COLLECTIVE RIGHTS OF NATION-STATES

By

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ABSTRACT

This thesis will present the argument for treating nation-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 nation-states in international relations. The theory of collective rights of cultural groups is motivated by an observation that certain aspects of both human welfare and justice have not met with success by relying on the language of individual rights alone. This thesis is an attempt to apply the theory of collective rights to nation-states in order to address some of the main issues discussed in the literature on global justice. Treatment of nation-states as moral entities and collective rights-holders in that capacity has two far-reaching normative consequences. Firstly, it makes it more apparent that the introduction of democratic governance over people has not been equally institutionally followed by the democratisation of governance over the state. Secondly, once it is accepted that nation-states are moral and not only legal entities, it becomes relevant to address not only their formal equality but their genuine capability to pursue legitimate interests in their mutual interaction. Thinking about nation-states as moral collectives offers a novel theoretical approach for facilitating more beneficial and fair terms of cooperation in the context of international relations.

For my mother, Slavena Radaković.

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CONTENTS

List of Abbreviations

United Nations (UN)

United Nations Trusteeship Council (UNTC)

United Nations Trusteeship Agreement (UNTA)

International Court of Justice (ICJ)

United Nations General Assembly (UNGA)

Gross Domestic Product (GDP)

Amnesty International (AI)

World Health Organization (WHO)

Multinational Corporation (MNC)

International Organisation (IO)

International Law Commission (ILC)

United Nations Security Council (UN SC)

Universal Declaration of Human Rights (UDHR)

United Kingdom of Great Britain and Northern Ireland (UK)

International Monetary Fund (IMF)

World Bank (WB)

World Trading Organization (WTO)

United Nations Conference on Trade and Development (UNCTAD)

United States of America (USA)

Organisation for Economic Co-operation and Development (OECD)

United Nations Development Programme (UNDP)

Transparency International (TI)

Human Development Index (HDI)

Corruption Perception Index (CPI)

INTRODUCTION

The last 70 years have seen the rise of two seemingly conflicting politico-economic trends. On the one hand, we have seen the increasing interconnectedness of political communities through the rise of global political and socio-economic institutions and the emergence of political and economic unions. On the other hand, the number of autonomous states has grown, as peoples from formerly colonised parts of the world have sought and obtained independence. These two developments are mirrored in the trajectory of the study of international relations: two systemic approaches of study have arisen: the state-centred and the global governance approach. The state-centred approach takes states as the main actors in international relations, whereas the global governance approach stresses the importance of various actors and their relationships in the international relations arena, such as states, territorial political organisations (e.g., the European Union or Mercosur, for example), large international organisations (e.g. the World Trade Organization or International Monetary Fund), the United Nations, intergovernmental and non-governmental organisations, and any other organisations or communities that have a socio-political and economic character.

In political science, the state-centred approach typically emphasizes the importance of the degree of power each state possesses to pursue its own interest, where interest can be understood as: security from external threats or internal strife, developing the economy and education, the ability to protect themselves from the influence of other states, population control, good foreign relations, etc. In philosophy, the same approach is mostly concerned with a justification of the state as an institution, its role as the provider of a public realm where freedom, justice, civil society, and the protection of individual and collective rights can be realised. The global governance approach in both political theory and philosophy tries to capture the fact that although there is no such thing as a single world government (hence, global *governance* not *government*), there is still a political dimension to the various non-state actors mentioned above that can collectively influence both the domestic sovereignty of states and their foreign relations.

Philosophers further pursue the normative dimension of the unusual phenomenon of governance without a government, hence they show interest in questions such as: how does political and economic interdependence on a global level affect individual states (ergo their citizens)?; does this interconnectedness result in the decline of traditional state sovereignty and require some form of institutionalized global political body(ies)?; if certain problems that contemporary societies face today are rather global in their scope (such as world poverty, climate change, and immigration), does this require some form of political mobilisation on a global level?; do various forms of group memberships, in particular national and state

membership (citizenship) result in the justified or non-justified discriminatory treatment of human beings, otherwise understood as equal in dignity and rights?; and does all of the aforementioned necessitate the development of some institutionalised form of global justice, as a normative framework that should govern the relations between political actors on a global level?

This thesis will attempt to address some of the main topics within the global justice debate by applying the theory of collective rights of cultural groups in a (closed) domestic political setting to nation-states in international relations. As a systematic approach in the study of international relations, it will be situated between the state-centred and the global governance approach. Namely, the idea of collective rights of nation-states confirms that the state is a morally valuable political and socio-economic collective indispensable for the protection of individual and collective rights. Nevertheless, the idea of nation-states as collective rights-holders also acknowledges the political dimension and legitimacy of various global (non-state) actors in the context of the normative theory of international relations. Applying the theory of collective rights of cultural groups to nation-states is also an attempt to address some of the obstacles faced by the supporters of global distributive justice, in particular those operating within the cosmopolitan tradition. Cosmopolitanism draws attention to the problem of moral discrimination between individuals on the basis of their citizenship – that is, to the problem of severe poverty and unequal socio-economic placements of states that critically affect individuals' well-being. By extending the principles of (domestic) distributive justice to the whole world, global governance normative theorists make arguments for some redistributive scheme that should be able to strike a balance between disadvantaged and advantaged countries. However, cosmopolitanism and the idea of global distributive justice more generally have not been able to genuinely influence the existing arrangements of global institutions, while their ideas have also met with resistance from the academic community.

Thus, the idea of collective rights of nation-states is meant to provide a novel approach to institutionalising fair terms of international cooperation. As a theoretical and normative framework, it is derived from an acknowledgement that the advancement of moral well-being at times requires treating some collectives as moral entities and rights-bearers in that capacity. The argument for thinking about collectives qua moral collectives has been applied to cultural groups. It stems from an observation that the mechanism of individual rights alone does not adequately protect interests of moral importance that are intrinsically collectively produced and enjoyed. More specifically, that the cultural beliefs, norms and practices that solidify the identities of cultural groups are an irreplaceable part of human welfare. In a majoritarian-based 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 thesis will examine whether it is possible to draw a parallel between cultural groups and nation-states; i.e. whether it is feasible to think of nation-states as moral entities and what the normative implications of such a view for contemporary international relations would be.

Writing this thesis has indeed been a true challenge for its author. Writing a PhD thesis is a difficult task in itself. However, the examination into whether the formal equality of states in international law appropriately captures the moral dimension of nation-states has been particularly difficult for several reasons. It firstly involved looking into the existing literature on international relations and global justice. Secondly, it required going through literature on the collective rights of cultural groups, which is generally separated into two different "rights-talks" categories: the conceptual approach and normative approach. Subsequently, it was necessary to combine international relations literature and collective rights of cultural groups literature into a coherent whole, without losing the specificity and nuances each field has developed. Finally, it is worth noting that, to the author's knowledge, no attempt has been made to apply the theory of collective rights to nation-states and international relations. This means that theoretical and moral arguments had to be constructed for nation-states qua moral collectives and rights-holders without much academic tradition to rely on. With that in mind, the author is fully aware there is a lot of room left for examining, improving, as well as socialising the idea of collective rights of nation-states.

In order to make the upcoming philosophical discussion more accessible for real-world policy application, a case study has been chosen that will hopefully make reading somewhat easier. Before Chapter I, an actual example of international cooperation between one nation-state and other global collective entities will be presented. The main protagonist of this thesis will be the nation-state of Nauru, and where possible, references to it will be made throughout the entire work, being mindful of the primary philosophical nature of this study. In short, Nauru is an island-country in central Pacific Ocean that was first colonised by Germany and later the British Empire during the late 19th and early 20th century. It was soon discovered that the greatest central part of the island held a significant amount of phosphate rock, which can be used for obtaining premium agricultural fertiliser (phosphorus). Nauru was surface-mined first by colonial powers and then trustee states appointed by the League of Nations and the United Nations respectively. In 1968, Nauru became a sovereign nation-state and its democratically elected government continued with phosphate extraction. As a consequence of excessive phosphate mining, 80% of the island of Nauru has been environmentally destroyed.

The idea of nation-states as moral entities can have various implications. With respect to this example, the goal in this thesis is to examine whether the treatment of nation-states as

moral collective rights-holders would be able to favourably address two problems. The first problem relates to the fact that the democratically elected government of Nauru continued destroying its country's living habitat since Nauru gained independence. This in itself seems to make Nauru a puzzling case and a somewhat exceptional one. However, how Nauru's government managed to make contractual obligations to its phosphate buyers and consequently degrade most of the island's environment is not an exception but rather the rule, as will be shown. Nauru is representative of a more general problem in the current system of governance over nation-states. The theory of collective rights of nation-states has the potential to make a significant contribution in that area. The second problem that more directly relates to the aforementioned discussion of global justice and cosmopolitanism has to do with Nauru's poor standard of living and its socio-economic underdevelopment. As a state, Nauru is an equal legal subject with rights and duties in international relations, law, and commerce. This status, however, fails to address the actual capability of the nation-state of Nauru to pursue its legitimate interests against economically far superior entities in the system of global trade. Nauru's position is similar to an underprivileged cultural group but without the mechanism of collective rights to foster genuine fair terms of cooperation. The idea of collective rights of the nation-state is able to explain why Nauru should be treated preferentially without committing other members of the international community to the redistribution of their resources.

This thesis will combine the literature on normative theory of international relations/global justice with the literature on collective rights of cultural groups. With this in mind, I decided to make the following textual arrangement of the whole work. Namely, in the early chapters I will begin by making it clear for the reader what is meant by a nation-state in order to provide an immediate clarificatory reference and avoid potential confusion. In Chapter I, I will present what makes a country a modern *state* and then proceed with an explanation of what makes a modern *nation*-state. I will mostly rely on Max Weber's sociological understanding of the state, which is also in line with the commonly recognised definition in international law. Thus, I will primarily associate the state as a collective with those characteristics that allow it to facilitate political and socio-economic governance as such: i.e. a government with control of the means of violence, legal order and the rule of law, territoriality, citizens, and the capacity to enter into relations with other states. As for the nation in the state, I understand it as a group of people who democratically govern over their independent political collective. A nation will be taken to intrinsically denote a collective whose self-identification cannot be separated from an aspiration to institutionalise a democratic form of governance. In other words, a modern nation-state will represent a democratic country.

Throughout Chapters II and III, I present a literature review of the normative theory of international relations and global justice. More specifically, Chapter II covers how authors

operating within the cosmopolitan school of thought address some of the main global ethical issues today, such as the existence of socio-economically underdeveloped countries and world poverty. Cosmopolitanism generally holds that all individuals possess equal moral standing, irrespective of their political membership, exemplified by citizenship in modern states. Following John Rawls (because they are often supporters of domestic systems of distributive justice), cosmopolitans tend to support some form of global distributive justice, keeping in mind the existence of considerable disparity within socio-economic conditions across the world. However, not all supporters of the redistribution of wealth look favourably on extending the domestic principles of distributive justice to the whole world. Chapter III specifically deals with some of the objections from authors who argue that the peculiarity of common membership in a nation or a state gives legitimate reasons for dismissing the idea of global distributive justice. With some reservations, I estimate there is merit to these arguments given by liberal nationalists, statists, and John Rawls, if not for moral than at least for practical reasons. I conclude Chapter III by pointing out that the global (distributive) justice debate can profit by shifting its focus from individuals as the sole moral entities to collectives, in particular, nation-states. Moreover, I will directly and indirectly argue in the remaining chapters that this strategy should in turn also have a beneficial impact on the well-being of individuals.

Chapter IV and V offer a literature review on theory of collective rights. These chapters will respectively cover two different "rights-talks" categories: namely, the conceptual and the normative. Chapter IV deals with a series of theoretical questions that require clarification if one wishes to speak of collectives as moral entities and rights-holders in a coherent way. I will give an account of how the collective rights of moral collectives differ from the rights of traditional legal collectives, how to differentiate between individual and collective rights, how the object of collective rights should be considered, and whether collectives as moral entities fulfil the functional conditions to be treated as rights-holders. Answering these questions will ultimately make it possible to analyse with more precision the subsequent arguments for cultural groups as moral collectives and rights-holders in that capacity (and indeed nation-states later in the thesis). Returning to matters of more practical importance, Chapter V firstly investigates the communitarian critique of liberalism and the importance of cultural context for moral and political reasoning. Secondly, it will be shown why smaller cultural groups are inherently disadvantaged in a democratic system of governance, and why they sometimes need additional socio-institutional resources in order to prevent their assimilation and disappearance. The chapter finishes with a brief overview of the existing types of collective rights in actual institutional practise in contemporary states.

Drawing from insights from the preceding chapters, in Chapter VI I present an argument for treating nation-states as moral collectives. I argue that the nation-state is able to protect the

morally important goods that comprise the object of individual and collective rights – rights that cannot be given substance without both a *democratic* and an *institutional* mechanism that characterise the nation-state as a collective. I do not claim that the governments of nation-states as a matter of fact protect the rights of their citizens. Rather, I will show that nation-states should 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. I argue that the treatment of nation-states as states only, i.e. as only legal entities, can have dire consequences for the well-being of the people. This is particularly observable in cases where nation-states act in the capacity of economic agents and their governments as the representative decision-making bodies. I will point out that the institutional conditions under which governments are able to govern over their states as legal entities allows them to confer contractual obligations to their nation-states without previously disclosing them to the public for their assessment. I indicate that, in a certain sense, the democratisation of societies and the introduction of democratic governance over people has not been equally followed by the democratisation of governance over states. At the end of the chapter, I call to attention to the fact that a lot more work can be done on investigating the institutional arrangements that could facilitate a genuine democratic method of governance over nation-states.

The final chapter of this thesis examines how the idea of nation-states as moral collectives can be utilised in the context of global inequality and world poverty. I believe the theory of collective rights of nation-states is able to offer a novel normative framework for tackling some of the pressing issues generally discussed by cosmopolitans and global justice theorists. By acknowledging that a just relationship between moral entities cannot be one where formal equality is deemed sufficient to achieve substantive equality of opportunity, it is possible to justify socio-economically underprivileged nation-states requiring preferential treatment in the system of global trade. In this context, the idea of collective rights of nation-states should be able to explain why certain forms of economic protectionism can be applied to nation-states with lower levels of wealth without betraying principles of democracy and multilateralism in international relations. Rather, such measures can be seen as indispensable in restoring balance between nation-states and fostering genuine fair terms of international cooperation. This is also the primary goal of this thesis: namely, to offer a moral argument to justify why some aspects of international relations and policy should be remodelled in order to facilitate a democratic (and more beneficial) interaction between relevant political actors. It is my conviction that thinking about nation-states as moral collectives can take us one step closer to achieving that goal.

CASE STUDY: NAURU

Nauru is a small island with a 22 km^2 surface area located in the central Pacific Ocean, about 3000 km northeast of Australia.[1] For most of its history, its rather isolated position prevented both its settlers from interacting with other societies and non-Nauruans from visiting the island. Similarly, because of its size, remoteness and no clear geostrategic or economic advantage, until the late 1800s it was left unaffected by the expansion of larger conquering political communities (apart from sporadic visits by foreign sailors). This changed in 1886, when the German and British Empire agreed to divide governance of the south-western Pacific islands, thus making Nauru a German colony. It is estimated that Nauru sustained about 1000 people of Pacific origin prior to colonisation (Kirch, 1997). At the beginning of the 20th century it was discovered that the limestone on the island held a substantial amount of phosphate – a chemical compound that is mined for the purposes of obtaining phosphorus. Phosphorus is a chemical element that is in many ways essential for life on our planet. But phosphorus is also well-known for its commercial purpose as an agricultural fertiliser since it is an essential plant nutrient.[2] Being highly reactive, it is not found free in nature but is generally contained in many minerals – most abundantly in phosphate-bearing limestones (phosphate rock). Nauru had an unusual amount of phosphatic deposits in the centre of 80% of the island.

Phosphate on Nauru was discovered accidently by the London-based Pacific Islands Company, which at the time had plans to harvest dried coconut as a rich source of oil from the island.[3] In 1906, the company changed its name to the Pacific Phosphate Company and was granted the right to mine phosphate from the surface of the island. It is estimated that around 630,000 tons of phosphate were excavated from 1906 until the end of World War I when the

[1] Throughout this thesis, unless otherwise stated, I will be using *Worldmark encyclopedia of nations: Nauru* (Gale, 2007) for general historical and geographical information.

[2] Phosphorus used to be harvested from guano (an accumulated excrement of seabirds and bats) until the end of the 19th century and ever since then phosphate rock has been the main source for agricultural fertiliser. The United States of America (USA) *Geological survey* (Ober, 2017, pp. 124-125) estimated around 68 billion tons of phosphate rock in world reserves, while 0.264 billion tons were mined in 2016. Since its annual demand has increased steadily, it is hard to make an exact prediction of when the supply of phosphorus will run out. Current predictions range from 50 to 345 years (Cordell, 2010). The largest reserves of phosphates are found in Morocco (about 32%), followed by the countries of the Western Sahara, South Africa, Jordan, Syria and Russia. The largest measured undeveloped phosphate deposit in the world is located in the Republic of Congo (Congo-Brazzaville). An exclusive 100% right to mine phosphate over this area of 1.663 km2 is held by the United Kingdom of Great Britain and Northern Ireland (UK) based company Cominco Resources.

[3] It is recorded that Albert Ellis, an officer in the company's phosphate section, realised that a rock brought from Nauru to Sydney (used as a doorstop at the time) was in fact a high-quality phosphate rock. He consequently visited the island and said: "The sight of a lifetime. Material in scores of millions of tons which would make the desert bloom as a rose, would enable hard-working farmers to make a living, and would facilitate the production of wheat, butter and meat for hungry millions for the next hundred years to come" (Gowdy & McDaniel, 2010, p. 41; cited from Nazzal, 2005, p. 3).

German empire lost possession of Nauru (the people of Nauru received approximately £1,300 during those years of mining, whereas the value of the exported phosphate is estimated at £1,000,000 at the time). After the Great War, the governance of Nauru was mandated to Australia, New Zealand and Great Britain by the League of Nations. Coinciding with the 1919 change of the island's administration, the Pacific Phosphate Company was acquired by the Board of the British Phosphate Commission. Representatives from Australia, New Zealand and Great Britain jointly managed this state-run business enterprise accredited to extract phosphate from Nauru (as well as the Christmas and the Banaba Islands). After World War II, the United Nations Trusteeship Council (UNTC) assigned the same three states to administer Nauru in the best interest of its inhabitants and of international peace and security.[4] However, in reality the governance of Nauru was largely administrated by Australia, and to a lesser extent by the remaining two trustee states.[5] The British Phosphate Commissioners continued mining throughout these periods until 1968 when Nauru became a sovereign nation-state.

In 1919, the governments of Australia, New Zealand and Great Britain made an agreement granting them exclusive right to Nauruan phosphate. It also entitled them to buy it at production cost and not the world market price at the time, which is why royalty payments given to the landowners remained insignificant over the entire period (Weeramantry, 1992). It is estimated that under the British Phosphate Commissioners business management around 34 million tons of phosphate was mined from the island, with an approximate value of 300 million Australian dollars (Gowdy & McDaniel, 1999). In 1967, the company sold their assets and the right to mine phosphate back to the people of Nauru, and the year after the island in the central Pacific Ocean declared its independence (Nauru had to borrow against its future earnings from the same three states who were selling them rights to mine their *own* phosphate). The newly formed Republic of Nauru established the Nauru Phosphate Corporation, which was put in charge of phosphate mining in the island. The state-run enterprise has been in charge of mining phosphate since then, although its operations have been significantly diminished since the 1990s due to phosphate deposit depletion. In 2005, the Nauru Phosphate Corporation changed its name to Republic of Nauru Phosphate Corporation (RONPhos). Its offices are in Nauru and Australia.

[4] The Council operated between 1946 and 1994 with the purpose of managing "transitional" colonial territories and those territories taken from the defeated states after World War II.

[5] Although following the adoption of the United Nations Charter in 1945 there was international pressure to grant autonomy to colonial territories, the government of Australia did not change its management of the island, nor was it criticised by the remaining trustee states.

