

COLLECTIVE RIGHTS AND DEMOCRATIC STATES: A NEW FRAMEWORK FOR ADDRESSING GLOBAL SOCIO-ECONOMIC INEQUALITY

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Abstract: This article will present the argument for treating democratic states as moral and not only legal collective entities; that is, it will apply the theory of collective rights of cultural groups in a (closed) domestic political setting to democratic states in international relations. Numerous experiences by self-identifying cultural groups bear witness to the fact that morally important objectives are not always reached by merely treating individuals as the sole bearers of moral status. In order to prevent latent cultural imperialism, many countries around the world have adopted various models of collective rights protection and policies of preferential treatment for these groups. This article will examine whether it is possible to make a parallel between cultural groups and democratic states; in particular, whether it is feasible to think of democratic states as moral entities and what the normative implications of such a view for contemporary international relations and trade would be.

Keywords: democratic states, cultural groups, collective rights, international relations

Introduction

The motivation behind the inquiry into whether collectives qua moral collectives can be bearers of rights stems from the observation that certain aspects of both human welfare and justice have not met with success by relying on the language of *individual* rights alone.¹ In a majoritarian system of democratic governance, the recognition of individuals as the only moral entities effectively results in the disappearance of smaller and underprivileged cultural groups. In order to prevent latent cultural imperialism, many countries around the world have adopted various models of collective rights protection and policies of preferential treatment for these groups. This article will examine to what degree it is possible to make a parallel between cultural groups and democratic states; i.e. whether it is feasible to think of democratic states as moral entities and what the normative implications of such a view for contemporary international relations and trade would be.² This parallel extends only to explaining how the recognition of moral collectives should be normatively and institutionally addressed, but not to the reasons that make cultural groups and democratic states moral entities. However, in order to apply the normative argument from one contextual setting to another, it is necessary to first examine whether the original argument holds at all i.e. whether it makes sense to talk about cultural groups as collective rights-holders. With that in mind, I will initially outline the moral argument that underpins the treatment of cultural groups as collective rights-holders and how this status is institutionally recognised in democratic states. Subsequently, I will present a rationale for

¹ Throughout this article, (collective) rights will be understood as a socio-institutional mechanism of protection which allocates the duty bearer in the governing political authority. I will omit the discussion that involves examining whether the existence of rights depends on their legal codification or not (i.e. positive law vs. natural law theory). The reader should nonetheless be aware that the theory of collective rights of cultural groups (and potentially democratic states) investigated in the coming discussion should not be taken as synonymous with theory of morality.

² I do not here dispute that one could argue for policies of preferential treatment without invoking the theoretical and institutional framework of (collective) rights. I maintain that a rights-model is one plausible way of defending such policies, not the only way. I thank an anonymous referee for pointing out the need for this clarification.

thinking about why democratic states should be treated as collective entities of moral importance. In the last part of the paper, I will briefly evaluate whether these considerations put us in a better position to address the problem of global socio-economic inequality and poverty.

To avoid confusion, I will use the term cultural to refer to ethnic, religious, language and indigenous groups of various kinds i.e. to all groups whose primary source of self-identification is their common culture. This means that nations will not be included in the category of cultural groups since their moral dimension is additionally connected to their common political aim and the right to self-governance. It will not be possible to adequately address the question what nations are in this short piece. For the brevity sake, I will take a nation to denote a self-conscious group of people who claims a self-legislative power and the right to self-determination.³ Nations and cultural self-identifying groups should not be conflated with democratic states. Democratic states will be understood as modern political and socio-institutional collectives that facilitate public governance and uphold the principle of equality. Thus, for the purpose of the following discussion, their status as *democratic* can be determined through the institutional design that brings about the conditions where equal consideration is given to everyone's right to pursue their interest, whether these are individuals or groups. Moreover, such a notion of democratic states as used here is consistent with various forms of democracy and cultural/moral norms, and it is not reducible to only the liberal conception of democracy.

1. CULTURAL GROUPS AS MORAL COLLECTIVE ENTITIES

In the philosophical literature, the theory of collective rights is typically separated into two different "rights-talks" categories; namely, the conceptual and the normative one. Some of the main questions concerning the conceptual status of collective rights are: how do the collective rights of moral entities differ from the rights of (traditional) legal entities (Jones, 1999; Jovanović, 2012); what makes a right belong to the category of collective rights, keeping in mind that we exercise many *individual* rights on the basis of our collective membership (Mitnick, 2006; Miller, 2002); whether the object (benefit condition) of collective rights can only be enjoyed by collectives or by individuals alike (Green, 1991; Jovanović, 2012); and whether collectives fulfil the conceptual conditions to be treated as right-bearers, i.e. whether the meaning of having a right can be applied not only to individuals as moral agents but also to collectives as moral entities (Hartney, 1991; Graham, 2001; Newman, 2004; Pettit, 2007; Preda, 2012). Some authors, such as Will Kymlicka (1995, p. 45), think that the debate about the conceptual status of collectives as rights-holders is sterile and morally unimportant because it does not answer why some group memberships (and not others) are relevant for the exercise of special collective rights. Perhaps Kymlicka is too quick to dismiss how the theoretical groundwork for collective rights can have normative implications for actual socio-political relations.⁴ Nevertheless, he is right to point out that resolving theoretical issues as such does not explain 'why some rights are unequally

³ The question what qualifies a group of people in a cultural group or a nation falls outside the scope of this article. However, following Young (1990), I will take that collective self-identification is necessarily reflexive and that is unreasonable to reduce it to a set of empirical facts.

