizens. The non-democrats’ waivers of their democratic rights has in effect undermined the right to participate as equals of democratic citizens in the making of law that governs them. In effect, the non-democrats’ waiver has subordinated the democratic citizens in part to the autocrat. It thus has the external effect of undermining the equal right to participation of democratic citizens in the making of the law that governs them. Hence it looks like the
exercise of the waiver on the part of the non-democratic citizens is no longer merely self-regarding. Hence it may not be permissible.

To be sure, we could say that the democratic society is voluntarily engaged in treaty making with the autocratic society, and so the citizens have chosen to do this and they didn’t have to do it. But the situation is more complex than this insofar as we recognize the deep interdependence of societies in the international system and we recognize that there are important morally mandatory aims that must be pursued through interstate cooperation. The association is not entirely voluntary; and in some cases it is required. This implies that the inegalitarian decision-making is not avoidable or at least can be avoided only at great cost. It still seems to undermine the equal participation of the democratic citizens.

So we have a situation in which we must choose between the self-determination of non-democratic peoples and the rights to democracy of democratic citizens. I have argued that there is an asymmetry between these considerations in that the democratic rights have primacy. And that is reflected in the self-regarding waiver principle appended to the human right to democracy. Hence these observations suggest that in fact non-democratic societies cannot legitimately waive their rights to democracy because in doing so they compromise the rights of others who do not wish to waive their rights, at least under the modern conditions of interdependence in the international arena.

It seems to me that here it makes sense to think that the rights of inclusion that are involved in the right to collective self-determination are precisely the ones that will come into question in the case of non-democratic societies. Those societies threaten the democratic character of the democratic societies when they interact with them. Thus it
makes sense to say that the democratic societies have rights to curtail the degree to which non-democratic societies are included in the international community. Democratic societies are legitimately acting in defense of the human rights of their members in doing so. For democratic societies to have duties to include non-democratic societies under these circumstances, which would follow from a full right of collective self-determination, would be for them not to take seriously the human rights to democracy of their own citizens.

But there is a complication here. The democratic rights that are compromised are limited to treaty making, which is still a relatively limited source of domestic law. The right of self-determination of non-democratic peoples that is being denied is more comprehensive. Hence, the interests in the power to waive of the non-democratic societies appear to be more comprehensive than the interests at stake of the democratic citizens in equal participation in this instance. There is something worrisome in denying the non-democratic peoples their power to waive and requiring that they retain their democratic rights when we have acknowledged the interests involved in waiving and when we see that the reason for not waiving is based in the interests of the democratic citizens.

However, a theoretical solution does exist to this problem. A compromise can be made in which the non-democratic society must be organized democratically when it comes to treaty-making while it may retain its non-democratic organization when it is concerned with purely domestic law. I do not know to what extent such a division of collective decision-making can be achieved in a society. It seems to require a rather complex political status for each person and it is hard to see how that can be maintained.
And I certainly do not know how plausible it is to think that any society would be willing to divide up decision-making in this way. This is a highly artificial and theoretical solution, but it does suggest that there is some kind of middle way between denial of democratic rights and denial of rights of self-determination.

There is one other worry raised by the foregoing considerations. The last worry derives from the first argument for the human right to democracy. It states that democracies are normally necessary and reliable in protecting basic rights of physical integrity. These rights are commonly accepted and have a particularly central place in the human rights system. If non-democratic societies normally violate these rights, can they still have rights to collective self-determination? One way we could go about thinking about this question is by asking if members can waive their rights not to be tortured or not to be killed or disappeared by the state. I don’t know how to answer this question. But it is useful to note here at least that the considerations that made it reasonable to append a self-regarding power to waive to the democratic rights don’t seem to hold as straightforwardly in this case. In the democratic case, we noted that the interests in the power to waive were the same kind of interests as the interests in the democratic right. But the interests in not being tortured, killed, disappeared or arbitrarily imprisoned are not entirely of the same nature as the political interests in democracy. They are fundamental interests in the physical integrity and the dignity of the person. It may be that the rights protecting these urgent goods cannot be waived.

If the above is true, we could still try to answer this question is by saying that only those societies that do protect the rights of physical integrity can have a right of collective self-determination. This would limit the rights of collective self-determination of non-
Self Determination and the Human Right to Democracy

Thomas Christiano

The extent of legitimate protection of non-democratic societies would be very limited indeed if this were the case. I will leave the discussion at this point, though I want to note here that the conflict that I have been discussing in these last paragraphs is one between the collective self-determination of non-democratic peoples and the basic rights of physical integrity.

Conclusion

We have arrived at a point where there appears to be conceptual space for the possibility of a right of collective self determination for non-democratic societies even when there is a human right to democracy. But the actual practical space for such a right seems quite limited because of the morally necessary interdependence of states in the international system and because of the fact that non-democratic states normally do not protect basic human rights. This problem does not arise because there is a direct moral incompatibility between the human right to democracy and the right of collective self-determination of non-democratic peoples. But it is nevertheless the case, that the scope for such self-determination is very limited.

I want to close the discussion on a softer note. Even though normally non-democratic peoples will not have a full right to collective self-determination in the sense of rights to non-interference and full inclusion, they will usually still be in possession of rights to non-interference from democratic states. The right against non-interference can be sustained even if the rights to full inclusion cannot be. Aside from all the worries that arise merely from considering the terrible effects of war on a society, a basic reason for
the right against non-interference is grounded in essentially democratic principles. One basic problem with one society intervening militarily against another is that the intervening society is not politically accountable to the society and the people for whom intervention is intended. That is, there are no political mechanisms for ensuring that the society that is supposedly being helped actually has some voice in the decision-making of the intervening power during the intervention and during the subsequent occupation. Since the intervening power has its own interests and is politically accountable to its own people and not to those for whom intervention is intended, the interests of the supposed beneficiaries are likely to be forgotten or misunderstood in the process. Only in the most egregious cases of widespread internal human rights abuses, can this worry be overcome in favor of intervention. But in the cases of collectively self-determining non-democratic societies these violations may not normally rise to this magnitude. So they do possess a weaker right of collective self-determination even if not the full rights.22

22 I want to thank Massimo Renzo for very helpful comments on the whole of a previous draft of this paper.