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During the last 100 years, approximately 100 million tonnes of phosphate rock have been surface mined on the island, which represents roughly 80% of the living habitat of Nauru.[6] The extraction of phosphorus from the phosphate rock has undeniable negative consequences for the environment since it involves stripping layers of land, which prevents the further sustainment of both vegetable and animal life on that soil (additionally, such mining produces large amounts of the heavy toxic and radioactive waste product called phosphogypsum). The harvesting of phosphate in Nauru was predominantly done in two ways: 1) surface-mining, meaning the layers of soil were stripped off in order to reach the mineral; and 2) phosphate was removed from the walls and columns of ancient coral. Both methods render the mined landscape inhospitable to life in general. Hardly any plants (certainly no food crops) can be nourished in such environment, which consequently has an effect on the island's fauna and ultimately on the well-being of human beings. Since the post-mined terrain consists of uneven scrapped out soil and massive coral karst looking columns or pinnacles (5-15m high), it is hardly useful for any productive human activity. The only truly usable part for the people of the island is the narrow coastal line.

In 1989, Nauru commenced proceedings against Australia in the International Court of Justice (ICJ) accusing Australia of failing to meet its legal obligations. Under the United Nations Trusteeship Agreement (UNTA), the trustee agrees to respect the principle of self-determination, the right of permanent sovereignty over natural wealth and resources; and more broadly, to uphold the general principles of environmental law. Nauru accused Australia of mining a substantial amount of Nauru's most valuable natural and economic resource, failure to accurately compensate the Nauru state given the discrepancy in the market value of phosphate, and lastly, of failing to address the environmental consequences of its mining. The case known as *Certain Phosphate Lands in Nauru* was accepted by the ICJ in 1992. Australia subsequently complained that the court did not have jurisdiction over the matter (but rather the UNTC and United Nations General Assembly (UNGA)), that Nauru had already agreed to another method of dispute resolution, that it had waived its claims to rehabilitation for depleted territory in 1967, that the lodging of compliance exceeds any reasonable timeframe from its independence, that the UNGA had terminated the trusteeship without any reservations, and that Great Britain and New Zealand ought to be parties of the dispute as they were also entrusted to administer the island during those times.

Australia (regrettably in its later estimation) had recognised environmental damage created by phosphate mining in 1949 when it submitted a report to the UNTC, which stated:

[6] D. Scott, General Manager, Nauru Phosphate Corporation, personal communication, 1998 (referenced in Morrison & Manner (2005, p. 523)).

"The phosphate deposits will be exhausted in an estimated period of seventy years, at the end of which time all but the coastal strip of Nauru will be worthless" (UN GA, 1949). The defendant was already considering at the time resettling the people of Nauru to another location as a measure of reconstitution for the devastation of the island. These measures tacitly reveal Australia's awareness of its responsibility (which was also confirmed by the UNTC in 1962) a fact that undoubtedly worked against it in the ICJ case (Nazzal, 2005, p. 9). Nevertheless, while the court processes were being followed the two countries reached a bilateral agreement with regard to rehabilitative measures. In 1993, the agreement took effect, and Australia's compliance to pay $A107 million to Nauru in the course of 20 years began. Article 1 of the agreement explicitly stated that by agreeing to these payments Australia did not assume any responsibility for the rehabilitation of the phosphate lands in question. The motivation behind the payments rested in the fact that Nauru was almost completely mined out and hence it served the purpose of adjusting the island to a post-phosphate future. Accordingly, both Australia and Nauru informed the ICJ to discontinue proceedings on the case *Certain Phosphate Lands in Nauru*.[7]

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Although approximately two thirds of phosphate had been mined out of Nauru prior to its independence in 1968, the negative effects of phosphate mining in general and those particularly alarming for such a small island were already known at least as early as 1949. The sovereign government through its state-run enterprise continued to mine phosphate, in spite of its knowledge of the negative effects of phosphate mining for the environment. The democratically elected government of Nauru never passed legislation regarding the regulation of environmentally harmful actions; to the contrary, it decided to pursue the short-term goal of wealth accumulation even if that meant devastating the living habitat of its people (after all, phosphate is a very valuable commodity and Nauru was able to offer premium grade quality). Companies from the island's former colonial trustee states carried on purchasing the product, and new buyers appeared from Japan and South Korea. This commerce was very successful for a short time during the 1970s and 1980s, so much so that the country had one of the highest gross domestic product (GDP) per capita in the world. Even during the 1990s when its GDP

[7] Nazzal makes a good point when she writes: "Perhaps an ICJ ruling on the Nauru case could have further elucidated the doctrine PSNR [permanent sovereignty over natural resources, ICCPR, Art 1] as a principle of deep significance to many post-colonial states especially those that have depended directly on their natural resources to satisfy their very basic needs. Indeed, a Court ruling on the Nauru case may have further substantiated several principles of importance to post-colonial peoples and to environmental law in general" (2005, p. 12).

started to decline due to the gradual disappearance of the phosphate deposits, it was still higher than other Pacific island countries. [8]

Apart from directly paying the citizens of Nauru for the mined phosphate, the government established the Nauru Phosphate Royalties Development Trust, which is believed to have held over US$1 billion during the early 1990s.[9] The purpose of the Trust was to rehabilitate the island's soil and to invest in further economic development and education for the future generations of Nauruans. Unfortunately, due to the government's poor management of their national and overseas investments, most of the fund's money had to be used to cover these expenses.[10] The government sought new ways to increase revenue; it offered questionable offshore banking services for years for which it was repeatedly criticised by the international community, until the early 2000s when major banks stopped handling transactions from the island. The government subsequently decided to sell citizenships (convenient for extradition evasion) and fishing rights to interested countries (e.g. China, Taiwan, and South Korea). Finally, in 2001 Australia and Nauru made an agreement that allowed Australia to relocate its asylum seekers to the small island. These detention camps have been a matter of controversy due to the reported poor living conditions, bad treatment of refugees and restrictions on entry and information to outside investigators, including United Nations (UN) officials.[11] For decades, political instability and a series of corruption scandals have shaken the island, some of which involved Australian phosphate mining companies accused of bribing the government in order to get control over Nauru's phosphate industry (Thomas & Mckenna, 2010).

The removal of vegetation for the purpose of mining has affected the microclimate of Nauru (more frequent droughts) and has endangered a number of indigenous species (IUCN, 2008). No attempt has been made to address the creation of unusable karrenfield landscape and studies have shown that the soil (about 80% of the island) that has been affected by phosphate mining cannot be regenerated by natural processes (Morrison & Manner, 2005; Manner et al., 1984). There is also no genuine evidence that any remedial attempts will be made in the future,

[8] In 1993, Nauru had about US$10,000 GDP per capita, which was 4 to 5 times higher than that of Papua New Guinea, Samoa, Tonga, or the Solomon Islands (*The world almanac and book of facts*, 1998).

[9] These are estimations since no public records have been made available about the exact amount held in the trust fund (Van Atta, 1997, pp. 87-91).

[10] For example, the government established a national airline company (Air Nauru), which had 5 Boeing 737s mostly used by politicians for personal travelling. The island's remote position and the lack of developed tourism made it clear that such an investment was misguided from the start. Nauru also invested in urban land in Melbourne, which it had to later sell for half the price it was purchased; it had a number of failed hotel investments in Fiji, Guam and the Marshall Islands (*The Economist*, 2001).

[11] Australia does not allow individuals to ever settle in the country if they come by boat as asylum seekers. Its Refugee Processing Centre on Nauru is reportedly well hidden from the eyes of the international community. Under Australian law (the Border Force Act, 2015, Part 6) any individual that works as a service provider in the centre faces criminal charges if he or she speaks publicly about the conditions in the detention camps. In 2016, Amnesty International (AI) published a report *Australia: Island of despair: Australia's "processing" of refugees on Nauru*, which accuses Australia as de facto manager of the centre for a series of human rights violations.

nor is it clear that such attempts are feasible at all. Phosphate mining has significantly limited the possibility of food cultivation and Nauruans largely depend on imported foods and even water due to the increase of the population. Before colonisation, Nauruan society was able to sustain itself by eating fish, mangos, breadfruit, pandanus fruits, almonds and others. Imported Western products such as canned fruits, processed meat and goods are more accessible today and about 30% of Nauruans over 25 and 50% over 50 years old suffer from diabetes (Van Atta, 1997).[12] It is highly unlikely that Nauru will be able to support itself by relying on local resources. The spiritual relationship that existed in traditional Nauruan culture between the land and its people has been almost completely lost through the continuous degradation of the environment.[13] The phosphate reserves are nearly exhausted and the mining has left behind uninhabitable surroundings. Therefore, it can be said that excessive phosphate mining has negatively affected Nauru in every relevant sense, be that socio-political, economic, nutritional, cultural and environmental. It has disturbed the entire bio-system of the island.

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The case of Nauru can be analysed from various perspectives; firstly, Nauru was a victim of imperial conquest and exploitation from the late 1800s until 1968, thus its history can provisionally be categorised into pre-independence and post-independence periods. This research will predominantly be concerned with post-independence Nauru and references to the earlier period will only be made when deemed relevant for the given context. Secondly, Nauru suffered a high-level of environmental degradation, which was carried out by both the colonial powers and later the national government. In agreement with the first condition, we will only be interested in the socio-political and economic effects of the island's environmental deterioration from 1968 onwards, i.e. from the moment Nauru became a sovereign nation-state with a democratically elected government. Thirdly, we will not analyse in depth the environmental and health-related effects created by phosphate mining as they would be properly done by their respective sciences. It will be sufficient to take as a given that there is a causal relationship between mining of this sort, environmental deterioration and acute impact on flora and fauna in general, including human health as well. This study will primarily examine the case of the nation-state of Nauru in the context of international relations, i.e. how its interaction with other nation-states, multinational corporations (MNCs) and international organisations (IO) brought

[12] According to World Health Organization (WHO) estimates (2007), Nauru's obesity rate is 71.7% – the highest in the world at that moment. Nauruans also held the highest percentage of overweight inhabitants, which was estimated to 94.5%. These alarmingly high figures are probably best explained by the sedentary lifestyle, high-fat food and Nauruans' genetic make-up, which is more suited to low-fat food. See also Streib (2007).

[13] Like many other Polynesian societies that were colonised during 19th and 20th century, Nauruans today predominantly follow the Christian religion. Their cultural identity and comprehensive understanding of the world is nevertheless heavily influenced by their indigenous religion, which combines deities and spirits with natural phenomena.

about a current state of affairs and whether this could have been prevented under alternative global institutional arrangements. While it is possible and true that any nation-state may come to suffer environmental, socio-political and economic degradation in a different situation or due to different circumstances, Nauru's particular interactions with global collective agents and the current operating global institutional framework will allow us to examine its degradation in a broader context. This can be a useful model for the further normative analysis of contemporary international relations.

CHAPTER I: THE STATE AND THE NATION OF NAURU

Throughout this thesis, I will primarily try to address the two following issues that relate to the case of Nauru: namely that a significant part of the country's living habitat has been destroyed through the actions of its democratically elected government, and that Nauru is drastically socio-economically underdeveloped compared to many other countries in the world today. This chapter focuses on clarifying what it means to be a country with a democratically elected government; i.e. what makes the island country of Nauru a modern *nation-state* and how that relates to environmental degradation of the island. On the one hand Nauru, like any other contemporary nation-state, has a unique socio-historical experience that characterises the birth of its nationhood and the creation of its sovereign state. On the other, it does not seem important to show how Nauru specifically became a nation-state in order to establish that it currently fulfils the necessary and sufficient conditions for being one. Why is it important to show that Nauru is a nation-state? In the most general sense, it is important because it helps explain how Nauru arrived at the unfortunate set of circumstances that exist currently. But moreover, fully appreciating that Nauru is a nation-state will have far-reaching consequences for the aforementioned two issues that this thesis is ultimately trying to address. In terms of textual arrangement of this chapter, I will firstly present what makes Nauru a modern *state*, before looking into what makes it a modern *nation*-state.

1. Nauru: A modern *state*

The classical sociological definition of the modern state comes from Max Weber, who defined it as a political organisation whose administrative staff successfully upholds the claim of monopoly to the legitimate use of physical force. Such a political organisation possesses an administrative and a legal order whose authority is binding for the members of the state (citizens), but also for all individuals who are confined within the territorial borders of its jurisdiction (Weber, 1978, pp. 54-56).[14] Notwithstanding the socio-political developments of the last 100 years, Weber correctly identified the attributes of a state that are still present in contemporary political communities. These are: 1) a government with control of the means of violence; 2) legal order and the rule of law; 3) territoriality; and 4) citizenship.[15] Weber did not

[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).

[15] This list is similar and somewhat based on Pierson (2011, 6). However, he adds other characteristics not implied in Weber's account, such as sovereignty, impersonal power, the public bureaucracy, and authority/legitimacy.

attempt to identify the end-goal or purpose of a state as a political and socio-institutional collective. He primarily treated the aforementioned attributes as social facts (which is not to say that their joint work would not enable a state to perform a series of normative functions). In Weber's account, the definition of statehood is impersonal and non-organic. It is devoid of any normatively purposeful elements[16] and it is "action-oriented, anti-essentialist and empirically founded" (Anter, 2014, p. 94). Thus, more generally, Weber's sociological understanding of the state is essentially associated with the institutional means that are taken to be indispensable for political and socio-economic governance as such (see also Pierson, 2011). The question of what one society perceives as legitimate rule is separated from rulership itself; that is, forms of governance are not coupled together with the state itself as a sociological and material body that can successfully uphold them.

Singling out the characteristics that allow a state to function as a type of political organisation is also in line with the (largely) recognised operating definition of statehood in international law given in the Montevideo Convention on the Rights and Duties of States (1933). 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". The convention adds one condition that is absent in Weber's account: the capacity to enter into relations with other states, which (in light of post-World War II global developments) can be extended to relations with other collective entities. Moreover, it presumably takes "*government*" to include what in Weber's account is expressed as both government and legal order. The convention, however, does not contain a universally accepted legal definition of a state. As James Crawford notes (2006, p. 17), the concept of statehood as a formal category in modern history has been largely made dependant on recognition by other states, along with major IOs, most importantly the UN. In this regards, for example, when the governments of the United Kingdom and India asked the International Law Commission (ILC) to include the definition of the state in its Draft Declaration of the Rights and Duties of States, the Commission made the decision "that no purpose would be served by an effort to define the term 'State' [the term] is used in the sense commonly accepted in international practice" (ILC, 1949, p. 289).[17] In agreement with the sociological account of statehood, it appears that the international community is not interested in terminologically identifying what makes something a state as long as it works like a state. For operational purposes, the modern state can thus be understood as a political and socio-institutional

[16] It does not, for example, defend the view that the purpose of the state is "the promotion of the prosperity and happiness of the populace" (Craven, 2014, p. 218).

[17] The ILC was established in 1947 by the UN GA, and in 1949 it approved a Draft Declaration of the Rights and Duties of States. The Declaration was referred back to the General Assembly, who took note of it, however, in 1951 decided not to take any further legal actions regarding it.

collective characterised by 1) a government with control of the means of violence; 2) legal order and the rule of law; 3) territoriality; 4) citizenship; and 5) the capacity to enter into relations with other collective entities (domestic and foreign).

A government with control of the means of violence: A great number of entities can exercise violence, but the state government is envisaged to have the *right* to use different means of violence, including physical force. The use of violence by the government is justified under the assumption that governance of the state at times requires coercive measures. Every action that stands in contradiction to the integrity of the state is sanctioned; hence, every contemporary state (if not every historical form of the state) possesses an organised body of individuals (i.e. coercive authority), which has the power to govern, even by means of physical force.[18] In this sense, for a state to have a government is closely related to its being a sovereign state, where sovereignty represents the actual power of government over the means of violence. In the context of contemporary international relations, state sovereignty is a status that includes both internal and external aspects; internal sovereignty reflects the idea of supreme political authority inherent in the state itself, and external sovereignty confirms that "*no final and absolute authority exists elsewhere*" (Hinsley, 1966, p. 26).[19] State sovereignty is an *idea* rather than a crude assertion about the socio-political reality, because no state can ever be said to be sovereign if we hold to a literal interpretation of the above. In the history of political communities, it is a relatively recent idea, normally taken to be concurrent with the birth of democracy and the creation of modern nation-states. Nevertheless, it is evident that every form of political community and its respective political authority (government) naturally aspires to be sovereign, i.e. to be recognised as such and to govern without internal and external interference. The modern idea of state sovereignty is principally related to the attainment of democracy and its *raison d'être* lies in the aspiration for self-governance of the people. Nauru is an independent republic whose government is separated according to the leading model between a legislative, an executive, and a judiciary branch. According to the Constitution of Nauru (1968, Art. 16, 18, 19, 29, 30, 68, 69), the legislative power is vested in parliament whose members are elected by Nauruan adult (20 years old or older) citizens every three years. The head of the executive branch is elected by parliament, i.e. the president as the head of the state appoints the ministers of the Cabinet (Nauru does not have an army, but it has a police force, which is under civilian control). Finally, the Supreme Court of Nauru, together with subordinate courts, represents the judiciary branch of the government of Nauru. The president also appoints judges to the Supreme Court.

[18] Indicatively, every state has "police", which is derived from the Greek *polis* (city-state), a place where people could find protection.

[19] The categorisation of internal and external sovereignty can be traced back to Henry Wheaton's *Elements of international law* (1944).

Legal order and the rule of law: Control of the means of violence can be directly connected to the existence of the legal order and the rule of law. The legitimate use of violence by the government is justified precisely because it can refer back to a certain set of norms (rules) that have been or are about to be breached by legal persons (e.g. individuals or collective entities). The existence of a set of established rules is essential to the institution of the state, regardless of whether these rules can be contested on moral grounds. Modern states almost always possess one legal document of the highest order – a constitution designed to establish the most important aspects of the socio-political arrangement of a community. Although in some cases, these aspects are spread out through a number of essential legal documents (treaties, acts, etc.), the general idea remains the same: the coercive authority does not exercise its power randomly but according to some set of rules. In this sense, the rule of law is impersonal and as such it provides some elementary stability to every state. The legal scope of a state expands over a great number of political and socio-economic activities considered relevant for the successful functioning of the state. As the civilizational growth of socio-political communities continues so has the legal scope of states increased. Today, modern states have highly developed legal systems and far-reaching bodies of law, such as constitutional law, criminal law, commercial law, environmental law, etc. The document of the highest legal order in Nauru is its Constitution and the Supreme Court represents the highest authority on its interpretation (1968, Art. 54).

Territoriality: In terms of governing power and not actual land ownership (Crawford, 2006, p. 56),[20] the legal order upheld by the (sovereign) governing body is directly related to the exercise of territorial sovereignty. States are a form of political communities that occupy physical space with (more or less) defined borders and it is within this geographical area that they maintain their jurisdiction. The legitimate use of force and rule of law must materialise *somewhere*; thus, even though the actual geographical area over which states exercise their power may change, having a marked territory makes the political and socio-economic administration exercised by the government materially possible. Despite the fact that there is no defined minimum or maximum territorial size, the ability to exercise power over a certain piece of land represents one of the elementary conditions of statehood. While the territorial aspect remains of central importance to the question of statehood, the lack of defined borders does not necessarily result in the dissolution of a state (as many instances of former and contemporary states testify). A change in the territorial borders circumscribed by one state does not affect the status of the state in this basic sense – there is no "rule requiring contiguity of the territory of the State" (Crawford, 2006, p. 47). States may change borders and still remain the same states;

[20] Crawford (2006) also writes that international law views territory as the power to govern with respect to some territory. Also see ILC (2001, Art. 4-7).

states may have territories spread throughout the world with many other states in between; new states can arise on exactly the same territories as their predecessors. To a limited extent, the ability to govern over a certain territory may be compared to property ownership of land, and hence the ability to use it, to earn income, and to transfer ownership as if it is a *good*. In the same light, the power of the state government to exercise control over a certain territory cancels out the power of other actors to do the same. Currently, there is hardly any land left that has not been incorporated into the territory of some state; most wars between states involve an attempt to acquire more territory. Today, states guard their borders with absolute care, and one of the indications of a well-functioning state is its ability to protect its borders. Nauru is a small island country; hence, the state of Nauru encompasses the 22 km^2 surface area located in the central Pacific Ocean.