⁴ Kymlicka (1995, pp. 45-47) also does not use the term *collective rights* because he thinks it is too broad and inadequate to explain 'various forms of group-differentiated citizenship.' According to him, it is also not able to explain the difference between internal restriction (claims of groups against its own members) and external protection (the claim of a group against the larger society). I believe most of Kymlicka's discontents with the theory of *collective rights* can be resolved by firstly constructing an appropriate theoretical apparatus for investigation of normative issues.

distributed between groups' and why 'justice between groups requires that the members of different groups be accorded different rights' (1995, p. 47). Thus, being mindful of various important conceptual points (and points of disagreements among authors therein), this article will only focus on the normative side of collective rights; more specifically, whether a parallel can be drawn between cultural groups in a (closed) domestic political setting and democratic states in contemporary international relations and trade.⁵

Historically, the idea that groups of individuals can have rights is not unfamiliar and it certainly is not controversial from a legal point of view. The law incorporates persons as the bearers of rights and duties, and the legal concept of the person extends beyond the physical individual. A legal person is a social entity and not a natural individual (Groarke, 2010, pp. 298-301), although in contemporary legal systems almost every natural person also represents a legal person.⁶ Originally in Roman law, the Latin word *persona* referred to 'anything that could act on either side of a legal dispute;' persons were considered 'creations, artefacts, of the law itself' and in a legal sense, there were no real or artificial persons (French, 1979, p. 208). In the 5th century AD, the term person acquired its singular nature when Roman philosopher Boethius defined it as 'an individual substance of a rational nature' (1962, III, p. 6). Outside the legal sphere this is how the term is used today – to refer to singular individuals who belong to the specie of human beings. Human beings are persons, persons are moral entities, moral entities have moral value, and moral value is what justifies our claims to specific legal rights. However, in juridical usage, a legal person is a subject of law as the bearer of rights and duties; thus, a legal person can be an (natural) individual, a business company, a voluntary association (trade unions, environmental groups, non-profit organisations), a political party, a municipality, a state, an international organisation, etc.

Thus, on the one hand, the question of collective rights seems superfluous, keeping in mind that a variety of non-individual entities have long been treated as rights-holders. On the other hand, it seems that a democratic system of governance where all citizens have equal political status is compelled to treat individuals as basic moral units; that is, to assign rights to collectives only insofar as they advance the interests of individuals. Because they are creatures of law, these collectives typically do not have a moral dimension; thus, the rights allocated to collective entities with legal personalities are considered parasitical and therefore reducible to individual rights. However, in the last few decades, both academic and wider public circles began appreciating that not everything that exists in the natural and social spheres and is worthy of protection is adequately captured by using the language of individual rights. In particular, there has been an increasing recognition that some critically important human interests, which are valuable and deserving of protection, need to be vested in collectives rather than on the individual if they are to be successfully safeguarded (Van Dyke, 1982; Kymlicka, 1989, 1995; Freeman, 1995; Waldron, 2002; Kukathas, 1992; Jones, 1999; Newman, 2004). These moral interests in question are generally associated with common membership in various self-identifying collectives, most notably cultural groups.

⁵ Because the aim of this article is to investigate the plausibility of this analogy, it will not be possible to look into some of the main normative issues associated with collective rights. It is easy to foresee how many claims of collective rights can come into conflict with individual rights because what is in the best collective interest does not necessarily have to match the interests of its individual members (see Tamir (1999); Green (1991)).

⁶ This has not always been the case. Slave trading is a typical example where natural persons (individuals) were treated as things (as objects of rights and duties), instead of legal persons (as subjects of rights and duties).

In the philosophical literature, the protection of cultural groups gained prominence when a number of authors began arguing that socio-cultural context is inseparable from moral and political reasoning (Taylor, 1979; Sandel, 1982; Walzer, 1983; MacIntyre, 1984). Is thinking about justice beginning with individuals who are stripped of all knowledge of the self (Rawls, 1999) fundamentally flawed because ‘a totally unencumbered self is a human impossibility’ (Taylor, 1997a, p. 182)? If this is so, then it appears that every political context is innately characterised by some version of value collectivism, including the liberal one which operates on the assumption that the common conception of the good is not (primarily) collectively constructed but individually (rationally) chosen. From a theoretical perspective, this (later-termed) communitarian⁷ critique of liberalism brought to the fore that individual choices are only meaningful when perceived within the relevant communal or cultural context. But from a socio-political side and more recent historical developments, it called into question the ability of the classical democratic institutional mechanisms to accommodate the growing claims of minorities situated within multicultural states (Dare, 2002, p. 189). Writers situated in the Anglo-Saxon part of the so-called New World particularly felt the need to address this issue as over time original inhabitants of these lands have turned into minorities (e.g. Native Americans, indigenous peoples of Canada, Aboriginal Australians, Māori in New Zealand etc.). The post-World War II era started seeing the slow vanishing of cultural groups not as a result of forceful conversion or (somewhat less frequent) systematic destruction that took place throughout history. Their disappearance has rather been identified as collateral damage from democratic institutions and their majority-based decision-making procedures, thus representing democratic liberalism as a form of cultural imperialism, if not in its intention then at least in its effects.

Treating some collectives as entities of moral importance is to a large extent an attempt by democratic theory to reassess the moral consequences of its institutional models. Traditional democratic theory did not anticipate that smaller cultural groups would be left potentially vulnerable to dominant collectives. The idea that the dominant culture can take care of itself and that smaller (democratically vulnerable) cultural collectives require additional socio-political resources (Margalit & Halbertal, 1994, p. 492) can be brought into connection with policies of preferential treatment.⁸ Introduced after World War II, these policies aimed to ‘restore the members of groups which have been discriminated against in the past to a position of equality with other groups in the same community’ (Sadurski, 1984, p. 572). To be clear, more often than not, preferential measures are designed with the aim of equalising opportunities for underprivileged *individuals* with those who were, so to speak, given a head start. Since there is a strong correlation between being a disadvantaged individual and being a member of some group, group membership is perceived as a good reference point. Indeed, most of the policies of preferential treatment are not intended to promote the well-being of these groups as such but rather to create conditions where individuals are able to genuinely develop their capabilities and rights. There are, however, instances where policies of preferential treatment are used with the ultimate purpose of fostering the interests of collectives; i.e. cultural groups. Since it is not feasible

⁷ It is worth noting that abovementioned pioneers of the *communitarian* school of thought never identified themselves with this label. Furthermore, in order to avoid confusion, the reader should be mindful that from 1990’s there has been a rise of a “new communitarian” wave which focuses more on socio-political issues that relate to individual alienation in liberal societies (e.g. high divorce rate and depression, urban crime, excessive pursuit of material wealth etc.). See Etzioni (1998).

⁸ I will use the term preferential treatment rather than positive discrimination because the latter appears to be inherently (negatively) morally loaded. Both terms, however, are often used interchangeably in literature and social practise. For criticism of preferential treatment policies, see Goldman, (1979); Fullinwider (1980); Ballam, (1997).

to accommodate a collective cultural heterogeneity that characterises every modern democratic state, the exact selection of appropriate candidates has generally been limited to: 1) cultural groups of significantly smaller size (relative to the culturally dominant population) that were integrated into the larger national society during democratisation – national minorities⁹; and 2) cultural groups (i.e. indigenous peoples) that originally inhabited certain regions before colonisation and their incorporation into the eventually established democratic states.

Once it is accepted that a cultural group or any other collective is an entity of moral importance, it becomes relevant to address its genuine capability to maintain its well-being as a moral category. Thus, on the one hand, it looks as if it is against the democratic principle of equality to make *individual* cultural membership politically relevant. On the other, it appears necessary to grant privileges to certain underrepresented cultural groups in order to prevent moral harm and ultimately their disappearance. If the mechanism of individual rights has failed to protect the interests of cultural groups understood as entities of moral importance, then perhaps it is unavoidable to treat these collectives as (preferential) rights-holders. Although not universally accepted among scholars, this argument has surely provided the normative force for the institutionalisation of collective rights of various kinds. In this respect, Jacob Levy's classification of institutional models used for the accommodation of cultural groups represents a useful starting point (keeping in mind that the author himself admits it is based on empirical rather than philosophical observations). Levy (2000, pp. 125-160) separates the collective rights of cultural groups into a) self-government, b) external rules, c) internal rules, d) recognition/enforcement e) assistance, f) representation, g) symbolic claims, and h) exemptions.¹⁰ It should be noted, however, that this list is not exhaustive. Nevertheless, one thing can be said to be common for all types of collective rights of cultural groups. Namely, they are all based on the moral argument of preferential treatment; that is, on the recognition that some collectives require additional socio-political resources in order to develop their capabilities and ensure their well-being.

For the purpose of this article, it will not be possible to deal in more detail with each of these categories and their associated problems. Admittedly, this would also be unadvisable since relations between cultural groups in closed political societies and between modern democratic states are in many ways two significantly different contexts. Be that as it may, perhaps it is plausible to make an analogy between cultural groups and democratic states with respect to

⁹ National minority does not refer to a minority with the status of a nation, but a minority within a nation-state. Thus, national minority can be defined as 'a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members—being nationals of the state—possess ethnic, religious, or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language' (Capotorti, 1991, p. 96). It is interesting to note that the United Nations (UN) throughout its legal documents does not endorse any specific definition of "national minority" and finds that the terms "national", "ethnic", "religious", and "linguistic" when put before "minority" are self-explanatory (Preece, 1998, p. 20).

¹⁰ In short, the category of a) self-government represents the most substantial set of institutional measures for the protection of cultural groups and as such it can include a variety of jurisdictional powers; b) external rules pertain to restrictions on the liberty of non-members of cultural groups; c) internal rules correspond to expected rules of conduct for the members of cultural groups that are otherwise not applicable to non-members; d) recognition/enforcement allows cultural groups to use other than general law in certain areas of laws (e.g. traditional law with respect to land rights, family law, and criminal law); e) assistance refers to the allocation of any additional funding required for the preservation of (cultural) collective interest; f) representation refers to assurances that members of some cultural groups will be represented in central governing institutions regardless of the popular vote; g) symbolic claims typically involve a recognition of cultural groups' identity exemplified by an observance and use of its chosen name, flag, anthem, holidays and alike; and h) exemptions refer to provisions that allow members of some cultural groups to be relieved from abiding certain (otherwise universal) laws.

category exemptions as a form of collective preferential treatment. Exemptions from the general law refer to a cluster of special rights which relieve individuals of duties they would otherwise be obliged to fulfil by virtue of their citizenship. They are often given to members of some cultural groups on the basis that the universal application of a law to all citizens does not take into account the fact that certain practices have a special meaning for the members of these collectives. Despite the fact that a (general) law does not specifically aim to prohibit these practices (and consequently cause harm to cultural groups), in some cases it nevertheless does so as a by-product of wider legislation. Some of the commonly cited examples include the religious use of peyote by Native Americans, exemptions from mandatory helmet law in New Zealand and Canada for the members of the Sikh religion, exemptions for Muslims from the regulation concerning the use of head-coverings for official documents photographs in Switzerland, and many others.¹¹ A more complex form of exemptions occurs when beliefs and practises of some cultural groups come into conflict with the basic moral norms and generally accepted principles of law of the wider society.