Citizenship: States have a population of a permanent character, in the sense that individuals who reside within their borders do so in some habitual manner. Just like in the case of territorial size, there is no designated minimum or maximum number of individuals who can form the population of a state (and not every discernible geographical unit needs to be populated in order to form the territory of one state).[21] In modern states, habitual residents typically represent the *citizens* of a state;[22] thus, citizenship refers to the status of individuals that inhabit the territory of the sovereign state and who are subject to the state's laws. Citizenship is granted to individuals, most typically by the circumstance of being born in a particular state; citizenship may be (usually with difficulty) acquired through other mechanisms; and citizenship may be renounced by (former) citizens or even be lost by the state's decision (denaturalisation or revocation). Citizenship is made of rights, duties, liberties, constraints, powers and responsibilities that are accredited to an individual from the state; and the ability of assigning and claiming them is what differentiates citizens from non-citizens (Held, 1995, p. 66). In this sense, citizenship is a form of exclusive political membership. In 2011, Nauru had a population of around 11,000 people, where the majority were classified as Nauruan citizens (93.6%).[23] According to the Constitution of Nauru (1968, Art. 71, 72, 73, 74), in order to be a considered a citizen, one has to fulfil at least one of the following conditions: be part of a Nauruan community in 1968; be born of Nauruan citizens after 1968; be born from a marriage between a Nauruan citizen and a Pacific Islander; be born in Nauru and at the time not

[21] This is particularly noticeable with uninhabited islands and areas restricted for human settlement (national parks and reserves).
[22] This does not necessarily have to be the case, for example: foreign workers, permanent residents but not citizens, status-unresolved migrants, etc.
[23] Other inhabitants of the island generally consist of foreign contract workers, technicians and teachers. However, it should be noted that because of its small size (and history), the distribution of Nauruan and non-Nauruan population has greatly changed in the past. See Nauru Bureau of Statistics (2002, 2011).

to hold any other citizenship; or be a woman who is married to or has previously been married to a male Nauruan citizen.

Capacity to enter into relations with other collective entities: Properly speaking, because it does not depend on any factors that are external to the state itself, the ability of states to interact with other collective entities is a consequence rather than a condition of statehood. This is also confirmed in Article 3 of the Montevideo Convention (1933), which declares that the "political existence of the state is independent of recognition by the other states".[24] It is quite possible for one state to exist without establishing communication with other external entities. This nevertheless largely remains a theoretical possibility since there has never been a single state but always a system of (more or less) interdependent states. The capacity to enter into relations with other collective entities is not an exclusive property of states; other entities can and regularly do take part in relations with states, most notably IOs of various kinds and MNCs. Just like states, these collective actors possess an international legal personality, which establishes their status as subjects of the law, with rights, duties and the corresponding legal consequences of their actions. Traditionally, the state had the exclusive status of an international personality, with the exception of instances where entities such as companies or individuals were treated as the subjects of international rights and duties.[25] During the 20th and 21st century, this traditional state-only conception has been challenged by various political, socio-economic and legal developments (Portmann, 2010, pp. 13-18). Nevertheless, it is worth noting that the state remains the undisputed bearer of international legal personality. At the moment, non-state entities cannot exercise the institution of recognition as such – they can only be recognised but cannot recognise any entity as an international person. Likewise, the creation of international law is purely in the jurisdiction of states as primary international persons (Schwarzenberger & Brown, 1976, pp. 12-14). From 1968, the state of Nauru was able to enter into political and economic relations with other global collective actors; in 1999, it was admitted to the UN and today it is a member of several major IOs.[26]

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[24] It should be noted that Article 7 of the same convention states: "The recognition of a state may be express or tacit. The latter results from any act which implies the intention of recognizing the new state".

[25] On these occasions, the endowment of rights and duties to other entities was based on the entities' state of origin, thus deriving these legal claims from the international personality status of their respective state.

[26] Admission to the UN is decided by its main deliberative organ – the UN GA. However, before potential admission is affected by a UN GA decision, it needs to be recommended by the Security Council (UN SC), in particular its five permanent members, which can veto admissions of new member states (Russia, the United Kingdom, France, the People's Republic of China, and the United States). Nauru's membership was originally disputed by China because of Nauru's diplomatic and trade links to Taiwan (UN SC, 1999). Nauru is also a member of WHO, the Food and Agriculture Organization, the Economic and Social Commission for Asia and the Pacific, the International Civil Aviation Organization and others. However, it is one of the few UN member states that is not a member of Interpol, the International Maritime Organization, or the International Finance Corporation.

Acknowledging that Nauru is a modern state is indispensable for understanding how people living on a small island found themselves in a situation where their political independence did not result in the prevention of the island's environmental destruction. Namely, as a state, Nauru had a government with the ability to administer any political and socio-economic affairs related to obtaining and arranging the sale of phosphate; it had legally established rules according to which the government was allowed to organise mining irrespective of the environmental consequences of these actions; it had a territory that served as a physical platform for obtaining various natural resources; it had citizens as permanent settlers of the territory under its jurisdiction who have been negatively affected by the surrounding living conditions; and it had the capacity to enter into relations with other collective entities, which is why the government was able to sell phosphate. If Nauru as a state, that is, as a political and socio-institutional collective, was not able to cooperate with interested buyers of this precious commodity, the government would most likely not have continued surface mining the island's soil. The environmental degradation, which led to a series of other problematic consequences, has been created through Nauru's cooperation with other global collective entities. Moreover, in this specific case, it has come about as a result of actions of a *democratically elected* government as the people of Nauru have been able to exercise their national right to self-determination since 1968.[27] Thus, Nauru is not only a modern state; it is a nation-state. Why was Nauru not a *nation-state* prior to 1968?

2. Why is Nauru a modern *nation-state*?

Being a nation-state makes Nauru not only a political and socio-institutional collective but a *specific kind of political* and socio-institutional collective. The modern state represents a tangible social phenomenon that differentiates it from other human collectives in general, and other types of political collectives. At the same time, the *nation* in the *state* reflects another defining aspect of such a collective – that is, the underlying principles that define social co-existence against the legitimacy of the *political* distribution of power (e.g. the publicly elected parliament vs. the king and high nobility). These two aspects are co-supportive: the first representing how one society thinks of itself politically and the second showing how society materialises this idea institutionally – the dualism accurately represented in the wording of *nation-state*. The modern idea of the nation-state is principally linked to the disappearance of theo-monarchical forms of governance, democratic aspirations and creation of *nations*. So how did Nauru become a nation-state?

[27] It should be noted that Nauru was able to enter into political and economic relations with other global collective actors as a sovereign state from 1968, although it was admitted to the UN in that capacity in 1999.

2.1 Different Types of Nations?

It is generally considered that political communities came into being as a response to the need of individuals to live in integrated societies, to protect them from external threats and prevent/resolve internal conflicts (Service, 1978). However, the idea of a nation-state brings together both the question of origin and the justification for the state. In pre-modern times, the political aspect of socio-institutional collectives was intimately linked with the religious-based order of things; that is, the religious experience was immanent to how societies thought of themselves, and therefore, how they organised themselves politically. Even when the separation between spiritual and temporal power existed (e.g. the church and the monarch[28]), in one form or another the legitimacy of the temporal power laid in its acceptance by the religious authority. This paradigm shifted in Europe between the 17th and 18th century as the ruling aristocratic dynasties sought to legitimise their sovereignty outside of religious law. The medieval monarchy transformed into absolute monarchy and an alternative political order had to seek support for its "artificial existence" elsewhere – the people. As the rulers strived to create feelings of political unity that would transcend old regional loyalties, they also started taking notice of *public opinion*. Community support legitimised the monarch's governance, and eventually the populous became aware of itself in a *political* sense. People began identifying as political communities, nations were born, claiming self-legislative power and the right to self-determination.[29]

The idea of political emancipation and nationhood involves liberation from an oppressor (who may be the privileged noble class or foreign rule). This explains why Nauru became a *nation*-state in 1968, around 200 years after the American and French Revolutions.[30] During the first half of the 19th century in Europe, intellectuals generally thought that the nation-state was the only legitimate state, and that national self-determination/political participation would eventually bring about the end of intra-state wars and conflicts.[31] However, what was not

[28] For a much deeper analysis on the relation between temporal and spiritual power in medieval Christian Europe, see Kantorowicz (1957).

[29] It can be said that the idea of a social contract represented a theoretical articulation of the profound shift that was taking place in Europe at the time – an attempt to legitimise and explain why individuals ought to subject themselves to the governing authority, without making reference to a religiously constructed higher law. Even Machiavelli's *Prince* can be considered as an inquiry into endowing political power with unquestionable authority without making reference to religious principle (Henaff, 1996; Lefort, 2012).

[30] The democratic aspirations of the time were fortified in legal documents that (at least formally) claimed freedom and rights for all men, such as the American Declaration of Independence (1776) and the French Declaration of the Rights of Man and the Citizen (1789).

[31] Kant, for example, argued that the abolishment of monarchical rule, apart from having a moral basis, would also gradually result in the establishment of perpetual peace. He wrote: "If, as must be so under this [republican, non-monarchical] constitution, the consent of the subjects is required to determine whether there shall be war or not, nothing is more natural than that they should weigh the matter well,

anticipated by intellectuals of the time is that very soon the nation-state would gradually forfeit the ideal of emancipation and political self-governance. In fact, it would transform itself into an aggressive, non-tolerant (both domestically and internationally), highly militarised political community (Mommsen, 1990, p. 212). This transformation was fuelled both externally and internally, i.e. externally as the rise of nation-state coincided with the last stage of (high) European imperialism (circa 1880-1918), and internally as the strength of one political and socio-institutional collective (now nation-state) was measured by the national cohesion of its citizens (Arendt, 1951, pp. 123-158).

Thus, although in the 18th and 19th centuries a number of European countries and the U.S.A. showed signs of progress in their internal policies (emancipation and equal treatment of individuals) and their external relations (relative respect of the sovereignty of selected European nation-states), their treatment of other countries and societies did not follow this trend. The colonisation and exploitation of the Americas, the African continent and parts of Australasia intensified, culminating in numerous armed conflicts with native peoples, killings and oftentimes the organised slave trade of the defeated. Apart from having clear economic benefits, imperialism came to be seen as an instrument of national/cultural expansion. Empires competed over international influence, and perceived the administration of foreign territories beneficial to the motherland and to the "non-national peoples" under their rule. Thus, imperialism demonstrated the strength of a nation, fuelling national pride in the homeland while its military conquests were morally justified by identifying imperialism with the spread of moral/cultural values and the civilizational achievements of the nation.[32] Nauru fell to this fate, being colonised at the end of the 19th century, first by Germany and later becoming a British colony. Following the decline of the great empires and the aftermath of World War II, Nauru pushed for independence from Great Britain, Australia and New Zealand who governed over the island. In 1968, Nauru became a nation-state.

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before undertaking such a bad business. For in decreeing war, they would of necessity be resolving to bring down the miseries of war upon their country" (1991, p. 122).

[32] This line of reasoning is well presented in the following speech excerpt given by Archibald Philip Primrose, 5th Earl of Rosebery at the Anniversary Banquet of the Royal Colonial Institute, 1st of March 1893: "There are two schools who view with some apprehension the growth of our Empire. The first is composed of those nations who, coming somewhat late into the field, find that Great Britain has some of the best plots already marked out. To those nations I will say that they must remember that our colonies were taken – to use a well-known expression – at prairie value, and that we have made them what they are. We may claim that whatever lands other nations may have touched and rejected, and we have cultivated and improved are fairly parts of our Empire, which we may claim to possess by indisputable title. But there is another ground on which the extension of our Empire is greatly attacked…that our Empire is already large enough and does not need extension…We have to consider not what we want now, but what we shall want in the future. We have to consider what countries must be developed either by ourselves or some other nation, and we have to remember that it is part of our responsibility and heritage to take care that the world, as far as it can be moulded by us, shall receive the Anglo-Saxon and not another character…" (Bennett, 1962, pp. 310-311).

What made Nauru a *nation* with a state? Ever since the idea of nationhood took hold, there has been a tendency to "nationalise" a great number of social collectives. These entities vary from peoples, racial groups, ethnic groups, tribes, religious groups, language groups, territorial groups, etc. (Arendt, 1951, pp. 222-243). Firstly, most people would agree that a nation represents a people who identify themselves as a distinct group with a characteristic history and culture; these two are often accompanied by other socio-natural traits such as a common ethnicity, language, race, religion, customs etc. For example, Nauruans share the common history of living on the small island, which was colonised and environmentally devastated through phosphate mining; they are traditionally divided into 12 tribes; they speak the Nauruan language, which is unique and cannot be categorised within broader language groups; they share most of their physical traits with other Polynesian people (although it is believed they are a blend of Micronesian, Melanesian and Polynesian ancestry); and their original religion has been almost entirely replaced by Christianity – beginning in the late 19th century and today, two-thirds of Nauruans identify as Protestant and one-third as Roman Catholic.

This view of nationhood, however, fails to take into account those nations where ethnicity, race, religion, etc. play a minor role (if any), or nation states that are multilingual, so not bound by a unifying tongue.[33] Academics striving to provide a more inclusive definition of nation must be careful and precise and take into account the broad spectrum that characterises the contemporary political world. Thus, for example, David Miller (1995, p. 27) claims the concept of *nation* consists of five elements: a nation is a community (1) constituted by shared belief and mutual commitment, (2) extended in history, (3) active in character, (4) connected to a particular territory, and (5) marked off from other communities by its distinct public culture. These five elements serve to distinguish national identity from other collective sources of personal identity. Anthony D. Smith's definition explains "a *nation* as a named community possessing an historic territory, shared myths and memories, a common public culture and common laws and customs" (2002, p. 15).[34] In a slightly different tone, Yael Tamir claims that:

> A nation, then, may be defined as a community whose members share feelings of fraternity, substantial distinctiveness, and exclusivity, as well as beliefs in a common ancestry and a continuous genealogy. Members of such a community are aware not only

[33] The ethnic element is almost completely missing in the nation-states of the American continent, Australia and New Zealand. Furthermore, as Anthony D. Smith points out, ethnic communities do not have to possess a political dimension, an attribute that seems indispensable for a nation. For more about this, see his distinction between *ethnie* and *nation* (2010, pp. 10-16). Examples of multilingual nation-states are Belgium, Switzerland, and India.

[34] This appears to be the latest and somewhat revised version of his standard definition of nation as "a named human community residing in a perceived homeland, and having common myths and a shared history, a distinct public culture, and common laws and customs for all members" (2010, p. 13).

> that they share these feelings and beliefs but that they have an active interest in the preservation and well-being of their community. They thus seek to secure for themselves a public sphere where they can express their identity, practice their culture, and educate their young. (1995, p. 425)

What is observable in these contemporary definitions is that the concept of nationhood has both political and cultural elements. In that sense, they do not exhibit much difference to the definition of a nation as "a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life, and psychological make-up manifested in a common culture" given by Joseph Stalin over 100 years ago (1994, p. 11). Assuming that the people of Nauru succeeded in fulfilling all of the cited conditions for nationhood, why did they only become a nation with a state in 1968? A good way to explain this quandary is to make reference to the typology originally popularised by Friedrich Meinecke who differentiated between cultural and political nations (*Kulturnation* and *Staatsnation*): "nations that are primarily based on some jointly experienced cultural heritage and nations that are primarily based on the unifying force of a common political history and constitution" (1970, p. 10). The distinction between two types of nations (and consequently two types of nationalism) was also taken up Hans Kohn (2005) although he never used the terms political and cultural nation explicitly. Rather, he distinguished between Western and sometimes Central/Eastern European or Asian nationalism,[35] essentially between "the West and the Rest" (Hall, 1992). Anthony D. Smith (2010, p. 39) referred to "voluntarist" and "organic" kinds of nationalism, and John Plamenatz (1973) reaffirmed the Western and Eastern types of nationalism. This dichotomy is constitutive of the contemporary understanding of the nation, which combines elements from both types, and as such legitimises the initial separation between political/civil and cultural/ethnic nationhood.

The political/civic idea of nation takes the nation as a purely political and voluntary collective. What defines individuals as co-nationals is "a bond of mutual recognition of one another as legal subjects and fellow citizens" (Van de Putte, 1996, p. 164). Just like in the hypothetical state of nature, individuals do not possess any "natural" ties (race, ethnicity, religion etc.). To use John Rawls' (1999a) expression, they are abstract individuals behind the "veil of ignorance" who aspire to form a political community. In a national collective,

[35] "In the Western world, in England and in France, in the Netherlands and in Switzerland, in the United States and in the British dominions, the rise of nationalism was a predominantly political occurrence; it was preceded by the formation of the future national state...Outside the Western world, in Central and Eastern Europe and Asia, nationalism arose not only later, but also generally at a more backward stage of social and political development: the frontiers of an existing state and of a rising nationality rarely coincided; nationalism, there, grew in protest against and in conflict with the existing state pattern – not primarily to transform it into a people's state, but to redraw the political boundaries in conformity with ethnographic demands" (Kohn, 2005, p. 329).

cultural/ethnic or other communal memberships are not prohibited but simply considered *politically* irrelevant because they do not have a justificatory role in the broader socio-political context. Once the group of individuals hypothetically forms a political community, they self-legislate only what is at their individual and collective advantage. As they partake in matters of common political affairs, they develop a sense of communal belonging and even a special relationship with other co-members. Participation in public institutions and the collective governance of the community entails a certain responsibility towards others, and in this sense, the fact that every human community necessitates a degree of special commitment is not seen as controversial. In recent literature, the idea of a political/civic nation has been expressed in the language of constitutional patriotism, that is, as a revival of 18th century republicanism (Kant, 1991, p. 75). Popularised by Jurgen Habermas (2001), the idea of constitutional patriotism reaffirms that national membership can (and ought to be) rational and a cultural, grounded on democratic norms and values (Muller, 2012, p. 1927).[36] "What is a nation? A body of associates living under *common* laws and represented by the same legislative assembly" (Sieyès, 1963, p. 156).

The ethnic/cultural idea of nation is said to draw its roots from a conscious politicisation of traditional moral values, a "natural bond" of the ethnicities and peculiarities of these identities, be that language, religion, customs, etc. Here, "the principle is not: Whoever wants to be a nation is a nation. It is just the opposite: A nation simply *is*, whether the who compose it want to belong to that nation or not. A nation is not based on self-determination but on pre-determination" (Meinecke, 1970, p. 205). Because an ethnic/cultural nation emphasises natural membership, blood ties, cultural authenticity etc., it is not in theory predisposed to those "foreign" members who are willing to join the nation as *political* members. The emergence of this interpretation of nationhood is believed to be related to those regions where a limited or incomplete lack of political sovereignty was connected to ethno-cultural belonging during imperial times. Thus, when the moment came to claim nationhood and self-governance, ethnic/cultural membership provided the defining reference point in the establishment of nationhood. This appears to be true in the case of Nauru. Or is it?

2.2. A Conceptual Understanding of Nationhood

The separation between these two types of nations has been criticised on a number of grounds. The political/civic concept of the nation appears to be more "enlightened", progressive, rational and liberal, and in its promotion of ethical universalism, more cosmopolitan. An ethnic/cultural nation seems to correspond to a more conservative, closed

[36] Muller (2012) also argues that constitutional patriotism is not in fact a variation of political/civic nationalism.

type of community, with a tendency to transform itself into a totalitarian and exclusive collective. It can be contested that the first political nations did not in fact reflect their own ideology and that perhaps only recent socio-political developments in certain nation-states deserve to be associated with the political/civic type of nationhood. An objection can be raised against the practical tenability of a voluntary/contractarian (political) understanding of nationhood – that is, with providing citizenship to all those who comply with the requirements of one nation-state and revoking it from all those who do not (Tamir, 1995, p. 90). A similar argument can be made against the ethnic/cultural nation regarding those members who do not, strictly speaking, share relevant ethnic/cultural features and hence the problematic status of their membership. Ultimately, it can be easily disputed whether ethnic/cultural homogeneity has ever existed in any human collective of large proportions, including the national one.

Perhaps philosophically the strongest argument against the political/civic and ethnic/cultural conceptions of the nation is the one which in fact challenges the *principal possibility* of political nationhood without the cultural particularities that distinctively characterise a community of people. As one of the key figures in contemporary liberal nationalist theory, Will Kymlicka (1989, 1995) argues that in fact all nation-states, i.e. all types of nationalism, are based on a shared cultural feeling of belonging that is further institutionalized through a shared language and shared customs. The liberal and non-liberal (political/civic and ethnic/cultural) forms of nationalism do not differ in that respect, although they vary in the intensity and content of the culture that is being promoted. A liberal state promotes a "thin" national culture, which is characterised by a shared language, a set of public and social institutions, education and law. As opposed to this, a "thick" ethno-culture more intensively promotes family customs and values and religious lifestyle, among others (Tan, 2004, p. 90). Taking this into account, the contemporary definitions of nationhood generally combine elements from both the political/civic and ethnic/cultural concepts of the nation.