There has been a growing interest in the literature and the public domain with respect to exemptions from general law for members of cultural groups. This is particularly noticeable in the socio-cultural setting of post-colonial countries, the more recent so-called European migrant crisis, and globalisation in general (see Dimova-Cookson & Stirk, 2010). Since democratic states by definition (at least in principle) stand for collectives that epitomise democratic governance, it is not expected they would require substantial exemptions in their interaction with other global actors.¹² Although this remains true in aspects that relate to the underlying moral and political norms of democratic states, this is not so obvious in the context of their socio-economic relations. Namely, under the supervision of the World Trade Organization (WTO), international trade today is conducted following the principles of multilateralism, trade without discrimination and anti-protectionist policies. All are associated with democratic principles of equality that are supposed to contribute to the welfare of democratic states and foster fair terms of international cooperation. In spite of that, there has been an increasing recognition that economically undeveloped countries with weaker socio-political institutions remain disadvantaged in the system of formal equality of global trading actors (Pogge, 2008; Clapp, 2006; Lafont, 2012).

2. DEMOCRATIC STATES AS MORAL COLLECTIVE ENTITIES

Theory and institutional mechanism of preferential collective rights of cultural groups can offer a novel approach for thinking about international relations and the existence of severely disproportional socio-economic placements and capacities of states. Namely, the theory helps in understanding that mechanisms for the protection of collective interests are not the same as those used for the protection of individual well-being. Before looking into whether some of these mechanisms should be extended to international relations and trade, it is necessary to briefly look

¹¹ Peyote is a type of cactus which has psychoactive (hallucinogenic) effect when consumed and it has been traditionally used by Native Americans for a spiritual purpose; a Dastaar or a turban is a mandatory clothing item for Sikh men and women and is regarded an integral part of the Sikh religion practice; a hijab is a type of veil that usually covers the head/chest/face and is worn by some Muslim women in public or in the presence of adult (non-immediate family) males.

¹² This is of course under the assumption that the general principles of international law embody democratic values. For instance, these are, 'the principles of consent, reciprocity, equality of states, finality of awards and settlements, the legal validity of agreements, good faith, domestic jurisdiction, and the freedom of the seas' (Brownlie & Crawford, 2012, p. 37).

into whether democratic states (like cultural groups) can be thought of as collective entities of moral importance, keeping in mind their status in international law as only legal collectives. Namely, the philosophical treatment of collective rights generally involves collectives that do not strictly speaking come about as creations of law but whose moral importance is principally linked to our existence as social beings. Although the existence of democratic states has far-reaching and omnipresent effects for our social life, it can be argued that a parallel between states and those generally taken as moral collectives cannot be made on the basis that the former come into being through legal enactment. Cultural groups are not created by social conventions (at least not in this sense) and their recognition as morally relevant is grounded on a myriad of pre-legal and sociological facts (Jovanović, 2012, p. 127; see also Newman, 2013). At the outset, every state, democratic or not, appears to be an artificial collective with a legal personality comparable to other traditional collective legal entities.¹³

The state in contemporary understanding is essentially associated with the institutional means that are taken to be indispensable for political and socio-economic governance as such. This sociological account of statehood does not try to identify the end-goal or purpose of a state. Rather, it focuses only on a set of observable characteristics that allow it to function as a type of political collective. According to Weber (1978, pp. 54-56), for example, these are a government with control of the means of violence, legal order and the rule of law, territoriality, and citizenship.¹⁴ In his account, the definition of statehood is impersonal and non-organic. It is devoid of any normatively purposeful elements and it is 'action-oriented, anti-essentialist and empirically founded' (Anter, 2014, p. 94). Singling out the characteristics that allow a state to function as a type of political and socio-institutional entity is also in line with the (largely) recognised operating definition of statehood in international law given in *Montevideo Convention on the Rights and Duties of States* (1933).¹⁵ As a general approach, both sociological account and *Montevideo* definition of statehood seems to be consistent with the understanding of cultural groups presented earlier. Namely, cultural groups were primarily conceived as unique facilitators of conditions through which human beings get 'access to a range of meaningful options' (Kymlicka, 1995, p. 84). A normative inquiry and potential disagreement about what those meaningful options should be does not challenge the principal capability of these collectives to facilitate cultural self-identification through internalisation of fundamental social norms, beliefs and practices. Following that parallel, we can suppose that the principal capability of the modern state is to facilitate governance, regardless of how political power is justified and distributed.

¹³ It should be noted that the literature on state creation in international law is divided on this matter; namely, into constitutive and declaratory theory of state creation. Constitutive theory claims that states come into being through recognition by other states (i.e. international legal mechanism), whereas declaratory theory requires an entity to fulfil minimal operating conditions for statehood (i.e. recognition by international law is only declaratory). For the sake of argument, I will assume that the truth lies somewhere in the middle, and that states cannot be identified with pre-legal entities such as cultural collectives. For more about this, see Parfitt (2016).

¹⁴ Weber's definition has been used as a model for many other contemporary versions; thus, for example, Anthony Smith takes a state to represent 'a set of autonomous institutions, differentiated from other institutions, possessing a legitimate monopoly of coercion and extraction in a given territory' (2010, p. 12). See also Pierson (2011).

¹⁵ Article 1 of the *Convention* requires that 'The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States'. Although the signees of this *Convention* were only American states, it is considered that it represents a part of customary international law, hence that it applies to all subjects of international law. A similar definition is indirectly endorsed by the European Union through the principal statement of its Badinter Committee; namely 'that the state is commonly defined as a community which consists of a territory and a population subject to an organized political authority; that such a state is characterized by sovereignty' (Pellet, 1992, p. 182).

Against the backdrop of the philosophical treatment of collective rights, the *Montevideo Convention* (1933) also asserts that states are juridically equal, enjoy the same rights, and have equal capacity in their exercise (Art. 4); and that no state has the right to intervene in the internal or external affairs of another (Art. 8). States acquire many rights and duties as signatories of various conventions or contracts under the assumption that this procedure is necessary for the advancement of morally important interests. In light of that, international law duly accepts that states as legal subjects are liable if they commit internationally wrongful acts and that they are responsible for making full reparations for the injury caused; where injury includes either material or moral damage caused by the internationally wrongful act (ILC, 2001, Art. 31).¹⁶ Hence, the state as a right-holder (and a duty-bearer) is not viewed controversially in legal theory and practice. Although it is clear that states have rights, there is little discussion with regard to the democratic state as a particular kind of state and its status as a right-holder. What differentiates a state as a legal collective from a democratic state taken as also a moral entity and rights-holder in that capacity?

One plausible way to argue that a democratic state should be understood as a moral entity is by referring to its ability to provide protection of the morally important goods that comprise the object of individual and collective rights – rights which cannot be given substance without both a *democratic* and an *institutional* mechanism that characterises the democratic state as a collective. If the concept of rights requires a well-defined duty-bearer (Hohfeld (1917, p. 717), then it is best to situate that relationship into a framework characterised by both political motivation (*democratic*) and the socio-institutional means for its realisation (*state*). The question of whether as a matter of fact governments of democratic states protect morally important interests is an empirical matter worth investigating on an individual basis. But it does not follow by implication that the governments of democratic states will protect the rights of their citizens any more than it follows that members of cultural groups will have their interests advanced by these collectives. The justification for protecting cultural groups is not built upon the premise that *particular* cultural beliefs and norms benefit their members because they are *in fact* beliefs and norms that contribute to human well-being. Instead, it is based on the recognition that a *cultural framework* turns our thoughts into a particular kind of thoughts (Taylor, 1997b, p. 132) and that no comprehensive self-identifying cultural group is of greater moral importance than another. Just like cultural groups are a fundamental platform for moral and political reasoning, so are democratic states facilitators of the protection of individual and collective rights. In other words, they have the status of moral collectives not because they unavoidably promote human well-being, but because they are the best locus where *interests of a specific kind* can in principle be advanced due to the nature of these collectives.

Those morally important interests of certain kind estimated to maintain a democratic society and to offer sufficient reason for holding others under duty are best realised through membership in a democratic state. To start off with individual rights, for instance, consider the fundamental right to education. Arguably education is one the most important interests for humans: we have a unique capacity to seek, interpret, and express information. Education is necessarily carried out in a communal setting and it unquestionably can be facilitated in various environments. However, the relation between membership in a democratic state and the

¹⁶ Internationally wrongful acts are a breach of international peace whether by aggressive military activity, colonial and apartheid-type activity, the enforcement of slavery and genocide, the production of massive pollution of the environment, or anything that violates the right of self-determination of peoples (ILC, 1976, Art. 19).

protection of the right to education cannot be written off as merely contingent. Namely, in a democratic state, the provision of education to its members is arguably intrinsically linked to the nature of the collective in question. It is derived from the principle of individual equality and the need to foster the necessary conditions for the authentic participation in a democratic civil community (Dewey, 1916). As, for example, Carr notes: 'It is only in a democracy whose education system does not equip its members with the intellectual skills and social attitudes necessary for participating in public debate that open discussions about the democratic purposes of the National Curriculum could be deemed to be important in principle [...]' (1991, p. 183). In this context, moreover, fulfilling educational needs of individuals requires not only an endorsement of democratic principles in abstract, but also socio-institutional resources for its realisation – the state.¹⁷

The democratic state also provides goods to its citizens that are collective in their nature, namely public goods, common-pool resources, and the good of national self-determination.¹⁸ In contemporary democratic states, the existence of public goods is fundamentally connected to the democratic management of the commonwealth (*res publica*) state. The provision of public goods presupposes a type of governance that rests upon the idea of democratic political endeavour and collective ownership. There can be no provision and protection of public goods if there is no recognition of the *public* as a politically relevant category. Common-pool resources are yet another example of collective goods whose protection in principle require an allocated duty-bearer, such as the governments of democratic states. Namely, Article 1 of the *International Covenant on Economic, Social and Cultural Rights* (UN GA, 1966) declares that all peoples may freely dispose of their natural wealth and resources. Most (if not all) mentioned in this article falls under the category of common-pool resources. Again, this is not to say that the governments of democratic states (or whoever the government delegates it to) will responsibly manage common-pool resources by default, just as there is no guarantee any government will necessarily protect the individual rights of citizens (see V. Ostrom, Tiebout, & Warren, 1961; E. Ostrom, 2010). It is rather that only in democratic states the (mis)use of these resources for private gain can in principle be sanctioned and deemed illegitimate due to the democratic and institutional nature of these collectives. Finally, it is difficult to conceive of any other entity that is better positioned to maintain the good of national self-identification and the exercise of democratic governance. Assuming that democracy as a political category reflects how one society understands and governs over itself, it is hardly conceivable that those common political aims can be asserted without democratic institutions, i.e. without democratic states.