Mixing the two types of nationhood in contemporary theoretical accounts seems to implicitly reflect the conviction that a certain level of cultural homogeneity is necessary to provide political stability in any society. In non-democratic states, the presence of cultural homogeneity is more recognisable because of the structural absence of those social institutions where individuals are permitted to challenge the existing socio-cultural and political order. However, in democratic societies, the standing connection between the cultural and the political is more latent because, as Claude Lefort notes, political competition and the competition of ideas in general is constitutive of the society itself: "the legitimation of purely political conflict contains within it the principle of a legitimation of social conflict in all its forms" (1988, p. 18) Such a principle makes democratic societies appear *politically* "acultural"; but somewhat paradoxically, the same democratic principle that legitimises the political (and hence socio-

cultural) conflict requires an elementary social agreement about its own legitimacy, i.e. a form of *democratic culture*.

Although there might be a disagreement over the prevalence of one or the other, it is interesting to note that accepting the fusion of the two in fact legitimises the initial separation. The question nevertheless remains: why did Nauru become a nation with a state in 1968 and not earlier? That is, what made the cultural community of Nauru into a national collective? The fact that the people of the island shared historical, cultural and collective-psychological elements before they became a nation is not disputed. These are uncontroversial characteristics that portray political communities in general, but none of them explain the specific character and legitimacy of a national community. We cannot know that Nauru is a national collective from knowing that it is a political collective, but we can know that it is a specific kind of political collective from knowing it is a *nation*-state. It is important then to take note that case-relative conditions such as common history (present or future) language, religion, ethnicity etc. are neither necessary nor sufficient for the creation of nationhood. The whys and wherefores of nations are many, but as a conceptual and politico-normative relevant fact, what separates the pre-1968 and post-1968 community of Nauru is the *democratic character of its governance*. Thus, in its authentic sense, nationhood requires the existence of a common political aim, along with the means and willingness of individuals to democratically participate in its realisation. Anyone who begs to differ must accordingly give an account of why Nauru became a nation-state in 1968 and not earlier or later.

It is not easy to precisely establish what motivates one group of people to form a self-conscious collective and legitimately claim the right to self-governance.[37] What made the people of the island of Nauru self-identify as a nation is an empirical question that can be investigated accordingly. But the question of why a socio-political phenomenon comes about is not the same as asking what justifies our perception of it as conceptually and morally distinctive from other similar phenomena. The only politically relevant normative input that provides a nation its legitimacy in international law and relations is its democratic form of governance. This is why Nauru became a nation with a state in 1968 and not earlier or later. The conceptual understanding of nationhood attempts to analyse the meaning of nation. It does not describe the characteristics that nations exhibit in their specific socio-historical and cultural context. In that sense, it is similar to a separation within the scholarship on rights that focuses on the function of rights, rather than on their content; i.e. on our understanding what rights do for those who hold

[37] From a political side (which possibly has the greatest impact on international law), there is, of course, another major obstacle related to determining which groups of peoples are nations – namely, the possible subsequent legitimisation of various (national) secessionist tendencies that exist in many contemporary states. Since both political self-determination of peoples (Art. 1) and territorial integrity of states (Art. 2) are codified as rights in the UN Charter (1945), it does not look like this problem will be resolved in the near future.

them and not strictly speaking on the moral standing of the rights-holders.[38] All nations are made of cultural groups, but only cultural groups that adhere to a certain political order are nations. Thus, what nationhood does to a group of people is that it characterises their social co-existence and distribution of political power in the form of democratic governance.

The nation-state of Nauru has a publicly elected Parliament of 18 members. This constitutes the legislative power that appoints the head of the state – the president. In this specific socio-historical case, the 12 clans living on the central Pacific island most probably developed a common political identity and aim because they were conquered and segregated by foreign imperial powers. It took them almost a century to acquire the means to liberate themselves from colonialism and once they got a chance they created a constitution by which they instituted themselves as the highest political authority. But even if this simplified sociological reconstruction of the birth of Nauruan national identity was mistaken, it still would not change the fact that Nauruans are a nation. What makes a group of people self-identify as a conscious political entity is different from conceptually determining what makes this kind of collective unique as a political paradigm of governance and social co-existence. A nation consists of a group of people who democratically govern over their independent political collective. Their exercise of freedom is contained in their wish to subject themselves "only to the laws that they have enacted for themselves through a democratic process" (Habermas, 2015, p. 34) and their "assertion of right which has the effect of challenging the omnipotence of power" (Lefort, 1988, p. 31); i.e. omnipotence of the general will over the individual. As such, it is consistent with various forms of democracy and cultural/moral norms, as long as these norms respect the fundamental principle that made possible the creation of the nation in the first place – the principle of equality and public governance.

Can nations exist without cultural groups? Certainly not since they are a form of human communities. Can nations exist with multiple cultural groups? Certainly they can, as many cases across the world testify. A number of normative problems associated with this will be addressed in Chapters IV and V. But as a matter of conceptual clarity and political legitimacy, nations should be treated only as self-identifying democratic groups. In practical terms, this understanding of nationhood is the only one that will enable a democratic state to survive its own socio-cultural diversity and the perpetual movement of peoples throughout geographical space. Thus, throughout this thesis, the question of what one society perceives as legitimate rule will be separate from rulership itself. The nation of Nauru will be taken to denote a self-identifying group of people that wishes to democratically govern over itself. Accordingly, the state of Nauru will be understood as a political and socio-institutional collective that is simply a facilitator of governance as such. Certainly, some of the claims in this chapter do seem to raise a

[38] For a more detailed discussion on the functional nature of rights, see Chapter IV, Part 2 of this thesis.

number of interesting questions of moral importance. For the purpose of the main argument, i.e. that nation-states should be treated as collective rights-holders, I will principally focus only on one. In particular, if nationhood as a political category reflects how one society understands and (democratically) governs over itself, can nations properly speaking be said to exist without the means to assert their common political aims through democratic institutions, i.e. their states? This will be a recurring theme throughout the thesis that will be developed more fully in Chapter VI.

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This chapter primarily aimed to show that the post-1968 environmental destruction of Nauru cannot be fully understood without acknowledging the status of Nauru as a modern nation-state. Namely, as a state, Nauru possesses: 1) a government with control of the means of violence – a coercive authority invested with the power to govern over the community (an organised body of individuals divided between six departments with five ministers and the president as the head of the state); 2) legal order and the rule of law – the existence of some established (written) set of rules according to which the government exercises its power (the Constitution and various bills and acts); 3) territoriality – a physical space with (more-or-less) defined borders within which the government maintains its jurisdiction (22km^2 of an oval shaped island); 4) citizens – individuals who permanently inhabit the territory over which the sovereignty of the state is claimed and who are accredited with special rights, duties, liberties, constraints, powers and responsibilities by virtue of this membership (conditions for citizenship are regulated in Part VIII of the Constitution); and 5) the capacity to enter into relations with other states – an internationally recognised legal personality that confers rights, duties and corresponding legal consequences onto a state as a subject of international law. As a *nation*-state, Nauru possesses a democratic form of governance, meaning that justification of its political authority is derived from the principle of equality of the people who formed this community.

In 1968, the democratically elected government established the Nauru Phosphate Corporation (now RONPhos) and continued the mining of phosphate regardless of the well-known devastating effects of such undertaking. It has never passed a legislation regarding the regulation of environmentally harmful actions. As a consequence, it has contributed to making over 80% of the island's territory into uninhabitable karrenfield terrain unsuitable for future food cultivation (about one third of the total destroyed part). Its citizens rely on imported processed Western products and they have the highest obesity and diabetes rate in the world. The nation-state of Nauru maintained political and economic relations with other global agents who were interested in either buying phosphate or in their questionable banking and off-shore immigrant detention camp services. It is evident that the current model of self-governance and

international law/relations was not able to prevent or protect it from its fate. The government knew about the harmful effects of phosphate mining and so did the governments and companies from Nauru's trading countries (Australia, New Zealand, India, South Korea, Japan and others).[39] None of the parties involved have admitted any responsibility for the current condition of Nauru. On the contrary, even today they continue buying what is left of Nauruan phosphate deposits to fertilise territories of their states while the island transforms more and more into a barren wasteland. Has Nauru been a victim of the "international state of nature", that is, the existence of multiple self-interested international actors without "a common power to keep them all in awe" (Hobbes, XIII)?

[39] Recall that already in 1949 Australia submitted a report to the UNTC that stated that in 70 years' time all but the coastal strip of Nauru would be worthless.

CHAPTER II: COSMOPOLITANISM AND DISTRIBUTIVE JUSTICE

In political philosophy, the most notable problem of a world divided into separate states is encapsulated in the theory of political realism. In the context of international relations, political realism is primarily characterised by "the constraints on politics imposed by human selfishness [egoism] and the absence of international government [anarchy]" (Donnelly, 2000, p. 9), both resulting in a never-ending quest for power and security by the individual states, often at the expense of other states. In Western political thought, political realism has a long tradition dating back to Niccolò Machiavelli's *The Prince* and Thomas Hobbes's *Leviathan.* The theory remains relevant in contemporary philosophy to an extent that many post-World War II political developments and discussions in academia can be seen as an attempt to face the challenges posed by this approach.[40] In the absence of a political governing body encompassing all the states, the fact that the legal order of particular states can be directly or indirectly endangered was already noted by Immanuel Kant at the end of the 18th century. He argued that without some external supra-national political organisation, every state will strive towards expanding itself at the cost of its citizens' lives.[41] The rationale behind Kant's argument (which is also reflected in the concerns of many contemporary thinkers) is that as long as there is no overarching political institution on a global level, individual states will always pursue their self-interest. This pursuit can take many forms, from military intervention to economic exploitation. It is by allowing states to follow their self-interest that individual rights can be violated. This seems to hold at least for the pre-independent period of Nauru.

The concern over the plurality of self-interested sovereign states is captured well in a simple but a philosophically significant question formulated by high-ranking Jacobin Anacharsis Cloots[42]: why is there more than one state? He maintained that the social contract theory, by its own logic, results in the creation of a world-state and that all individuals should unite and form one universal republic (Kleingeld, 2012, p. 40). Cloots' idea was that a plurality of states represents a state of nature on a global level, where different states stand for different individuals in the state of nature. In order to secure themselves from one another, states (just like individuals) ought to enter into a global political union and form a world republic. The

[40] Kenneth Waltz (1979) makes a similar point at the beginning of his seminal work. He writes: "Nearly every author who wants to write something portentous about international politics either defends Realism, invents a new species of it, or uses it as a point of departure for some other 'ism' that he or she wants to defend" (p. 1).

[41] "[P]eace can neither be inaugurated nor secured without a general agreement between the nations; thus, a particular kind of league, which we might call a *pacific federation* (*foedus pacificum*), is required. It would differ from a *peace treaty* (*pactum pacis*) in that the latter terminates *one* war, whereas the former would seek to end *all* wars for good" (Kant, 1991, p. 104).

[42] Born Jean-Baptiste Baron du Cloots de Val-de-Grace (1755–1794).

challenge put forward by this view is whether such a world-state should be constituted by force, the same way individuals who deny leaving the state of nature are sanctioned by those individuals who have come together in a social contract.

Given the perpetual dynamics of formation and dissolution of political entities and belonging, the question of a supra national body remains relevant today, even if it manifests itself in new and differing ways. There is reason to believe that political communities will change over time in almost every possible way, and that their mutual cooperation will vary from open antagonism to complete political unification. Indeed, the argument above is formulated to uphold the creation of a centralised world government as its conclusion. However, the argument also reveals the general problematics of *how* international cooperation or even the consolidation of political communities should be conducted, presupposing that socio-political animosity and warlike confrontations are undesirable as such. Would Nauru have fared any different had it belonged to a larger political collective? In fact, it did belong to the German and later the British Empire, but Nauruan society hardly benefitted from these memberships. On the contrary, being absorbed into these empires (colonised) is precisely what brought about political oppression and economic exploitation (i.e. environmental degradation). But perhaps under different circumstances – circumstances where universal individual equality and democratic institutions are respected, Nauru would profit from membership in a political *cosmopolis*? After all, this would also be a scenario where no interaction could have been established between the government of Nauru and other trading states' governments. In other words, there would be no possibility for interested buyers to take advantage of the fact that the government of Nauru is willing to sell phosphorus by all means necessary.

1. Cosmopolitanism and Distribution of Resources

What would it mean for the people of Nauru to belong to a political *cosmopolis* and how does this relate to the problem of an international state of nature that presumably principally contributed to all their problems? The first mention of cosmopolitanism is attributed to Diogenes the Cynic (of Sinope, c. 400 B.C.), who, when asked where he came from, replied "I am a *kosmopolites*." Diogenes' answer is typically interpreted as one's refusal to be characterised by his local origin or any other social membership. He thought of himself as a citizen of the world (cosmos) and not only a citizen of a particular city-state (polis). The Stoic school of philosophy further developed this notion of world citizenship by teaching that the world community represents a universal moral realm in which all citizens of different states are equal, regardless of their ethnic, religious, racial or any other social particularity acquired at birth. Their central point was that although we are all members of some social communities, this membership is contingent. The Stoics did not negate the importance of background qualities acquired by birth;

however, they argued that each citizen of each state first and foremost owes his allegiance to the universal realm of morality – the world community (Nussbaum, 1996, p. 7). Kant was one of the first philosophers who faced the theoretical challenge of an international state of nature, which is not surprising considering his philosophical commitment to social contract theory and his affinity with the Stoic concept of *cosmopolitanism*. Kant revived the idea of world citizenship – *cosmos* meaning the universe and *polis* meaning a city-state in Ancient Greek.

On the one hand, Diogenes' answer "I am a *kosmopolites*" implies he did not want to be characterised by his place of birth; he refused to accept any special ties to a particular polis as a defining or significant feature of his identity. In this sense, he supported a negative conception of cosmopolitanism (Kleingeld, 2012, p. 2), meaning that he defended a personal attitude of extreme individualism and omitted the communal spirit. On the other hand, Kant's version of cosmopolitanism is a positive one and it is closer to the Stoic interpretation of it. In this understanding, cosmopolitanism stands for moral responsibility towards all rational creatures, regardless of their cultural, ethnic, religious or any other affiliation. For the Stoics, universal rational membership entails universal moral membership. Politics takes a secondary role, and particular political membership is irrelevant, in the sense that there should be no moral discrimination between individuals on the basis of their political affiliation.[43] To a certain extent, Kant follows the same line of reasoning as he is a proponent of moral cosmopolitanism; however, he has his own interpretation of what *moral* cosmopolitanism stands for and he expands this view by introducing the political dimension of cosmopolitanism. Thus, in Kant's work, we typically find cosmopolitanism in two domains: *moral cosmopolitanism* and a *political version of cosmopolitanism*. [44]

Moral cosmopolitanism stands for the view that all humans are part of and participate in a universal moral community, which is not to be defined by their ethnic, national, or religious roots and, in that sense, all humans should be thought of as world citizens (e.g. Nauruans and Australians alike). There is something common to all human beings that transcends the empirical facts – something that is characteristic for all people. In particular, Kant argued that because we are *rational*, humans must not be perceived as merely means and be reduced to the level of things: "For rational beings all stand under the law that every one of them ought to treat

[43] Although differing political affiliations may result in unequal moral treatment, the Stoics were not interested in abolishing all political entities for the sake of creating one universal political body. Nussbaum claims that their point was even more radical: that we should not give our allegiance to any form of government, but first and foremost, to the moral community made up by the humanity of all human beings (Nussbaum, 1997, p. 8).

[44] This is not the only possible categorisation of cosmopolitanism. For example, Garrett Wallace and David Held (2010, p. 9) identify roughly five interrelated themes in contemporary examination of cosmopolitanism: global justice, cultural cosmopolitanism, legal cosmopolitanism, political cosmopolitanism, and civic cosmopolitanism. However, the Kantian separation between moral and political cosmopolitanism is best suited for the purpose of our discussion.

itself and all others never merely as means, but always at the same time as an end in itself" (Kant, 2002, p. 52). The topic of Kant's moral theory is beyond the scope of this research, but the conclusion of his argument may be summed up in the claim that it is human rationality that makes us participants in the shared moral world.[45] In that sense, the moral world transcends all other particular communal belonging, hence, each citizen of a particular polis is also a citizen of the moral *cosmopolis*. Now, since every answer to the question of morality continuously tries to find expression in a socio-political setting, Kant was naturally concerned with whether belonging to a *moral cosmopolis* automatically entails membership of a *political cosmopolis*. Political cosmopolitanism holds that the equal moral status of individuals should result in the actual impartial treatment of persons who hold equal moral worth – thus the political institutionalisation of moral cosmopolitanism. This returns us to the question of the political implementation of social contract theory on an international level i.e. to a certain kind of institutional cosmopolitanism where there is no state of Nauru, Australia, New Zealand, the UK etc. – where there is no possibility to be disadvantaged by the never-ending quest for power and no citizenship as a category.

Although Kant endorsed the principle of lawful coercion of individuals to form a civil state and leave the state of nature, he did not think the same principle should be applied on an international level. He talked about a voluntary league of nations instead, and suggested an eventual federation of free states governed by just international law in which all states must be republican in their political structure.[46] Kant's reasons for no aligning with world-statism are based on the difference he drew between individuals in a state of nature and individuals who have already formed a civil state, i.e. individuals in a state of nature and states in an international state of nature (Kant, 1991, p. 104). States, unlike people living in a hypothetical lawless condition before entering a social contract, have an internal constitution and are not subject to the coercive right of others under their conception of right (Nauru is a sovereign

[45] Kant holds that there are two distinct aspects of the human mind; the first being theoretical reason, which deals with the experience of our perception and understanding, and the second being practical reason, which directs our experience as purposeful, moral beings. Theoretical reason can process an infinite number of objects as the experience of our perception and understanding, but our practical reason, on the other hand, has only one peculiar object, namely, *the will* (Kant, 1956, p. 15). Being in possession of a will is something that is universal, present in all human beings and it is precisely because of this possession that we are all capable of acting in a moral way. "Will is a kind of causality belonging to living beings in so far as they are rational" (Kant, 2002, p. 50). Therefore, the human will is able to act independently because it is rational; it is not bound by naturalistic mechanistic laws that are typical for non-humans (or non-rational beings). Following our will and our rationality, we free ourselves from this natural necessity and by doing what is morally correct, we overcome our basic desires. Thus, for Kant, a free person is a moral person, and a moral person is a rational person.

[46] Kant has been criticised by a number of authors for being inconsistent with regard to his moral and political theory. See, for example, Carson (1988), Cavallar (1999), and Habermas (1997).

democratic republic with a publicly elected parliament and a constitution).[47] In that sense, the proposal for a voluntary union of states operates as a point of departure from the international state of nature, while it still preserves the political autonomy of the people who form the existing states (Kleingeld, 2012, p. 49). Furthermore, Kant's rejection of world-state cosmopolitanism is also based on the lack of guarantee that the world-republic would exercise its power in such a way that it would preserve those already acquired political rights in the member states. For this reason, he claimed that the amalgamation of separate states is a lesser evil than the creation of a universal monarchy that could very well turn into soulless despotism (Kant, 1991, p. 113).[48] In the grand scheme of things, Nauru is better-off as an independent nation-state.

However, while in theory Stoic and Kantian moral cosmopolitanism might be true and the citizens of Nauru possess equal moral status as the citizens of Australia, it is unfortunately not useful in practice in this particular context. Nauruans remain significantly disadvantaged compared to citizens of Australia or New Zealand, for example. People living on the island in the Central Pacific have limited access to clean water, food, education, health facilities and many other benefits of modern society. If the people of Nauru, Australia and New Zealand were all citizens of one state, all things being equal, they would all enjoy a sufficiently similar level of welfare. The contemporary theory of cosmopolitanism tries to somewhat address this issue by suggesting political institutional arrangements that ought to be implemented on a global level in order to achieve greater equality between the citizens of different states. Much has changed in the course of two centuries, especially concerning the democratisation of global relations and the degree of inter-connectedness/dependence of different political communities. Can Kant's arguments withstand the test of time and the socio-political developments that have taken place since the 18th century when they were formulated? Has globalisation and the rise of global governing institutions made it possible to reconsider the idea of political cosmopolitanism?