¹⁷ Similar argument can be made by looking into some of the rights individuals enjoy as residents or citizens of a modern democratic state. For example, the right to life and liberty and security of person; the right to vote and be represented by the Parliament; the right to freedom of thought and religion; the right to protection of health; the right to government assistance in case of incapacity for work, loss of provider, or old age; the right to be judged by an independent court; etc. The provision and protection of all these rights is arguably deeply connected to the nature of the democratic state as the facilitator of the democratic form of governance.

¹⁸ For treating common membership as a (moral) good, see Margalit & Raz (1990); Réaume (1988). As for other types of goods, in brief economic terms, unlike private goods, public goods are considered to be non-excludible (i.e. using them does not prevent others from using them at the same time) and non-subtractable (for any level of their production, the cost of providing them to a marginal (additional) individual would be zero (Samuelson, 1954; Desai, 2003). Common examples of public goods are street lighting, national TV and Radio, police service and national defence, unpolluted air, public roads, parks and natural sights, educational institutions, social services, healthcare etc. Common-pool resources are non-excludible but subtractable goods, which is why their overuse leads to scarcity and ultimately their disappearance. They typically include natural or human-made resource systems, such as waters, forests, pasture, arable land, fishing grounds, irrigation systems, and potentially a variety of natural resources used throughout industries.

3. DEMOCRATISATION OF INTERNATIONAL TRADE: DEMOCRATIC STATES AS COLLECTIVE RIGHTS-HOLDERS?

If the purpose of rights is tied to the promotion of the right-holder's well-being; in particular, to the protection of morally important interests that are sufficiently strong to impose duties onto others (Raz, 1988, p. 166); then it is necessary to conceive of an entity whose resources allow it to perform such a task. The democratic state is such an entity – it protects rights because it is *democratic*, and it is able to protect rights because it is a *state*. Recognising the moral standing of any entity has important normative consequences in that it justifies why some need more than others to fulfil their legitimate interests. Against the background of globalisation and the democratisation of international relations, the intensified interrelationship between political communities has generally had beneficial outcomes in many spheres of life. But perhaps it is somewhat less appreciated that this closer cooperation has also exposed the relevance of power disparities and the peculiar character that applies to these collectives. In principle, modern democratic states call upon their sovereign right to specify under which conditions they will accept certain particular international obligations. However, this international endowment does not guarantee the negotiating parties equal strength, just as not all self-identifying cultural groups were equally well-positioned to defend their interests during the creation of democratic states. In that regard, is international trade an example of a form of cooperation that can bring about foreseeable negative consequences to participating democratic states due to their socio-economic disparity?

International trade today (or about 97% of it) is heavily regulated by the WTO which describes itself as a as a forum for governments to negotiate trade agreements and a place for them to settle their disputes (WTO, 2018a; 2018b). There is a considerable agreement among professionals and analysts that the WTO has been successful in the fulfilment of its primary goal – the promotion of a rules-based multilateral trading system (Bhagwati, 2005; Dupont & Elsig, 2017). The WTO trading system advocates for rules and regulations that are designed to contribute to the following goals: trade without discrimination, the reduction of trade barriers, the predictability of investment, the promotion of fair competition, and the encouragement of development and economic reform (WTO, 2018c). Trade without discrimination is grounded on: 1) *the most-favoured-nation* principle according to which countries are not allowed to grant special trading provisions to one partner without doing the same to all other WTO members; and 2) *the national treatment* principle which requires imported and locally-produced goods to be treated equally once they enter the market. The gradual liberalisation of the global market requires lowering trade barriers, such as customs duties or import bans. Stability and predictability are achieved through the binding nature of the WTO agreements, since the commitments of trading partners encourage investments, create jobs, increase consumer satisfaction and lower prices. The promotion of fair competition means that the institution of free trade allows for exceptions regarding the protection of national markets, although the exact extent of these measures is a matter of negotiation. Thus, although it is generally held that the liberalisation of the market leads to economic development, the policy of WTO recognises that some countries need time flexibility for the full implementation of agreements.

Together with the International Monetary Fund and the World Bank, the WTO almost unconditionally opposes protectionist policies (WTO, 2017, p. 3). Protectionism in this context

refers to laws and regulations that restrict free trade at the expense of foreign (state or privately owned) companies. The justification of such governmental measures is often defended on the grounds that in certain circumstances and in certain industries, foreign producers have an unfair advantage over local producers. Some of the most common mechanisms include tariffs, quotas, regulatory barriers, domestic and export subsidies, and exchange controls.¹⁹ As a form of economic policy, protectionism can have both positive and negative effects. It is advantageous in cases where states are purposely trying to strengthen one of their underdeveloped industries; i.e. imposing import limitations allows domestic companies to catch up to their foreign rivals, assuming there is a significant competitive advantage between the two. From a negative point of view, the lack of competition in the long run can potentially weaken domestic industries, reduce the quality of products and services, and possibly weaken entrepreneurial incentive. Furthermore and quite expectedly, extensive protectionism in one country motivates economic retaliation in the others. In turn, this can lead to a form of economic isolation due to domestic companies being unable to offer their products or services outside of the home market. Lastly, it is worth noting that the closing of economic relations with the outside world is often associated with the closing of socio-cultural relations in that context. For this reason, contemporary protectionist policies are also considered anti-democratic and anti-cosmopolitan.²⁰

The WTO multilateral approach can be associated with the principles of democratic governance because it allows every state to participate in trade negotiations, while it also assigns equal rights to all involved parties.²¹ This appreciation is of utmost importance because it is precisely the “democratic” character of the WTO that has allegedly created unfair conditions where everyone’s interests are not equally promoted. On the one side, citizens of the more affluent democratic states (i.e. expensive domestic workers) have raised concerns with regard to regulations that allow the outsourcing of cheap labour. On the other hand, citizens of democratic states with lower economic standards of living have accused the WTO system of allowing economically superior agents (states and multinational corporations) to legally impose their economic interest at the expense of the weaker ones. Both injured parties argue that the alleged system of equality of democratic states contributes to the condition of unfairness; and again, not necessarily in its intention, but undeniably in its effect. While these criticisms are not unrelated to one another, only the second one will be the subject of the brief proceeding discussion: are democratic states with weaker socio-political institutions and economic development disadvantaged in the relationship of formal equality of states as subjects of international law?

Although rules-based multilateral trading has a strong incentive, there is quite a number of economic indicators that the liberalisation of international trade has not benefitted all parties

¹⁹ Quite briefly, *tariffs* are import taxes that raise the price of foreign goods; *quotas* refer to a set maximum number of products that can be imported in a given period; *regulatory barriers* generally include classification of product standards that potentially deter foreign companies from taking part in the domestic market; *domestic and export subsidies* consist of payments made by governments to domestic companies which effectively reduce the cost of production; and *exchange control* in the context of protectionism is defined as a governmental intentional depreciation of the national currency, thereby increasing the price of imported goods and correspondingly making domestic products cheaper abroad (Coughlin et al., 1988).

²⁰ Interestingly, the greatest number of restrictive trade measures are employed by the most socio-economically developed states (Gowling WLG, 2017), who coincidentally also make a group of states with the longest standing tradition of democratic governance.

²¹ There is, however, one exception to a uniform rule-driven structure of the WTO and it concerns accession protocols of new member states. In particular, ‘unlike any other international organisation, the WTO has required its acceded Members to adhere to more stringent rules than those set out in the provisions of the WTO Agreement and has offered no official explanation for the differential treatment between its original Members and acceded Members’ (Qin, 2017, p. 225). At the moment, 36 out of 164 are acceded members (WTO, 2018d).

equally. Already in 1997, the United Nations Conference on Trade and Development report noted that almost all developing countries that have undertaken rapid trade liberalisation also experienced an increase in wage inequality, a large decline in the industrial employment of unskilled workers, and absolute falls in their real wages. This ongoing trend directly challenges the conviction that free multilateral trade is supposed to contribute to everyone in the same favourable manner. To such a degree, although every democratic state and every company can be good at something²², there is a qualitative difference with respect to what they are good at. Namely, the great socio-economic disparity that exists between democratic states is reflected in their level of industrial development that is ultimately derived from their socio-political and technological positions. The criticism thus goes that economically underdeveloped countries have been extensively used mostly for their natural resources and cheap labour. Because of the international pressure not to employ protectionist policies, they have not been able to develop their industrial capacities and social capital in general. The strongest version of this critique accuses the global economic order of systematically producing political instability and economic underdevelopment in already impoverished states (see Pogge, 2008; Wenar, 2013, 2016).

How is the system of the formal equality of states as subjects of international law unfavourably manifested throughout international socio-economic institutions? It is not difficult to conceive how material inequality translates into inequalities of power, and how a stronger party is better placed to set the terms of exchange in its favour (Miller, 2007, p. 75). To be sure, the societies from which democratic states are constituted are not ahistorical entities, hence their socio-economic inequality can be factually explained by combining the most diverse domestic and external factors. In some instances, politically unstable and economically weaker states have a history of being militarily dominated, socially discriminated and economically plundered by a number of today's wealthiest democratic states. Nevertheless, upon closer inspection, it does not seem necessary to establish whether there truly has been a historical injustice in order to acknowledge that some democratic states are economically better placed than others. In that sense, the fact that their economic capability is so uneven is, following Rawls (1999, p. 87), neither just or unjust. But what can be considered just and unjust is how international institutions will deal with these facts through, among other things, the regulation of international trade. Given democratic states' disparate ability to pursue their socio-economic interests through international trade, one can see how the mechanism of free market can potentially contribute to what it is supposed to eliminate – international economic inequality and underdevelopment.