The contemporary concept of world citizenship has been explored by a number of philosophers such as Charles Beitz, Thomas Pogge, Jurgen Habermas and others. As a moral and political theory it revolves around three central elements: the first element defines individual human beings as the ultimate units of moral concern and not nation-states or other forms of human association; the second element states that the status of equal moral worth should be

[47] This position is also confirmed in the second and fifth Preliminary Articles in *Perpetual Peace*: (2) "No independently existing state, whether it be large or small, may be acquired by another state by inheritance, exchange, purchase or gift"; (5) "No state shall forcibly interfere in the constitution and government of another state" (Kant, 1991, pp. 94-96).

[48] Indeed, at the time when Kant was writing about cosmopolitanism, powerful European empires were colonising the rest of the world and their treatment of native peoples was far from the ideal of a universal moral community of all human beings.

acknowledged universally by all people; and lastly the third element points out that the two previous elements should result in the actual impartial treatment of persons who hold such equal worth and rights (Held, 2010, p. 47). There are different understandings of the role and purpose of cosmopolitanism in the literature on the topic. For example, for Thomas Pogge (2008, p. 169), cosmopolitanism takes the individual to be the ultimate unit of moral concern regardless of the ethnic, religious, racial or national membership acquired at birth; Martha Nussbaum (1996) understands cosmopolitanism as an attitude of enlightened morality that places "love of mankind" ahead of "love of country"; whereas for Jurgen Habermas (1997) and David Held (1995) cosmopolitanism represents a normative philosophy for carrying the universalistic norms of discourse ethics beyond the borders of the nation-state (Benhabib, 2006, pp. 22-23). This last interpretation takes cosmopolitanism to represent a moral frame of reference that ought to be politically institutionalised; cosmopolitanism is "the ethical and political space which sets out the terms of reference for the recognition of people's equal moral worth, their active agency and what is required for their autonomy and development" (Held, 2010, p. 49). As such, the theory of cosmopolitanism denotes fundamental moral values recognizable by everyone: for example, international treaties, the creation of the UN and the Universal Declaration of Human Rights (UN GA, 1948) (UDHR) show that the international community is already in some sense predisposed to accept cosmopolitan values (although this last claim can be contested).

As an ethical position, cosmopolitanism raises the issue of accommodating group memberships that may assume a moral character. It carries the burden of reconciling cosmopolitan moral/political principles with the importance of the (moral) relationship between individuals and their collective associations.[49] The group memberships in question may be of different kinds, but generally cosmopolitanism deals with those memberships that translate into political memberships for (to use Rawls' expression) morally irrelevant reasons. Depending on the given socio-political context, these are frequently found in gender, religious, cultural/ethnic, national and *state* memberships (citizenships). The strongest interpretations of cosmopolitanism reject the idea of group membership as a necessary condition for the fulfilment of the individual's moral and political potential (Waldron, 1992). Softer variants (which are also more popular) make space for such associations but only take them to be of secondary importance when speaking about moral values (Appiah, 1997). Thus, cosmopolitanism can be more responsive to the special moral relationships that individuals develop as part of relevant collectives. Still, while there is a place for the moral importance of

[49] Almost all writers who advocate or write about cosmopolitanism deal with this inbuilt tension. These are, for example, Yael Tamir, Seyla Benhabib, Pauline Kleingeld, Martha Nussbaum, David Held, Jurgen Habermas, Will Kymlicka, and David Miller.

various forms of human association, this remains limited to preserve the authenticity of the philosophical claim of cosmopolitanism.

It can be difficult to situate cosmopolitanism as an independent, self-standing moral theory because it is compatible with many and it can be logically derived from a number of philosophical and religious systems of thought. However, its central idea of world *citizenship* and its insistence on equating moral equality with political equality helps draw a contrast with the ever-dominant form of the plurality of political communities. For the purpose of this research, it is interesting because of its relevance to the question of nation-state sovereignty in the context of global relations and the negative consequences that can come about as a result of global collective interaction. But furthermore, it is relevant because normative issues in contemporary global relations principally arise from the political and socio-institutionalised membership of individuals (citizenship), rather than from other forms of collective memberships which can, but need not necessarily, coincide with one another. Thus, although a person from Nauru possesses the same moral stature as a person from New Zealand, it cannot be said that this formal equality represents a genuine fair equality – a reasonable chance for pursuing his or her life goals. So, it appears true that the multiplicity of nation-states does result in some form of relativisation of individual moral equality, either because some nation-states are better off than others and/or because individual nation-states tend to pursue their self-interest at the expense of others. In any case, individuals who have special status as citizens become privileged (e.g. New Zealanders) or disadvantaged (e.g. Nauruans) by their citizenship, depending on the *socio-economic* placement of their states. Since citizenship is a form of group membership that is accidental or involuntary but tends to operate as a generator of moral discrimination between individuals, it is not difficult to see why cosmopolitanism is not predisposed to the idea of the multiplicity and full sovereignty of nation-states (although it need not reject it).

What is the connection between the cosmopolitan claim of individual moral equality and the existence of disproportional socio-economic status across the world? Namely, the importance of the distribution of resources for the well-being of individuals is not the invention of modernity and as such it has already been recognised in antiquity. Aristotle made a distinction between corrective justice, which deals with punishment, and *distributive justice,* which "calls for honor or political office or money to be apportioned in accordance with merit" (Fleischacker, 2004, p. 19).[50] For the Greek philosopher, this allocation of material and social

[50] Aristotle makes this distinction in *Nicomachean ethics*: "Of particular justice and that which is just in the corresponding sense, (A) one kind is that which is manifested in distributions of honour or money or the other things that fall to be divided among those who have a share in the constitutions (for in these it is possible for one man to have a share either unequal or equal to that of another), and (B) one is that which plays a rectifying part in transactions between man and man" (2009, V.2). Thomas Aquinas (1981, II-II,

resources (desert) was essentially tied to merit, and need was not viewed as a quality of merit as such. This is not to say philosophers and theologians were insensitive to the gap between the rich and the poor, but for Plato, for example, this state of affairs was unfavourable because it was detrimental for social harmony (2014, 422e-423b); for Christians and pre-Enlightenment thinkers the main issue with the excessive possession of goods was related to the evils of wealth (corruption). However, it is observable that none of these considerations were motivated by the idea that the moral equality of human beings should be accommodated by elementary distribution of material resources. The issue of economic inequality and poverty was seen as a question of practical or religious (philanthropic) nature, not as a question of justice.

The modern idea of distributive justice is based on the acknowledgment that enjoying political rights and participating in civil society is hardly achievable under the circumstances of serious material deprivation. This connection between moral, political and economic status underpins the ethos of modern welfare systems, and its relevance became evident as soon as human societies began the process of democratisation. From the late 18th century, the existence of poverty and its effect on freedom and equality started being perceived as a serious social and moral problem. Adam Smith (1976, pp. 781-788) wrote about the need to tax the rich at a higher rate than the poor and the importance of accessible education through public schooling. Hegel (1967, **§** 241-246), for example, pointed out the double-sided negative aspect of poverty: firstly, inequality related to the deprivation of the material conditions necessary for human survival; and secondly, the social inequality reflected in poor people's lack of means to develop their talents and skills. The poor are not in a position to pursue their personal interests, and the lack of minimum financial income prevents them from actualizing their capacities or meaningfully participating in civil society: "Poverty causes men to lose more or less the advantage of society, the opportunity to acquire skill or education, the benefit of the administration of justice, the care for health, even the consolation of religion" (Hegel, 1967, **§** 241). It is in this sense that the moral equality of the citizens of Nauru can be recognised to exist in a significant disproportional relation with the moral equality of Australians, New Zealanders and other citizens of economically developed nation-states.

The modern understanding of distributive justice takes into account the material distribution of resources among members of society. Because the formal equality of individuals is not sufficient for them to actualize their full capacities as both human beings and citizens, theories of distributive justice aim to identify the exact socio-political arrangements that would most adequately fulfil this purpose. These proposals will be dealt with in more details soon, but

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Q61, A2) almost identically relates the distribution of resources with merit, and material distribution is principally related to political positions in various political systems (aristocracies, oligarchies, and democracies).

at this point it is reasonable to draw a parallel between an individual lacking material means in a civil society and a political community lacking those socio-economic conditions needed for maintaining a decent standard of living. Just like poverty affects human beings both in a simple existential sense, and as a condition that restrains individual freedom (Hegel, 1971, § 436)[51], it appears that the economic well-being of an entire nation-state can hinder the creation and/or sustainment of civil society proper (and ultimately the well-being of individuals). Material deprivation, which is bad in itself, can also lead to moral degradation, and the question of basic material equality becomes the question of moral responsibility. For this reason, the great disparity in the economic equality of political communities is tied to the contemporary concept of cosmopolitanism, which is in turn committed to the equal moral worth of all individuals.

Against this background, it is not difficult to understand why cosmopolitanism is associated with the idea of *global distributive justice* i.e. with the question whether the mechanism of distributive justice can be applied across countries depending on their socio-economic conditions. Traditionally, the concept of justice in the context of relations that transcend state boundaries has generally dealt with the justification of war and the appropriate conduct of the warring sides – *jus ad bellum* and *jus in bello*.[52] After World War II and the creation of the UN (especially one of its principal organs – the UN SC), the justice/the rightness of war started being analysed almost entirely within the doctrine of human rights as its standard of measure. Importantly, the UDHR also took up the justificatory role for military interventions against sovereign states by the so-called international community (these representing the cases where the community would establish a series of human rights violations by the state apparatus (Walzer, 2002)). Apart from those humanitarian interventions fought in the name of universal human rights and the spread of democracy, the most recent military actions against sovereign states have been validated on the assumption of potential security threats in the form of terrorism.[53] Notwithstanding the importance of affirmative actions of this sort and all the issues related to it, the case of (post-independence) Nauru demonstrates a problem of a different kind – a problem of a socio-economic nature. Nauru suffers from a condition of socio-economic underdevelopment – not because it was invaded and

[51] Elsewhere, Hegel writes that in poverty "freedom has no existence and the recognition of universal freedom disappears" (1995, p. 453).
[52] Contemporary just war theory also deals with *jus post bellum* (justice at the end of war). See Elshtain (1992).
[53] On this point, it is worth noting that there is considerable disagreement whether the language of universal moral values and human rights has been predominantly used to advance political and socio-economic interests of the chosen few (Western) nation-states. See Hardt and Negri (2000). In academic literature, this argument was initially developed by Carl Schmitt who claimed that those who invoke humanity to justify wars wish only to cheat (1996, p. 54).

plundered[54] but because its democratically elected government legitimately cooperated with other global actors to its own detriment. All the same, the well-being of the citizens of Nauru is at the critical stage and the nation-state of Nauru is significantly socio-economically underdeveloped compared to its trading partners.

The contemporary theory of cosmopolitanism focuses on the problem of group membership (in this particular case citizenship), more narrowly if that membership somehow negatively affects the claim of universal moral equality of individuals i.e. if it results in the uneven distribution of resources. Needless to say, the resources available to an average Nauruan are significantly fewer than those available to an Australian or New Zealander whose lands were fertilised with the phosphate from the island country in the Central Pacific. Thus, cosmopolitanism tries to address the unfortunate condition of Nauru and people who are born into it, perhaps not eliminating it altogether but at the very least minimising it. Taking into account the separation of the world into a multiplicity of nation-states and the current political and socio-economic arrangements of global relations, how is this achievable? According to which distributive principles of justice should we organise the workings of global institutions in order to strike a balance between the disadvantaged and advantaged political communities?

2. Cosmopolitanism, John Rawls, and Global Distributive Justice

Cosmopolitanism points out the difficulties that arise through the existence of modern-day political membership – that is, the differences between the political and economic conditions of nation-states that consequently have considerable impact on the well-being of individuals i.e. citizens. As a moral theory, it naturally strives to extend itself into political theory by universalising ethics through globalising politics. The principle of moral equality ought to be the same in every society, in every political community; hence, it also needs to dominate the relationship between different nation-states. Contemporary cosmopolitan thinkers thus generally take the development of international and supra-national political structures as a positive thing, since they are perceived to operate (at least formally) for the benefit of all individuals, irrespective of their miscellaneous collective membership (including nation-states citizenship). However, theorists often disagree over the question of which type of political structure (or structures) is needed at the global level, along with specifying which (political and economic) obligations of *justice* should be connected to this structure (Tinnevelt & De Schutter, 2008).

[54] It is possible to argue that the actions of Nauruan government are strongly related to the fact that their island was previously mined for phosphate by colonial powers and hence that the government's continuation of it was not accidental. I will not pursue this argument throughout the thesis, although I acknowledge that it has merit.

There is no moral equality without political equality and political equality is hollow without economic equality. Alongside the industrial/technological revolution and the need to uphold socio-economic stability, it was this idea that initiated the rise of the 20th century welfare state with its function to redistribute wealth so all individuals could have an equal opportunity to actively participate in civil society.[55] Projecting this rationale from the domestic to an international sphere, i.e. to the entire human society now supported by institutionalised universal individual human rights, we encounter the moral dimension of the global redistribution of economic benefits and burdens. Needless to say, the idea of global distributive justice emerges out of the idea of domestic distributive justice, and the most famous account of distributive justice in the liberal tradition of political philosophy was given by John Rawls in his book *A theory of justice* (1999a). Rawls focused on investigating the nature and scope of distributive justice in closed political (liberal) communities. Nevertheless, other (especially cosmopolitan) authors suggested that his model of distributive justice should extend beyond the borders of the nation-state and be applied on a global level. Following this extension, we encounter some new questions: whether the citizens of relatively affluent states have a moral responsibility to share their wealth with poorer people elsewhere (Beitz, 1975, p. 360), and also whether the creation of international laws, agreements, organisations, agencies, bodies etc. advances the interests of a selected number of socio-economically developed states at the expense of less developed ones (Pogge, 2013, p. 298). Do the citizens of affluent and economically developed Australia, New Zealand, or the UK, for example, have a moral responsibility to transfer some of their wealth to the citizens of Nauru? If so, how much of their wealth? Furthermore, do they have a responsibility to (in this particular case) criminalise the purchase of phosphate from Nauru (due to the myriad negative effects previously described) and to push such a legislation on a global level via the governing bodies to which they belong?

John Rawls is famous for his assertion that political and legal systems should be structured to be governed by fair principles of justice, where fair principles are to be understood as those that allow all individuals to live as free and equal citizens. One of Rawls' primary motivations for his theory of *justice as fairness* was the conviction that we should try to eliminate some of the large disparities in life chances people face due to morally irrelevant reasons that are derived from the accidents of birth. He maintained society should be

[55] It is true that the topic of distributive justice cannot be theoretically (or historically) disconnected from the 19th century rise of socialism and the writings of Karl Marx (although Marx of course was not committed to a moralising concept of *distributive justice* as such). For the purposes of this research and the upcoming discussion, I will nevertheless have to omit this school of thought. The main reason for this decision especially lies in the difficulty of analysing Marx's position on this topic against the liberal-capitalist paradigm that shapes the contemporary discussion on cosmopolitanism and global distributive justice (and political and socio-economic ideology of the world in general). For an interested reader, see Wilde (2011).

interpreted as a cooperative venture for mutual advantage, and he was interested in identifying those factors that can potentially impede the actual exercise of our liberties to advance our own well-being (Rawls, 1999a, p. 84). Rawls included both natural fortune and social circumstance as undeserved individual endowments that should not be taken into account for the identification of principles of justice that ought to govern the basic structure of one society.[56] Rawls (1999a) wrote: "Those naturally endowed with more advantageous properties or more fortunate in their social positions do not deserve those advantaging properties, and a just society seeks to nullify the advantages stemming from the accidents of birth and history" (p. 364).

There are a number of plausible reasons why natural/social circumstance should be treated as morally arbitrary. We normally do not think people born with a natural (physical or mental) disability deserve the hardship that is associated with it. Nor do we think that anyone deserves to be born into a poor family. Why should the treatment of people born with natural talents (e.g. intelligence, strength, beauty) and/or with good social standing be considered with any difference?[57] Furthermore, Rawls points out, even possession of natural talents requires extensive nurture, which is made possible through *social cooperation*, and any higher social position one is born into presupposes the existence of a society. Although it is necessary to encourage prosperity and a rewards system of some kind, we should not forget that, in a certain sense, every individual achievement is only possible because of social cooperation. The recognition of these factors has to be built in a set of principles of justice. But fair negotiation for the basic structure of society by free and equal people is hindered by their motivation to maximise the stake of their natural talents and social positions – by the pursuit of their self-interest. There can be no fairness if everyone tries to tailor the principles of justice to their own advantage.

Thus, to arrive at these principles of justice, Rawls invoked the famous hypothetical scenario "the original position" (OP) – a variant of the state of nature concept developed in the classical social contract tradition (1999a, p. 11-12). In the OP, individuals are placed behind "the veil of ignorance", meaning they do not know their place in society (social class), their race or gender, generation they belong or any other group membership. In such a situation, Rawls argued, when presented with a choice to single out the basic principles of justice that should govern their society, individuals would choose those (fair) principles that would not favour anyone unjustifiably. The participants would rationally try to maximise the self-interest of all

[56] "No-one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of principles" (1999a, p. 18).
[57] "The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way institutions deal with these facts" (Rawls, 1999a, p. 87).

individuals or groups, not knowing where they would be allocated after the vote (Rawls, 1999a, pp. 17-20). But because they are not only rational but also reasonable, participants would also find it necessary to view a political system from the standpoint of each person who would be affected by it (Lehning, 2009). According to Rawls, individuals would opt for his theory of justice, i.e. justice as fairness, guided by two main principles, the first one mostly concerned with formal political equalities that should exist in one society, and the second one with social inequalities that might arise from economic inequalities.[58]

It should be noted that Rawls' theory of justice has been extensively analysed and scrutinised, perhaps more than any other in the last 50 years. It has been criticised for the procedure it uses (the OP and the veil of ignorance) and for the resulting principles that is proclaims. Just to name the few, for example, Martha Nussbaum argued that the procedure of OP fails to capture fair conditions needed for the establishment of principles of justice. In particular, she finds it problematic that Rawls intentionally excludes individuals who suffer from intellectual/mental impairments from the OP (Rawls, 1980, p. 546). Because the social contract theory Rawls is using is built upon the idea of reaping benefits through social cooperation, those who are unable to improve our social conditions are simply left out.[59] If Rawls is really interested in the least advantaged in society (the difference principle), surely people with disabilities (who are excluded from the decision-making procedure) fit the bill. Furthermore, more recently Charles Mills (2009) pointed out that Rawls' ahistorical method for determining the principles of justice fails to address the actual injustice that has been and or is still perpetuated against historically oppressed races (although a similar argument can be extended to other underprivileged social groups). Admittedly, Rawls was concerned with a normative political theory and not political practice; his principal aim was to work out an ideal of the perfectly just society against which we can measure instances of injustice.[60] But Mills points out that we need to move away from Rawls' ideal theory and concentrate on "eliminating the structures of socio-political domination—whether of class, gender, or race—that preclude the realization of genuine equality for the majority of the population" (2009, pp. 181-182).

Rawls has also been criticised for the content of his justice as fairness, primarily with regard to whether the difference principle represents the most appropriate socio-economic model of

[58] Principle 1: Each person has an equal right to the most extensive total system of basic liberties compatible with a similar system of liberty for all. Some of these liberties include the right to participate in the political process, the right of speech and assembly, to hold personal property etc. Principle 2: Social and economic inequalities are to be arranged so that they are both a) attached to offices and positions open to all under conditions of fair equality of opportunity (fair equality of opportunity principle) and b) to the greatest benefit of the least advantaged (difference principle) (1999a, pp. 60-61).

[59] "Moralize the starting point as we may, the bottom line is that the whole point of departing from the state of nature is to reap benefits from mutual cooperation, and the benefits are defined by all such theorists in a quite familiar economic way" (Nussbaum, 2006, pp. 118-119).