The Ricardian model of free trade and comparative advantage maintains that everyone has something to offer in international trade and that everyone will profit from mutual cooperation and competition. But too many cases have already shown that the only comparative advantage of economically underdeveloped and non-industrialised democratic states lies in their stockpile of various natural resources and raw materials. For this reason, the Ricardian model has been criticised for being overly simplistic and not able 'to provide any rational explanation for how some developing countries might be able to become industrialized and export high value-added products over time' (Siddiqui, 2015, p. 231). Namely, trade liberalisation assumes that all the parties involved have more-less equal standing; that all democratic states have relatively equally developed socio-political institutions, social capital and the technological development

²² This argument has been popularised by David Ricardo (2001, pp. 85-103) who observed that every country is characterised by its own comparative (dis)advantage. By taking into account their respective natural and social conditions, every country should specialise in those commodities and services, eventually leading to beneficial trade outcomes for all involved parties.

needed for production and export. However, an abundance of empirical evidence has shown the fallacy of this assumption and the increase of international trade has exposed these critical differences between democratic states more and more.²³

As a theoretical platform, the idea of collective rights of democratic states can be used to express why some democratic states require preferential treatment and economic protectionism in international relations and why they ought to be exempted from laws that represent excessive burdens for them. Ultimately, one has to ask in what meaningful sense are democratic states equal when they engage in non-discriminatory yet competitive interaction within international socio-economic relations. Underprivileged cultural groups attest it is possible to have democratic institutions and processes in place that nevertheless produce harm to collective entities. Because not all democratic states are sufficiently and/or similarly placed to reap benefits from the current international trade mechanisms, it is becoming more apparent that such an unbalanced state of affairs severely impedes their right to political self-governance and their ability to protect individual and collective rights. These considerations prompt us to re-evaluate whether the status of democratic states as collectives of moral importance is appropriately captured in the system of formal equality of states as subjects of international law. It is entirely possible that even in a system of international trade where everyone's formal equality is equally respected, democratic states with lower levels of economic development and/or outputs may still suffer comparative disadvantages.

4. CONCLUSION

David Miller (2007, p. 76) correctly notes that gross inequalities between democratic states make it difficult to achieve international fair terms of cooperation, which in turn prevents nations from genuinely exercising their right of self-determination. In the context of international trade, a number of prominent authors have demonstrated that governmental policies of protectionism are needed in order to facilitate the development of domestic economy, and especially the industrial sector (Amsden, 2001; Stiglitz, 2006; Chang, 2008). In the past, such measures have indeed been used by a number of currently affluent states in order to facilitate economic development and modernisation.²⁴ Thus, as a matter of both economic theory and proven successful practise, it is not controversial to uphold protectionist policies until one democratic state is ready to progressively liberalise its market. So far, not much has been said about the moral justification for the preferential treatment of democratic states on the basis of their asymmetrical collective economic capabilities. Upon reflection, it is arguably true that relying solely on the non-discrimination principle would lead to the gradual and irrecoverable disappearance of cultural groups in democratic states; thus, policies of preferential treatment are designed to restore the balance between unequally positioned collectives. The same can be said for the principle of trade without discrimination – it masks the genuine disparity in collective

²³ Free trade regimes are able to use resources most efficiently, which will ultimately lead to socio-economic growth and prosperity. However, as Moellendorf notes: 'More competitive firms can be expected to expand as less efficient firms decline only if resources are fully employed already, which is rarely the case, especially in developing countries; capital can be efficiently allocated only if there exists well-functioning insurance against the risks associated with such investments, but this requires that risk markets and social insurance programs be in place, which is often not the case; prices can serve to coordinate information efficiently only if there are well-established markets, which are often lacking in developing countries' (2009, p. 93).

²⁴ For example, the promotion of industrialisation has been state-run in the USA, England, Germany, and most recently in East Asian countries, such as Japan, China, South Korea and Singapore (Siddiqui, 2015, 235-243). See also UN (1950).

capabilities and replaces it with the formal equality of states as international subjects of law. When the socio-economic disparity between states has foreseeable negative consequences, democratic states should be allowed to adopt economically protectionist policies, which will serve as a form of preferential treatment in order to achieve substantive equality of opportunity.

Thinking about democratic states as moral collectives and rights-holders in such capacity can make a tangible contribution to both the theoretical field of study and real-life practise. By relying on the proven institutional models and practise of collective rights of cultural groups, it can offer guidelines and a moral argument to justify why some aspects of international relations and trade should be remodelled. Once it is acknowledged that democratic states are moral collectives, it is possible to justify socio-economically underprivileged democratic states requiring preferential treatment in the system of international trade. At the conclusion, it is important to point out that measuring and meaningfully quantifying comparative differences in the economic capabilities of democratic states is certainly not a straightforward task. Notwithstanding, there are already established helpful methodologies for socio-economic assessment being employed by the leading international organisations.²⁵ The same holds for discussion regarding more exact institutional responses that could facilitate beneficial socio-economic international cooperation. With that in mind, this article aimed not only to present an argument, but moreover to socialise the idea of collective rights of democratic states and encourage further examination of the proposition.²⁶

²⁵ The World Bank classifies countries on the basis of gross national income (GNI) per capita which is subsequently used to determine their lending eligibility, that is, their financial creditworthiness. Countries are grouped into low income economies (\$1,025 or less); lower middle-income economies (\$1,026 - \$4,035); upper middle-income economies (\$4,036 - \$12,475); and high-income economies (\$12,476 or more). The International Monetary Fund calculates and ranks countries according to their gross domestic product (GDP) (nominal; nominal per capita; purchasing power parity (PPP); PPP per capita), population, and PPP. Countries are divided into advanced economies, emerging market and developing economies. The UN Development Programme uses the Human Development Index (HDI) to numerically capture the development of a country by not solely focusing on the economic dimension but by integrating life expectancy, education, and income into one meaningful measurable whole. Because it already incorporates the (individual) capability approach as a normative tool, it is perhaps one of the best indicators at the moment and potentially a platform that can be expanded for determining the socio-economic collective capabilities of democratic states. In the 2016 Human Development Report (198-201), according to HDI rank, countries were separated into: very high human development (1-0.800); high human development (0.799 - 0.700); medium human development (0.699 - 0.550); and low human development (0.549 - 0).

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