[60] We are referring here to Rawls' dichotomy between ideal and non-ideal theory of justice (Rawls, 1999A, p. 246).

redistribution of wealth. Indeed, the principle has been proven to barely be favoured at all by individuals who participated in experiments designed to determine actual preferences for principles of justice and fairness (Frohlich & Oppenheimer, 1992).[61] It has been blamed for not addressing the genuine cause of economic inequality that is inherently generated by a free market capitalist economy.[62] Finally, Rawls' theory of justice has also been criticised for endorsing an incoherent model of human psychology – namely, for failing to see that the maximisation of the worst-off in the OP was primarily guided by the pursuit of self-interest and not a motivation to actually help these individuals. There is no reason to think that people would be motivated to care about those worst off once the society is established, since they never cared about them in the first place (they only cared about themselves not ending up as that particular class (Cohen, 2009, pp. 136-137)). However, while the critiques mentioned here are important and have a place in a discussion about theories of justice, we will set them aside for now, particularly those critiques aimed at the difference principle. Our reasoning for suspending them lies in the fact that while disagreement over the exact nature of a welfare model for democratic societies rages on, this type of model continues to operate in affluent nation-states. Different forms of political regulation in the distribution of economic resources appear (more or less) successful and are supported by moral and economic reasons.[63] The question is whether (any) forms of redistribution of wealth should be put in place on a global level, withstanding the considerable socio-economic disparity between different nation-states.

With this question in mind it is not difficult to understand why the difference principle caught the attention of cosmopolitan authors (among others). They argued that a parallel can be made between the OP on a domestic state level and the OP that could be conducted in the face of global inequalities created by one's place of birth or citizenship.[64] Is it the case that the peoples of affluent nation-states have a moral responsibility towards those who are not their fellow-citizens by virtue of their shared humanity? Just as individuals receive political and material protection in modern political communities from the collective agency of their co-nationals,

[61] The empirical evidence of these experiments suggests that most people (circa 80%) prefer the guaranteed basic minimum income over all other offered options. Still, some authors argue that these results do not represent a threat to the difference principle, since the principle is fashioned to reflect the rational choice as a normative principle under reasonable constrains and not what people would actually choose. See Moellendorf (2009, p. 263).

[62] This argument relies on a socialist critique of capitalism based on the claim that in the capitalist model of economy, employers are always encouraged to reduce the marginal cost of production (employees' wages). This internal mechanism, it is argued, perpetually leads to the creation of inequalities between the social classes.

[63] However, this is not to say that the typical mechanism of distributive justice (i.e. increased taxation) enjoys popular support. In fact, recent findings in New Zealand (for example) show that the public perceives the rich as more individually deserving of their wealth than it views the poor deserving of financial assistance (Skilling & McLay, 2015). Keeping this in mind, it can be reasonably expected that (most) mechanisms of wealth redistribution across the globe would not be supported by citizens of affluent nation-states.

[64] For example, Beitz (1999), Pogge (1989), and Moellendorf (2002). Also see Brock (2010, p. 85).

should some form of assistance be provided to those who are less politically and economically (hence, morally) privileged in other nation-states? Should there be a global tax of some sort created for the purposes of alleviating poverty, for example, a global resource dividend deducted from the annual gross world product (Pogge, 1994, 2001)? At any rate, the large disparity of life chances that Nauruans face seems to be derived from the morally irrelevant factor of the accident of birth. No individual on the island had control over his or her place of birth and a just society seeks to nullify the advantages stemming from the accidents of birth and history (Rawls, 1999a, p. 364).

The cosmopolitan school of thought tends to support some global redistributive scheme (whether that be the difference principle or a needs-based minimum floor principle), since it is continuously trying to minimise the importance of collective membership for the evaluation of the moral status of individuals. Now, it is true that different cultures across the globe do not have identical value systems and that the redistribution of wealth/resources suggests an almost certain "economisation" of happiness. Yet again, does this mean that the people of Nauru should not have an equal opportunity "to attain an equal number of positions of a commensurate standard of living" (Caney, 2001, p. 120)? Can it be reasonably expected that this can be achieved in the circumstances of serious material deprivation? If we agree the answer is no, does that mean the principles of justice that operate in sovereign democratic nation-states need to be replicated globally or does the political and socio-institutional separation between individuals entail the negation of a universal scope of justice? And somewhat paradoxically, will the replication of those principles that conceptually originate in sovereign nation-states in fact result in the loss of their sovereignty and ultimately in the negation of the condition of the possibility of justice, national or global?

The development of institutions that foster closer cooperation between global agents appears as a natural extension of cosmopolitan moral theory, and some of the proposals even include the creation of supra-national institutions with a global democratic parliament and government (Held, 1995; Archibugi, 2004). Oftentimes, the burden of implementing these changes falls on the existing nation-states and their governments (especially the major Western ones (Wenar, 2008, p. 27)). Although this is understandable considering the global influence of such great democratic powers, it is also somewhat at odds with another prevalent (although not exclusively) cosmopolitan claim – namely that these same world powers uphold unfair global arrangements (especially with regard to economic order and relations), and furthermore, that they actively contribute to the perpetuation of global poverty. Recent research, both in the academic and non-academic world, has been centred on this topic, combining insights from economics, political science and a normative philosophical evaluation. Whether these accusations are true or not, it is conceivable that political and socio-institutional arrangements

do not equitably assert the legitimate interests of all involved parties. That is to say, there is nothing conceptually problematic in claiming that current global arrangements essentially benefit those already developed nation-states with stable political regimes and big economic markets.[65]

We will address the moral argument of global actors perpetuating the unequal distribution of wealth in Chapter VI, and a more detailed account of those mechanisms generally suggested to be at work will be covered in Chapter VII. At this point, it can be safely maintained that cosmopolitan authors would in principle be against any organisation of global institutions that would systematically and predictably negatively affect the equal moral worth of all individuals. This is not surprising since cosmopolitan moral theory allows (although does not necessitate) the idea of global redistributive justice due to its commitment to translate moral equality to both *political* and *economic* equality. Cosmopolitanism has thus had significant influence on transforming the normative discussion of global relations into a discussion of the equal distribution of goods necessary for individuals to realise themselves as human beings, irrespective of their country of residence. The economic redistribution of resources and the creation of basic political and social institutions that do not systematically disadvantage individuals for morally irrelevant reasons characterise all modern welfare nation-states (which coincidentally form a group of the most affluent countries as well). It is thus not unusual that contemporary thinkers writing within the liberal tradition have been discussing whether the same approach should be applied across the borders of modern nation-states. In response to that, most cosmopolitans believe that it is necessary to substantially remodel the current global institutional arrangements, in particular those of IOs that exercise the greatest influence (such as the UN, the International Monetary Fund (IMF), the World Bank (WB), and the World Trading Organization (WTO)).[66]

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The problems of severe economic inequality between modern nation-states, widespread world poverty and of the protection of individual (human) rights present themselves as points of critical concern that exceed the capacity of individual modern nation-states. Quite clearly, addressing these issues then becomes a question of cooperation and the responsibility of the constitutive members of our global community – that is, those agents that can be distinguished as relevant either by their unambiguous political legitimacy or by the socio-economic influence they exercise. As mentioned in the Introduction, today these are represented by modern nation-states, IOs, and MNCs. Irrespective of the degree of influence these agents have in contemporary

[65] Brock, for example, has done an informative review of this topic in her *Global justice: A cosmopolitan account* (2009, pp. 220-247). Apart from making references to the work of numerous other authors, she in particular focuses on Kapstein (2006).
[66] Simon Caney (2005, pp. 162-163) is representative of this view.

relations, it is certainly true that the nation-state outpaces other participants as a type of political collective characterised by popular control and provision of rights (Dahl, 1999). Indeed, the nature of the participants in any collective enterprise also delineates the legitimate responsibilities and agency that can be expected therein; thus, it is no wonder that any response to the pressing global issues has to primarily consider the nation-state as the locus of democratic accountability. The principle of individual equality that reaches its political realisation in a democratic form of governance recognises the unavoidable requirement of economic well-being for the establishment of a genuine civil community.

Whichever version of institutional cosmopolitanism one might be in favour of, it holds that any given global political arrangement would affect the status of existing sovereign nation-states. Depending on the specific demands of such a political union, member-states would have to reconcile their internal legal systems and potentially reduce the scope of their legal jurisdiction, that is, their sovereignty. For example, more affluent nation-states would have to commit a portion of their material and social resources to Nauru's development regardless of whether citizens of these economically well-off nation-states support such redistribution. Although this could potentially help the small island environment, economy and quality of life in general, it would also effectively limit the democratic character and sovereignty of all contributing parties. What are the consequences of universalising the idea of distributive justice across the world? In the literature, we find two leading accounts that emphasise the claim that the peculiarity of modern nation-states precludes the identification of principles of domestic (national) justice with principles of global justice: national and (Rawlsian or non-Rawlsian) statist accounts. Similar to a certain extent, both of these can be contrasted with the cosmopolitan school of thought as versions of the moral prioritisation of individuals based on their collective membership – nationality[67] or citizenship.

[67] Nationality is used here as membership in a nation and not strictly speaking as a legal status one possesses as a citizen of a state. This distinction will be appropriately addressed in the next chapter.

CHAPTER III: NATIONALISM, STATISM, AND COLLECTIVE RIGHTS

1. David Miller and Nationalism

In the background of the normative disagreement over the redistribution of wealth lies the assumption that the citizens of affluent nation-states would refuse to legislate such a global socio-economic model through their respective deliberative institutions. This assumption is most probably true[68]; hence the debate aims at establishing whether nation-states should be persuaded or even (externally) coerced into accepting the model on moral grounds. As one of the key proponents of the nationalist approach, David Miller (1995, p. 49) argues that national communities are in fact ethical communities, and that consequently, being a member of one nation creates an exceptional obligation towards other co-nationals but not towards non-nationals elsewhere. The question whether the relationship that exists between individuals should affect matters of morality is a well-known philosophical dispute between so-called ethical universalism and ethical particularism. On the one hand, advocates of ethical universalism claim that the special relationship we have with other individuals should not affect our moral reasoning, and this position is presented in, for example, Kant's moral theory. On the other hand, supporters of ethical particularism reject this impartial approach, claiming that this abstract model of humanity is empirically inadequate and does not do justice to the emotional relationships that exist between human beings. Close friends and family members are the people we care deeply about, hence, the moral feelings, obligations, and duties we have towards them cannot be identified with the duties we have towards strangers. The same can be said, the argument goes, about the special obligations towards our co-nationals. Relying on common history, language, ethnicity etc., we identify ourselves as being members of one nation, and our national identity fosters a feeling of morality towards others who also share the same identity. In a certain sense, our co-nationals become our extended family.

Because of the shared identity between individuals in a national community, helping other members results in a reciprocal outcome for the one who is providing help. Thus, ethical particularism claims that there is a relevant relationship between our identity and our moral deliberation, and our national identity represents an integral part of our personal identity (Miller, 1995, p. 66). Although a careful examination of ethical universalism and particularism falls outside the scope of this research, it is worth mentioning that there is a rising interest among moral and political philosophers in the claim that socio-cultural context is inseparable from moral and *political* reasoning.[69] The core of this (now called) communitarian critique of

[68] See Chapter II, footnote 62.

[69] Some of the most prominent authors include MacIntyre (1984), Taylor (1979), Walzer (1983), and arguably Gadamer (1977).

the universal abstract model of morality is built around the requirement to relate cultural membership to the creation of moral values. Cultural membership forms a substantial part of our individual identity, and our individual choices are only meaningful when perceived within the relevant cultural context (Dare, 2002, p. 189). This connection between the cultural, moral and political (national) aspects of our identity has already been referred to in Chapter I as a critique of the principal possibility of political nationhood deprived of a shared cultural feeling of belonging (Kymlicka, 1989, 1995). In the same chapter, I have defended the claim that the conceptual and politico-normative criteria of nationhood lie in the collective self-identification with a common political aim and the use of democratic means for its realisation. However, I have not argued that this understanding of nationhood presupposes that nations are acultural communities. On the contrary, I believe it obliges us to address the importance of cultural membership and the position multiple cultural groups have within democratic nation-states (which will be appropriately addressed in Chapter V of this thesis). Postponing that matter for the time being, in what sense does Miller take nations to be cultural and therefore ethical communities?

From the outset, it is evident Miller follows the leading tradition that combines the political/institutional and ethnic/cultural aspects when assessing the concept of nationhood. This is also why it appears to be a version of a communitarian (cultural contextual) critique of the universalisation of ethical norms. Miller does indeed appreciate the political/institutional aspect of nationhood[70], but he also believes that for a national political community to exist there has to be a sense of communal identification, which cannot be solely political/institutional, but must also be cultural (common history, language and so forth). It has been already pointed out that the question of why a socio-political phenomenon comes about is not the same as asking what justifies our perception of it as conceptually and morally distinctive from other similar phenomena. For this reason, the definition of nationhood in this work has not incorporated cultural qualifications. It was remarked that the presence of cultural groups is what makes a national community a human and hence a political community, but not what makes a political community a national community. Moreover, the only politically relevant normative input that provides a nation its legitimacy in international law and relations is its democratic form of governance. When understood as such, nationhood is not considered a socio-natural fact. Rather, the nationalisation of various collectives is intrinsically connected to the birth of democracy and the socio-normative dimension of collective self-governance. As it appears, Miller (and other authors with similar views) would disagree; hence, he argues that the existence of common culture is what brings about the sense of individual identification with a

[70] In particular, he makes references to Rawls (1999b) and Nagel (2005) whose views will be subsequently discussed.

(national) community and that this is a normatively relevant fact in the context of international relations (2008, p. 390). Thus, for the present purposes of the upcoming argument, let us assume that nations are cultural collectives, in the relevant sense of their theoretical meaning and their political legitimacy.

Now, if national communities are cultural (hence ethical) communities and the division of the world into a number of nation-states entails some version of ethical particularism, how will that affect the normative framework of international relations, that is, global justice? On the one side, there is the institutionalisation of moral equality of individuals through the legal endorsement of the UDHR (UN GA, 1948) by almost all existing nation-states; on the other, there are numerous (and sometimes incompatible) cultural and moral norms that characterise the political communities of our global society. The issue then appears to be the extent of this cultural diversity and the critical point where it creates legitimate or illegitimate discrimination against individuals solely on the basis of their collective membership – in Miller's version, a cultural-political membership of a national kind. He makes the claim that as a member of a nation that politico-culturally sustains the nation-state of the UK, he bears no responsibility towards rejuvenating Nauru's soil or financially supporting its citizens (the fact that the UK was involved in the governance of the island, exploitation of phosphate and later purchase of it from the Nauruan national government is accidental in this case). How does he justify his position?

In Miller's defence, it has to be granted that national communities are evidently ethical communities, since they are one of the many possible social constructions in which human interaction takes place. It is within communities that human beings actualise their moral capacities and quite clearly morality does not exist in a social vacuum. A national community is a kind of political community, and critically for Miller, this element of cultural belonging provides one of the necessary sources of moral responsibility within such communities. Now, since there can be other non-democratic political communities with a strong sense of collective identification such that it always puts *us* above *them* in morally relevant terms, it appears that Miller must combine the political *democratic* with the *cultural* aspect of nationhood in order to locate the authenticity of *national moral* communities (and essentially avoid the danger of political chauvinism). But does cultural membership in a nation preconditions political/institutional membership in terms of the distribution of rights and duties? Could a democratic nation-state even in principle endure such a (moral) prioritisation and political arrangement, without betraying its founding principles of political equality and individual rights?

To illustrate this better, let's recall how Miller's argument of justified selective national morality is based on the particularistic nature of self-identification, specifically on the different levels of personal identification. The more an individual (emotionally) identifies

himself/herself with another individual, the more he or she will be prone to act morally. But one might ask how political communities, especially nation-states, could ever function on the basis of such moral deliberation. This seems highly unlikely simply because within political communities, individuals form different types of identification and the way individuals identify with their close family members is certainly not the same as the way they identify with their spouse or colleagues. If we assume that emotional personal identification represents the (most relevant) source of morality, then no individuals in any community would ever be able to co-exist with one another, because there would always be a "higher" level of identification between them. Putting aside the plausibility of such moral reasoning in general, it is certainly evident that a nation-state has never aspired to thoroughly replicate the moral framework of its society onto its political and socio-institutional framework. Individuals develop meaningful relationships which may or may not have a connection to their membership in collectives of various sorts. But the moral theory and practice that applies between individuals can never be the same as the theory and practice that is meant to govern the relationship between political institutions and individuals.

The modern nation-state has never questioned the particularistic form of moral relationships between individuals (and how could it?), but it has prohibited it as the relationship between individuals and political institutions. This is a crucial point that is missing in Miller's understanding of national communities. Thus, it appears that Miller confuses a general moral doctrine with a political one, which is why he invokes psychological devices of individual/collective self-identification to account for the existence of special moral responsibilities. It is also possible that the same misconception leads him to use national, cultural and state membership (citizenship) interchangeably when he writes about the pressing issues in the discussions of global justice. In other words, Miller cannot explain why Nauru became a nation-state in 1968 and not earlier or later, because he mixes causal (empirical and case-dependant) and conceptual conditions for nationhood, i.e. historical/socio-cultural and politico-democratic ones.

However, Miller does at times appreciate the political dimension of nationhood characterised by a democratic form of governance. Indeed, he subsequently uses it to justify why principles of domestic distributive justice (e.g. Rawlsian fair principles of justice) cannot be extended to the global realm. He writes that "we attach considerable value to collective self-determination: to being able to decide, together with our fellow citizens, what social goals to aim at, and what policies to pursue" (2008, p. 384); thus, the right to national self-determination cannot be separated from collective responsibility, which comes as a result of the exercise of that right. In a similar vein, by making reference to Thomas Nagel (and Thomas Hobbes), he defends the view that the obligations of justice only arise between individuals who are subject

to the same sovereign authority (and the fact that there is no world government). In nation-states, people are collectively responsible both for the laws and their outcomes; i.e., for the coercion they impose on themselves because it is the public that governs and over whom it is governed (Nagel, 2005). For example, the Nauruan democratically elected government, through its state-run company RONPhos, chooses to mine phosphate and directly causes the environmental and consequently socio-economic degradation of their nation-state.

Finally, Miller (2008) quotes John Rawls' claim that a society is "a cooperative venture for mutual advantage" (p. 390) and replaces "society" with nation-state, to defend the view that both benefits and burdens have to be shared between those who participate in the cooperative practice. Hence, according to him, it is not possible to replicate the principles of justice from the sovereign national to the global community without violating the same principles that are meant to be replicated. Members of the nation-state of the UK are free to decide how they will manage their living habitat and their political and socio-economic co-existence. They are also responsible for the outcomes of their decisions; Nauruans are no different. In the discussion of global justice and the inequality that is created through different socio-economic placement of nation-states, only the universal protection of basic human rights allows for any affirmative action from the global community.[71] Still, Miller admits that it is often not easy to identify the violator of these basic individual rights and the (global) agent responsible for their protection and intervention in such cases.

Regardless of whether he succeeds in his attempt, it should be noted that Miller is able to argue against the non-national distribution of resources without invoking a cultural-based morality of a "common national identity". However, it then seems necessary to partially revise (essentially democratise) his stance on *national* responsibility in the discussion of global redistribution and to supplement it with arguments primarily derived from statist accounts. Putting that aside, how does Miller respond to the claim that current global arrangements primarily work for the benefit of affluent nation-states and that they also systematically contribute to the creation of poverty elsewhere? Although he does not explicitly adhere to this view, Miller does not exclude the possibility that interaction and co-operation between global agents can result in these negative effects. He claims that the guiding principle in economic relations between nation-states should be the production of co-operative surplus – participants should be better off as a result of their interaction with other collective agents. Miller defends the idea of national "internal" responsibility and uses that to justify the rejection of global

[71] "I understand human rights to be rights to those freedoms, resources, and bodily states that allow basic human needs to be fulfilled, and basic human needs in turn are defined as the conditions that must be met if a person is to have a minimally decent life in the society to which he or she belongs" (Miller, 2008, p. 391).

distribution. But this also leads him to accept the idea of "external" responsibility for the collective agency of nation-states regarding their interaction with other entities.

Thus, in a certain sense, Miler is forced to take seriously the accusation that affluent nation-states (can) uphold unfair global economic arrangements. This is reinforced because he holds that nations (and presumably their states) can be treated as moral agents with outcome responsibility for their actions and (in some cases) a remedial responsibility to aid those who need help (Miller, 2007, p. 81). Ultimately, Miller's goal is to enhance the possibility of national collective responsibility and he is aware this cannot be done without justly regulating the interactions between nation-states. His proposal thus includes two principles of global justice: 1) the universal protection of basic human rights and 2) a fair allocation of costs and benefits that arise through interaction and cooperation between political communities.[72]

2. John Rawls and Statism

David Miller's account of national responsibility at times confuses a general moral doctrine with a political doctrine. This makes his reasoning against global distributive justice inadequate to answer the cosmopolitan challenge. Indeed, the necessity of separating the idea of political (institutional) justice and the idea of morality is one of the many valuable insights of John Rawls; that is, his insistence in perceiving a political conception of justice as a framework for political, social and economic institutions. The principle of individual equality that is embodied via governing institutions and laws ought to be perceived as a fundamental political requirement and not as a moral requirement of democratic societies. Rawls remarked on this specifically, making sure his theory of justice was not confused with traditional moral doctrine. He maintained that the formulation of a political conception of justice has to take social and historical context into account as well as the multitude of conflicting conceptions of the good (Rawls, 1985, p. 225). Rawls recognised that democratic societies proper in fact presuppose a disagreement over the conception of the good through the workings of their deliberative institutions. Hence, his theory of justice rightly tries to work out the conditions of existence of democratic societies, rather than the moral rules for all kinds of social interactions that might take place within them. Analogously, the principles of the theory of justice so conceived cannot simply be replicated globally, hence disregarding the peculiarity of this socio-historical context. To use Rawls' (1999b) terminology, the principles of justice of a modern constitutional

[72] However, it is not obvious that this proposal can address the fact that 1) the democratic government of Nauru never passed legislation regarding the regulation of environmentally harmful actions although the negative effects of extensive phosphate mining in such a small island were already known since 1949 at least; and 2) that the democratic government of the UK (among other involved parties) had an environmental law in place that prohibited devastation of (its) living habitat although it kept purchasing phosphate from Nauru (also aware of the grave consequences for the island's environment). This issue will be dealt with later in the thesis.

democracy cannot be used for the formulation of *the law of peoples*; the principles of justice that should operate in the nation-state of Nauru, Australia, the UK etc. cannot be the same as the principles that should operate in their mutual relations. Since cosmopolitan thinkers used Rawls' ideas to argue for global distribution of wealth, is it possible that they misunderstood his theory of justice?

The argument for extending and reformulating domestic principles into principles of global justice draws its force from the postulation of the fundamental moral equality of all individuals, irrespective of their collective membership (Pogge, 1989, p. 247). Since ethical universalism underwrites Rawls' theory of justice, it came as a surprise that he did not embrace a similar normative theory of international relations in his later work. In *The law of peoples* he distinguished between liberal and decent non-liberal peoples, outlaw states, societies burdened by unfavourable conditions, and benevolent absolutisms.[73] Liberal states are characterised by a reasonably just constitutional government, citizens united by common sympathies and a moral dimension (Rawls, 1999b, pp. 23-24).[74] Although decent non-liberal states do not incorporate the democratic values of individual freedom and equality into their constitutions, they are said to meet the minimal standards that are embodied by the liberal conception of justice. Liberal and non-liberal decent states are categorised as well-ordered societies, unlike the remaining three whose basic internal political organisation cannot be tolerated in the context of international relations. Outlaw states are guided by violent and expansionist aims, and the violation of individual rights; burdened societies do not possess liberal or decent institutions, primarily due to their lack of resources and not their government's ill intentions[75]; and benevolent absolutisms deny their members the right to political participation although they generally respect other human rights.[76] Although most of the proceeding discussion in both the same work and in academia focuses on the relation between liberal states and all the others, it is

[73] Rawls makes a distinction between peoples and states, where peoples most closely resemble what has been defended here as the political conception of nations. Unlike states, peoples do not have all the powers of sovereignty associated with them, and they also possess a moral dimension. The plausibility of Rawls' distinction between states and peoples has been challenged but that discussion will have to be omitted. For our purposes, peoples will be treated as states to avoid potential conceptual confusion.

[74] In Rawls' understanding (1999a), for an agent to possess a moral dimension, it must be both rational and reasonable; that is, it must be able to assess a particular (political) system for the best interest of one's own good, but also to perceive it from the standpoint of all other agents that will be affected by it.

[75] Nauru possibly best fits within this category although it does possess democratic institutions.

[76] Each of these five categories of societies are expectedly elaborated in more detail in Rawls' work (1999b) but it is not essential for our discussion to pursue these subtleties. For example, decent non-liberal states are associationist, i.e. their members are allowed political participation but as members of a group. In the context of international relations, they are non-aggressive and they recognise the importance of peaceful cooperation through trade and diplomacy. They protect the basic human rights of their members, they are characterised by a system of moral duties and obligations and their legal system is based on a "common good idea of justice". Outlaw states can be compared to criminals in domestic societies and well-ordered states are entitled to defend themselves against them militarily if needed. Finally, burdened states require assistance from the international community in order to put an institutional framework in place that will allow them to develop their political and economic capacities.

questionable whether Rawls would agree to apply his principles of *distributive* justice on a global level even if all states were liberal (after all, there is no obvious necessary relationship between liberalism and affluence). That Rawls (1999b, 82) was against the forceful conversion of non-liberal into liberal societies is not disputed. But even if that were not the case, would that essentially change the problematics involved in directly translating the moral equality of individuals into political equality – genuine political equality that is established in self-governing states via decision-making institutions?

It is therefore important to note that Rawls' normative theory of international relations should be understood as a theory of inter-state (i.e. inter-institutional) relations, not as a theory of interpersonal relations. For him, neglecting the institutionalised (state) political membership obliterates the purpose of democratic governance and the responsibility that comes with it. Is it possible to make sense of *democratic* communities and their institutionalised procedures if these decisions are treated as individual resolutions and not as expressions of collective will? And is it not then possible to redistribute benefits and burdens that come about through such a cooperative venture to all members of the community? Because the element of social cooperation (along with individual equality and rights) plays an essential part in his theory of justice as fairness, Rawls negatively answered these questions and argued for the distribution of wealth within closed political communities (the difference principle). But why did he dismiss the proposal to replicate the state-model of distributive (economic) justice globally? Quite simply, because we live in a world with a multiplicity of states, characterised by a plurality of comprehensive moral and philosophical doctrines, distinct political cultures, and no legitimate coercive global institutions that are acceptable to those who are coerced by them. Although liberal communities are also characterised by the "plurality of conceptions of the good", there is an agreement on the deliberative procedures intended to ensure all views are taken equally seriously, which legitimises the enforcement of the created decisions (Dare, 2009, pp. 60-63). It also seemed unclear to him when redistribution of wealth between states would cease, given that if its sole aim is achieving universal moral equality, then there would be no obvious cut-off point (Rawls, 1999b, p. 106). Rawls argued that the economic circumstances of one state cannot be essentially improved by the mere distribution of economic burdens and benefits, since the principal causes of wealth do not inhere in e.g. natural resources, but in the political culture and social institutions of one state.[77] This appears to be true at least in our example; namely, although the Nauru Phosphate Royalties Development Trust accumulated over US$1 billion

[77] Rawls (1999b) also gives the example of a hypothetical case where two societies are initially equally well off, where one chooses a more industrious style of living whereas the other opts for a more leisurely existence. Decades after, a more industrious society will most probably find itself also more affluent and it seems unacceptable to ask them now to redistribute their wealth to the more leisurely one.

during the early 1990s, instead of rehabilitating the island's soil and investing into further economic development and education, the money was imprudently spent.

As appealing as they may be, it seems most of Rawls' reasons against global redistribution can be applied to his own theory of justice and the always operating taxation system that serves the greatest benefit of the least advantaged. Recall that in his *A theory of justice*, Rawls dismissed theories of justice that are solely based on merit or deservingness; he wrote "the effort a person is willing to make is influenced by his natural abilities and skills and alternatives open to him" (1999a, p. 311). These natural fortunes and social circumstances represent undeserved individual endowments and in that sense, they are arbitrary from a moral point of view. The theory of justice is supposed to nullify these advantages in closed political communities but not in an open global community. Why? Even with a high degree of inter-connectedness in the era of globalisation, different political communities remain different political communities with separate basic institutions. Distributive justice is a feature of *basic social institutions* and these are legitimately coercive institutions. Since they do not exist on a global level, Rawls' account of global justice is principally guided by the question: "How might reasonable citizens and peoples live together peacefully in a just world?"

In his view, this is best achieved through respect of the "Law of Peoples", which represents a set of juridical and institutional norms observable in the international sphere of law and practice. The law has eight principles[78] and once well-ordered (liberal and non-liberal decent) societies adopt these as a basis for their mutual interaction, a "Society of Peoples" will come into existence. The Society of Peoples is an international parallel to the liberal constitutional democracy on a domestic level. It must respect the plurality of comprehensive doctrines of the good as long as they abide by minimal standards, just as a domestic society ought to do as long as these doctrines are reasonable. The Society of Peoples does not stand for a unified world government, but rather a global cooperative organisation primarily concerned with the issues of security, trade and finance. It is a voluntary union of states, which preserves the political autonomy of the people who form these existing states, very much like Kant's pacific federation proposal. The respect of free and equal peoples on an international level excludes the forceful creation of an executive governing body as a basic global institution. But subsequently, it also prevents the facilitation of the global redistributive principle.

[78] These are: 1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples. 2. Peoples are to observe treaties and undertakings. 3. Peoples are equal and are parties to the agreements that bind them. 4. Peoples are to observe a duty of non-intervention. 5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense. 6. Peoples are to honor human rights. 7. Peoples are to observe certain specified restrictions in the conduct of war. 8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime (Rawls, 1999b, p. 37).

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In the context of international normative relations, Rawls' argument for the dismissal of global distributive justice inspired other authors to focus on the peculiarity of the institutional form of membership that individuals acquire as citizens of a state. These (now referred to as) statist accounts claim, for example, that egalitarian distributive justice can only hold between citizens, that is, 1) between individuals who share liability to a coercive state that has the power to enforce relative shares amongst its citizens (Blake, 2011, p. 555; Nagel, 2005); or 2) between individuals who equally participate in the mutual provision of a central class of collective goods (Sangiovanni, 2007, p. 4). In either case, it is the state as a political and socio-institutional collective that fulfils the role of coercive agent and/or provider of collective goods. Both versions express scepticism towards applying the domestic principles of distributive justice to the global order i.e. to anything that transcends political jurisdiction of the modern state and to an idea of (distributive) equality as a demand of justice between non-citizens.

The *coercive state agency* argument begins by asserting that states have legitimate power to oblige their citizens into obeying laws and regulations, and that this coercive agency results in the contravention of the citizens' autonomy. The restriction of individual liberty is nevertheless justified by the hypothetical consent of reasonable citizens[79] – an explanation that can be treated as an extension of the principles of individual equality set by the original social contract. Such state coercion is qualified as vertical due to a coercive agent, which is regulated by those who are bound by it, unlike the one found in the global system. The global system is coercive but in a horizontal sense since it lacks a centralised coercive authority. It is coercive as a matter of fact, but it is not purposely coercive like it is the case with modern states. For this reason, this form of indirect coercion cannot justify the principle of (global) wealth distribution. Domestic distributive justice rests upon the vertical nature of (direct) coercion that modern states exercise over their citizens (Blake, 2011, p. 568). The *collective goods state agency* argument maintains that equality is established through the reciprocal relationship between those who "support and maintain the state's capacity to provide the basic collective goods necessary to protect us from physical attack and to maintain and reproduce a stable system of property rights and entitlements" (Sangiovanni, 2007, pp. 19-20). This relationship is established between fellow citizens and residents. The effective functioning of a state is guaranteed by its citizens; hence a central class of collective goods comes about as a financial and sociological product of this joint enterprise. This empirical fact (as Sangiovanni (2008, p. 4) refers to it) is what differentiates the state system from the global order i.e. the lack of capacity

[79] Blake (2011) does not further explore this peculiarity of democratic forms of governance, that is, the relevance of public creation of laws for the existence of distributive justice. However, Nagel (2005), who also takes the coercive nature of state as a defining causal factor of internal distributive justice, makes more of this point.

of the global order to sustain itself. A society that exercises control and is able to sustain itself is the society that produces the principles of distributive justice. The modern state is such a society and the global order is not; hence the egalitarian principle of justice applies only to the state.

Admittedly, these two versions of statism are considerably more detailed than what has been sketched out here. Still, there is a common thread in the presentation of their arguments, which also holds in their mutual disputes. Namely, both accounts seek to identify the distinctive agency of the state, which can be used to produce a theory that will justify the socio-economic redistribution between citizens (or the lack of it between non-citizens). As one of the authors explains, a collective goods state agency focuses on what the state does, while the coercive state agency focuses on how the state is doing it (Sangiovanni, 2007, p. 19). Interestingly, neither account addresses the question of whether the principles of socio-economic distributive justice pertain only to (democratic) nation-states or to other types of states as well. Is it only a duty of democratic states to take up the model of the welfare state or can/should other political systems also have such commitments? We know as a historical matter of fact that there can be non-democratic welfare states with strong socio-economic principles of equality – e.g. the communist states of the second half of the 20th century composed of individuals who equally participated in the mutual provision of a central class of collective goods and who shared liability to a coercive state. These questions pose a challenge for the described statist theories because they seem to allow non-democratic forms of governance to produce the same egalitarian socio-economic distributive results, at least in principle. Consequently, this raises the issue of whether the exercise of democratic political rights is a necessary or sufficient condition for socio-economic equality, especially when viewed in the framework of global governance and the idea of global distributive justice. Although statist authors operate within the liberal political tradition, perhaps their emphasis on what the state does and how it does it as empirical facts neglects the politico-normative question of the democratic legitimacy of power and social institutions. Does the democratic exercise of power necessitate the distribution of resources between citizens of closed political communities? Does it also result in a distributive partiality between sovereign states, national or not?

As John Rawls (1999a) rightly differentiates, as an implication of democratic political justice and not a general moral doctrine, the principle of socio-economic equality is derived from the principle of political equality. Without making reference to a particular moral conception of the good, socio-economic egalitarianism is established in order to ensure the meaningful participation of citizens in a civil community i.e. the unimpeded exercise of political rights. The relation between political and socio-economic status is thus constituted in order to develop the elementary conditions required for authentic membership in a democratic

community (Hegel, 1967, **§** 241). For this reason, the democratic state will enforce some form of socio-economic redistribution as a natural extension of its political principles, unlike other forms of governance. It is quite evident that political equality is not instituted between the individuals that compose different states – to claim the contrary would mean obliterating the purpose of the decision-making procedures of their respective deliberative institutions. Specifically, it would negate the peculiarity of the democratic political relationship that is maintained between individual citizens and the governing control they exercise over themselves.

Importantly, it is this lack of legitimate political control over other states and their management of political and socio-economic affairs that renders global redistribution problematic. As there is no political relationship between all the individuals of this world, that is, not the kind of self-governing political relationship necessary for the postulation of the principles of (internal) political justice, the same socio-economic relationship does not exist. In principle, this does not prevent sovereign states from redistributing their socio-economic resources, but it means it is not their responsibility to do so. Finally, in practical terms, whether or not there is a duty to institute a redistributive mechanism over which the contributor parties have no control renders the whole enterprise unreasonable. Ultimately, according to both David Miller and John Rawls, it is the right of Nauruans to govern over their political and socio-economic affairs, which also makes them responsible for the outcomes of their decisions. Through their democratic elections, the citizens of Nauru appointed the government officials who then (legitimately) decided to continue basing the state economy on phosphate mining. Whatever the condition of Nauru is now, it has been principally (although indirectly) caused by the people of the island. For that reason, members of other nation-states have no responsibility to redistribute their resources to Nauruans and help them improve their political and socio-economic situation.

3. Global Justice and the Theory of Collective Rights

Both the cosmopolitan and the national/Rawlsian statist theories are based on the same democratic values of individual moral equality and right to self-governance. With that in mind, one might ask if it is possible to reconcile the two positions and pursue a path that avoids depreciating the principles of ethical universalism while simultaneously preserving the responsibility and rights created by membership in a modern nation-state? Namely, although the world's individuals do not share a relationship of political equality established between citizens in democratic communities, this is not to say there are no political or socio-economic relationships as such between sovereign nation-states and other global actors. Moreover, these relationships have intensified since the end of World War II. It is the failure to recognise the

transformation of social life as understood by the concept of globalisation that has been a repeated objection to both national and statist accounts. Thus, firstly, John Rawls has been extensively criticised for the inconsistency between his domestic and global take on distributive justice; and secondly, he and other statists have also been criticised for not properly acknowledging the effects of globalisation and the complicity of global actors (states, IOs, MNCs) in the establishment of a global economic order that contributes to socio-economic inequality and even great poverty (Pogge, 2008, pp. 110-115). The present world is not an aggregation of isolated and self-contained political communities, but a network of interconnected modern states, global governing institutions and other political and economic non-state agents. Recognising the world as an interconnected network has initiated a shift from the subject of global redistribution of resources to the subject of the complicity of global political and economic agents in the perpetuation of the unequal distribution of wealth. Despite the (more-less) scholarly agreement that political stability and socio-economic prosperity has to be first and foremost internalised by the governing institutions of political communities,[80] the possibility to obstruct these workings through an externally-based agency has also been acknowledged by most (if not all) political philosophers.

From a moral perspective, in the background of this discussion lies the distinction between negative and positive duties; negative duties require us to refrain from causing harm and positive duties require us to provide assistance when harm is being done to others.[81] It appears that carrying out negative duties strikes a balance between the special obligations towards those with whom we share a peculiar political relationship and those with whom we share common humanity. Negative prohibitive duties are often connected with traditional morality (e.g. Thou shall not…) and they generally prescribe the most critical aspects of human conduct. In that sense, they represent the moral minimum that is deemed more valuable than positive behavioural agency but significantly, a lesser moral sacrifice.[82] Furthermore, negative

[80] Even Pogge (2008) who argues that affluent countries and their citizens are causally (and morally) responsible for an unjust global economic order concedes that socio-economic (under)development is principally caused by the internal governing policies of individual states.

[81] The distinction between negative and positive duties closely resembles Kant's separation between perfect and imperfect duties i.e. those duties that can be willed to become universal law without contradiction and duties that are possible to universalise without self-contradiction, but impossible due to their non-rational (dispositional) character (Kant, 2002, pp. 24-26). For the purpose of textual clarity, my usage corresponds to the one endorsed by Salmond (1907, § 80, pp. 202-203).

[82] Although there is a common intuition to treat a harmful action as morally more objectionable than inaction to prevent it, it should be noted that the strict separation between negative and positive duties has been contested in ethical discussions. That is, to consider someone under duty not to perform a (harmful) deed can be said to amount to restricting his or her actions with regard to it. But equally so, to require someone to perform a (beneficial) activity would thus necessitate a limitation of one's actions with regard to not performing it. The difference then lies in the emphasis that has no relevant moral implications; hence, it can be argued that every negative duty entails a corresponding positive duty, just like every positive duty entails a corresponding negative one. For a defence of separation between

duties hold an advantage over positive ones in being more easily identifiable. Namely, as pointed already by Kant, positive (imperfect) duties are in principle non-exhaustive; hence, for example, the duty to help others entails no determinable final point for its fulfilment. Rawls most likely followed this line of reasoning when he claimed that the fulfilment of universal moral equality of individuals through wealth distribution has no obvious cut-off point, as already mentioned.

Whether in reality global political and economic agents are perpetuating inequality is an empirical question, which no doubt can be investigated accordingly. But it is not imperative to show that this in fact is the case to examine whether it is possible to externally influence nation-states through political and economic mechanisms. Consequently, it is possible to further examine whether there is a negative duty to refrain from inhibiting political autonomy and preventing socio-economic development as a form of harm in the context of international relations. The moral (negative) duty to not cause harm entails acknowledging at least the following ethical concerns that pertain to it, namely: what constitutes harm and the extent of it (e.g. whether the destruction of the greatest part of the living habitat of one state is harmful for its normal functioning); whether there is the intention to inflict harm, and if so, whether that intention is justified (whether the government of Nauru and phosphate buyers intended to cause the degradation of the island's environment for some particular reason); if there is no intention to inflict harm, whether the produced harm could have been reasonably foreseen by the perpetrator (whether all the parties involved were aware of the negative consequences of extensive phosphate rock mining); whether the sacrifice needed to prevent harm falls outside of the perpetrator's capacity (whether any of the involved parties could have refused to either mine or purchase phosphate respectively); and whether the extent of said sacrifice is correctly balanced against the severity of harm (whether the refusal to sell or buy phosphate would result in any of the involved parties being worse off than Nauru after the destruction of its living habitat).

It is plausible to claim that stripping layers of land, which prevents sustainment of vegetable, animal and (arguably) human life, is a harmful activity, and that to do so to over the greatest part of the living space impairs the overall functionality of a modern nation-state. It is further plausible to assume no party's primary motivation was to destroy the island's environment but rather to profit from harvesting phosphate. It is certain that the produced harm could have been reasonable foreseen, since Australian officials estimated as early as 1949 that the continuation of phosphate mining would leave all but the coastal strip of the island worthless (UN GA, 1949). Beginning in 1968, the government of Nauru has been in charge of its

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negative and positive duties, see for example Foot (1967). For a critique of the strong distinction, see Shue (1980, 13-64), but also M. Singer (1965).

natural wealth and resources. It was thus able to (at least gradually) stop mining and selling phosphate just as other nation-states and companies were able to stop buying it. Finally, the nation-state of Nauru generated high profits from the sale of phosphorus and the buyers benefitted from this transaction mainly in the access and use of said phosphorus. The extraction of phosphorus from Nauru's rocks has fertilised the lands of Australia, New Zealand, the South African Republic etc. and it had a combined positive effect on these countries' economies and the well-being of their citizens. This extraction has also left the island in an uninhabitable state, a non-sustainable society that is dependent on imported processed food and which consequently suffers from the highest obesity and diabetes rate in the world; a number of endangered indigenous species; and is home to an off-shore detention camp for disenchanted Australian immigrants. Arguably, the severity of Nauru's condition outweighs the benefits produced for all parties involved i.e. the sacrifice to not mine, sell, buy and fertilise lands using Nauru's phosphate rocks would be correctly balanced against the severity of the extensive environmental destruction of one nation-state's territory. It is not controversial then to identify the involved parties' failure to fulfil a negative duty and cause no harm. If this is so, accepting the duty to cause no harm begs us to assert the following: who is the harm-doer, who is the right bearer subjected to said harm and what is the nature of these duties and rights.

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The essential relational aspect of rights and duties was famously advocated by American legal theorist Wesley Hohfeld (1917, p. 717), who differentiated between four types of rights: 1) claim-rights, 2) liberty-rights[83], 3) powers, and 4) immunities – arguing that only claim-rights should be understood as rights in the strictest sense. Noticing that there is a degree of confusion when jurists use the term *right*, he identified the four fundamental legal concepts and proceeded to investigate the relations between them in terms of their correlatives and opposites. Thus, to avoid the equivocal use of the term *right*, he claimed that the jural correlatives of claim-rights (rights in the strictest sense) are duties, meaning that having a claim-right puts someone (or everyone) under a duty to allow the agent to practice the right in question. The correlatives of liberty-rights are no-rights, which means that being in possession of a liberty results in nobody's claim-right to prevent the liberty-right holder from enjoying it, while simultaneously obliging nobody to make the enjoyment of said liberty possible.[84] Having a liberty-right does not allow us to demand its fulfilment since there are no duty-bearers to demand it from, but it prevents others from demanding its prohibition.

[83] Hohfeld uses the term "privileges" although these are now more commonly referred to as liberty-rights.
[84] The jural opposites of claim-rights are no-rights and the opposites of liberty-rights are duties but this distinction is not of direct relevance for the discussion. The same holds for relational aspects of powers and immunities.

Because claim-rights entail duty-bearers whereas liberty-rights do not, it seems that the law treats claim-rights more "seriously"; that is, the law makes sure some specific rights (claim-rights) are actually exercised. Liberty-rights seem to be of somewhat secondary importance, as accidental or trivial rights that represent what possible conduct is left after deducting the part regulated by rules of duty (Williams, 1956). Liberty-rights are rights that cannot be taken away by anyone; but since no one has the duty to allow them to be exercised, it is likely that in many occasions the right-holders in fact will not be able to exercise them. Against the background of normative international relations, the positive duty to redistribute wealth globally would amount to the existence of a claim-right on the side of the beneficiary – an increasingly unpopular option in academic circles and most probably in the wider public. But the negative duty to cause no harm seems to entail the existence of liberty-rights, assuming for the time being that the right in question can be defined as the right to national self-determination and the right to pursue economic, social and cultural development (UN GA, 1966b, Art. 1).[85] Thus, returning to the subject of complicity and the perpetuation of the unequal distribution of wealth, we can determine that the nature of duties and rights in this framework holds that there is no duty by the global community to uphold or further socio-political development of one nation-state. Nauru does not have a claim-right to sell phosphorus and the buyers do not have a duty to buy (or simply redistribute resources to Nauru without purchasing anything from it). However, there is a duty not to interfere with the liberty-right of nation-states to pursue and realise this development. In that sense, it could be said that the nation-state of Nauru suffered a violation of its liberty-right by the mining, selling and buying of phosphate since no party involved refused to participate in the destruction of the island.

Global justice literature is somewhat ambiguous when discussing the *harm-doer* and the *right-bearer* in the framework of international relations, since these terms frequently shift from individuals to collectives i.e. from citizens to nation-states, IOs and MNCs. Keeping in mind that the individual has a central role in the liberal political tradition and the all-pervasive moral legacy of individual rights, it is still more common to recognise harm-doers and right-bearers as individual citizens. This approach is also manifested in cosmopolitan political theory, which defines individual human beings as the ultimate units of moral concern.[86] But is it correct to conceptually and normatively reduce the relations between collective entities to the relations of their composing individuals? This seems counter-intuitive when contrasted with the standard definition of international relations as relationships that transcend state boundaries, including

[85] This, of course, is the right of nations and not nation-states and it is used here only for the purpose of contextual clarification. The object of collective rights of nation-states proper will be presented in Chapter VI of the thesis.

[86] And further claims there is an unjustified double standard at work when we discriminate between individuals on the basis of their collective membership.

relations between countries, IOs (intergovernmental and non-governmental organisations), and more recently MNCs (McDougall, 1991, p. 2). International relations are relations between collectives and not between individuals. Although they operate in the same liberal individualistic tradition, national and statist accounts aim to show that, at times, the exercise of individual agency as a purposeful undertaking can only be comprehended as an integral part of larger collective agency. Belonging to a collective endows a specific dimension to individual well-being, which cannot be meaningfully understood without making reference to it. And likewise, that now and again, it is only possible to endow individuals with rights and exert influence onto them if they belong to a collective – in this particular case, the nation-state. A nation-state is a collective.

The rapid growth of global interconnectedness and a higher awareness of global critical issues that exceed the remedial capacity of individual nation-states have challenged the idea of traditional (Westphalian) political sovereignty. Nevertheless, modern nation-states remain the building blocks of the political and socio-institutional world as we know it since other global agents either essentially depend on their prior existence or they cannot be said to possess the same legitimate political dimension (if they possess one at all). The nation-state thus maintains the political potential for social change for better or worse. It can mobilise individuals and collectives not only because of its institutional means, but also because of the legitimate power it claims to have on its members. The cosmopolitan dismissal of group membership as morally irrelevant fails to recognise instances where the allocation and violation of individual rights intrinsically depend on membership in a collective. Is the modern nation-state one of those collectives worth protecting? Is it necessary to protect the nation-state as a *collective rights-holder* in order to contribute to the well-being of individuals?

The nation-state is a specific type of political and socio-institutional collective through which its members are able to exercise rights but through which they may also have their rights violated. Let us stipulate that it is possible to impede the well-being of individuals, collectives, or the whole nation-state by means of an agency that is facilitated through the interaction between global actors. This hypothesis sufficiently corresponds with the accusation that affluent nation-states and IOs are (deliberately) contributing to great poverty and economic inequality. The negative duty to cause no harm in the context of normative international relations (understood as relations between collectives and not individuals) would then be assigned to any entity that is capable of exerting such agency onto the nation-state as a political and socio-institutional collective – to nation-states, IOs, and MNCs. For the longest part of human history, the possible harm that political communities were able to inflict upon one another came in the form of military conquests, sometimes followed by the moral and physical degradation of the population of the defeated community, and/or its economic and cultural exploitation (in

Nauru's timeline, these events correspond to its colonial subjugation between 1886 and 1968). Acknowledging that armed warfare exists today, we witness another form of harm that comes about in a more latent non-militant form. Thus, the subject of the complicity of global political and economic agents in the creation of an unequal distribution of wealth is characterised by different practices – those practices that are made possible in a contemporary globalised world, but also made necessary for the normal functioning of nation-states. Moreover, these practises are *legitimate* according to the international law and the law of most (if not all) current nation-states. Most generally, these are various economic and financial arrangements (trade agreements, bank loans etc.) between individual nation-states, but also between them and highly influential IOs (e.g. WTO, WB, IMF) and MNCs.

The case of Nauru is a good example. Until 1968, the governments of the British Empire and later Australia, the UK, and New Zealand claimed governance over the island. They mined phosphate to the best of their abilities and used it to fertilise their lands. Once Nauru became an independent nation-state, its government continued mining. The island's trading partner states and companies continued to buy and profit from Nauru phosphate even though they were well aware of the severe negative effects such mining had on the island's environment (they continue to do so today and they assume no responsibility for their actions). No global governing body has coercively prevented the *buyers* from purchasing phosphate, nor prohibited the *government of Nauru* from deliberately engaging in such a trade. After all, phosphate rock mining and the distribution of phosphorus is not prohibited by any law as such, although the severe destruction of the environment is sanctioned according to the national laws of the involved trading states (all but Nauru) and international law.[87] Thus, the example illustrates that the existing global governing arrangements have allowed all parties to develop and participate in a trade agreement by which the living habitat of one nation-state was devastated. In turn, this has made the "sovereign" nation-state of Nauru fully dependant on the circumstances of global politics and economy over which they have no control.[88] Although Nauru is formally a sovereign nation-state characterised by 1) a government with control of the means of violence; 2) legal order and the rule of law; 3) territoriality; 4) citizenship; and 5) the capacity to enter into relations with other states, it effectively cannot provide elementary subsistence to its people by relying on its natural and social resources.

It might have been the case that the nation-state of Nauru would suffer from socio-economic and environmental degradation even if the island never contained an unusual amount of phosphatic deposits. However, this does not change the fact that its current condition has

[87] For example, the Stockholm Declaration on the Human Environment (UN GA, 1972).
[88] Due to phosphate mining, it is compelled to fully rely on imported (processed) food making the population one of the unhealthiest in the world.

been caused by the actions of its government and the representatives of other states and companies; that under the current global governing arrangements no party involved in the destruction of Nauru could have been coercively restrained from its actions; that all parties involved were exempt from any responsibility for their actions; that no global actor is under the obligation to provide Nauru with any form of assistance, especially with regard to regenerating their unusable island soil; that no global actor has a duty to contribute to development of Nauru in a way that will allow its citizens to reduce their dependency on external factors; that the exercise of power by the national government of Nauru has principally limited the present and future democratic character of the small autonomous nation-state in the central Pacific Ocean; and finally, that in the global system of intensified economic interaction, Nauru stands significantly disadvantaged compared to most other states (although it remains formally equal). Somewhat remarkably, throughout this entire time, it does not seem Nauruans had their individual rights violated, at least not in the way these violations could be meaningfully and institutionally addressed.[89] It nevertheless remains extremely difficult for them to maintain their well-being in conditions of grave socio-economic and environmental scarcity.

Thus, in those cases where political and socio-economic cooperation between nation-states and other global actors produces foreseeable negative outcomes for interests of moral importance, it does not always seem effective to address this issue by relying only on the language and mechanism of individual rights. Acknowledging that the protection of individual rights requires the protection of the state is not disputed in international law, where the state has long been considered a legal subject with rights and duties. For example, the Montevideo Convention on the Rights and Duties of States (1933) 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).[90] 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 this, 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).[91] Hence, the state as a right-holder (and a duty-

[89] There is no (individual) right listed in the International Bill of Human Rights that adequately addresses the Nauruan scenario.

[90] 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.

[91] 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).

bearer) is not viewed controversially in legal theory and practice. Although it is clear that states have rights, there is little discussion in philosophical literature with regard to the *nation-state* as a particular kind of state and its status as a right-holder. There is little application of *the theory of collective rights of cultural groups to the nation-state* as probably one of the most politically relevant collectives in the world today.

The theory of collective rights stems from the recognition that certain interests of moral importance are best protected by conceptualising some collectives as moral entities – most typically cultural groups. Namely, until quite recently, the policy of assimilation and subjection of national identity to cultural membership was seen as the most appropriate way of dealing with (minority) collectives different from the dominant "national" culture (Addis, 1991). But even after modern nation-states acknowledged the moral value of multiculturalism, it soon became clear that some cultural groups are systematically disadvantaged compared to others (national minorities, historically subjected ethnic or racial groups, and indigenous peoples). Thus, the idea of collective rights was initially motivated by allegations that the democratic majoritarian-based type of governance founded around the protection of individual rights inadvertently results in the disappearance of smaller self-identifying cultural collectives. Writers situated in the Anglo-Saxon part of the so-called New World particularly felt the need to address this issue as, over time, the 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 colonised world attracted attention because of the fundamental cultural differences existing between the (Western) majority and the indigenous minority, and because the assimilation of minorities effectively resulted in the cultural annihilation of indigenous peoples. Challenged with these accusations, a number of liberal writers started examining whether certain collectives of moral importance should be treated as rights-holders, since the conceptual and legal paradigm of individual rights was inappropriate to prevent the slow vanishing of their cultural practices (and effectively these groups).[92] In order to prevent their disappearance, many nation-states around the world acknowledged that it is necessary to treat some cultural groups qua moral collectives and not only as legally recognised entities i.e. that the preservation of their identities has to factor in their genuine capabilities to maintain their beliefs, norms, and practises against the all-pervading dominant culture.[93] The existence of some (underprivileged) cultural groups started being perceived as a moral category in itself. Eventually, these

[92] Most notably, Vernon Van Dyke (1975, 1977, 1928), Will Kymlicka (1989, 1995), Michael Freeman (1995, 2002), Jeremy Waldron (1992, 2002, 2009), Chandran Kukathas (1992), and others. It is worth including Peter French (1979) to this list, although he focuses primarily on the topic of the moral responsibility of corporations.

[93] Collective rights for the protection of cultural, indigenous groups, as well as national minorities exist in almost every modern democratic state today.

collectives were offered a form of preferential treatment and the provision of additional socio-political resources to meet their needs.

In the context of normative international relations, the theory and practise of collective rights of cultural groups is relevant because it points out that the well-being of human beings cannot be sufficiently safeguarded by perceiving only individuals as entities of moral importance. The appreciation of a class of moral collective entities whose value and preservation are unlike the value of traditional legal collectives has far-reaching normative implications. Namely, regarding some collectives as entities of moral importance brings to the fore the idea that collective interest as a conceptual and moral category can persist in a form that is not reducible to the individual interests of its members. Particularly, it can extend beyond the individual decisions of its members, even those who are their legitimate representatives.[94] It is at once noticeable that such an understanding is principally different from the way (morally neutral) legal collectives are commonly treated in domestic and international law. The interests of legal collectives are not of irrevocable permanent character; hence, their decision-making bodies are at liberty to do away (within the legal boundaries) with the collective as they see fit.

However, the distinction between moral and legal collectives is to an extent implicitly recognised by international law in the stipulation that all peoples and nations hold the right to *permanent* sovereignty over their natural wealth and resources (UN GA, 1962; 1973). No government as a decision-making body is free to deprive a nation of its own means of subsistence (UN GA, 1966b, Art. 1). On the basis of this, it can be said that nations are treated as moral collectives, although significantly their states continue to be traditionally considered as (only) legal subjects with rights and duties. Thus, notwithstanding the fact that nations stand for entities of moral importance, from the perspective of international law and commerce, nations do not have governments, legal order, territory, citizens, and the capacity to enter relations with other global actors. Only states are characterised by these attributes. The problem appears then to lie in the fact that nations, properly speaking, cannot exist without a political and socio-institutional platform that facilitates and materialises the democratic form of its governance – the state. More specifically, the nation-state *remains a state* as a legal collective and the moral dimension that subsists in the *nation* is left out of the collective that comes about as an expression of the right to self-determination i.e. the nation-state. Ultimately, in these circumstances of international relations, governments as decision-making bodies are able to

[94] Thus, for an example, it is not possible for Māori tribe (*iwi)* leaders to alienate collectively-owned land of their members in New Zealand. This is because land ownership has moral importance for Māori, which extends beyond mere private ownership of land; hence, it has not only instrumental but also spiritual value. See Mutu (2010, p. 26) for differences in (human-sourced) English and (spiritually-sanctioned) Māori understandings of leadership.

govern and confer duties upon nation-states under institutional conditions that fail to meet the standard of parliamentary and public scrutiny. Against this background, the idea of the rights of nation-states qua moral collectives is meant to preserve the moral dimension that is neglected in contemporary international relations. It is meant to address the fact that the creation of democratic legislative institutions for governance over nations has not been fully followed by the enactment of institutions for governance over states.

The theory and practise of collective rights of cultural groups crucially also points out that the formal equality of collectives of moral importance is inapt to address conditions where not all collectives are equally placed to pursue their legitimate interest through democratic means of governance. Although not immediately anticipated, the democratisation of societies exaggerated the status of (now) underprivileged cultural groups in comparison with those cultural groups that fared better through the democratic process. Such an unfavourable outcome did not come about through the segregation of cultural groups but effectively through cooperation under the principle of individual moral equality. The democratic interrelationship between cultural groups hence undeniably disclosed differences in their relative capabilities against one another, and these great discrepancies showed that the formal equality of collectives is insufficient to foster favourable conditions for human flourishing. Accordingly, the democratic processes aimed at preventing the discriminatory treatment of individuals resulted in the discrimination of those collectives that were underprivileged due to various socio-historical reasons. Treatment of cultural groups as collective rights-holders stems from a recognition that additional socio-institutional resources are needed for some collectives in order to facilitate fair terms of mutual interaction.

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 nature that applies to these collectives. In principle, modern nation-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 collectives of moral importance are equally well-positioned to defend their interests within nation-states. In the latter case, special collective rights of either permanent or temporary character are indispensable in order to address the inherent disparity in the actual capabilities of these collectives to sustain their interests. Keeping in mind the progression of the political and socio-economic global interconnectedness and the sheer disparity between the participating global actors, the question is, can the same model of collective rights be successfully applied in the setting of

international relations? In particular, in order to substantially address the respective differences in political and socio-economic capabilities between nation-states, is it necessary to apply the policy of preferential treatment to those economically underprivileged nation-states? The recognition of the nation-state as an entity of moral importance and a collective rights-holder offers a novel theoretical and normative framework within the discussion of global justice – it moves from the issue of (re)distribution of wealth to an allocation of preferential collective rights. This approach does not necessarily involve the redistribution of socio-economic resources, rather it offers a moral argument to explain why underprivileged nation-states should be entitled to economic protectionism: to balance out the existing global disparities in wealth.

Thus, the idea of the rights of nation-states qua moral collectives is meant to address two distinctive problems that apply to the case of Nauru and that also characterise a great number of other nation-states. The first problem is that the (democratically) elected government of the nation-state of Nauru has been an active participant in the destruction of the island's environment (together with governments of other nation-states and MNCs). The second problem is that the current socio-economic underdevelopment of this nation-state makes it difficult (if not impossible) to compete with industrially and technologically superior (for example) Australia in the global free market system. The nation-state of Nauru has the sovereign right to manage its internal political and socio-economic affairs in the best interest of its people. However, this right does not guarantee that the government representing this nation-state will in fact advance these interests, nor that the nation-state of Nauru is genuinely able to assert those interests in a global institutional arrangement, which treats all global actors equally. As it stands, the national right to self-determination and formal equal status of the political and socio-institutional collective thus created has not brought beneficial outcomes for the people living on the island in the central Pacific. The rationale behind the proposal of collective rights of nation-states is that no meaningful global "cooperative venture for mutual advantage" (Rawls, 1999a) can be said to exist if it assumed that nation-states should only be considered as legal collectives and not as moral collectives.

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Acknowledging there is no globally centralised political control, which consequently renders the positive duty to redistribute wealth problematic, is there a degree of negative duty to cause no harm to nation-states by way of recognising them as entities of moral importance? The theory of collective rights of nation-states is meant to provide a normative framework for a fairer and more beneficial interaction between global actors. The theory, of course, leaves many questions unanswered, some of which require a conceptual account of *collective* rights, while others call for a normative evaluation of the claim that the nation-state is a *moral* collective. I

will address the first requirement in Chapter IV by answering the following questions: how do the collective rights of moral entities differ from the rights of (traditional) legal entities; 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; whether the object (benefit condition) of collective rights can only be enjoyed by collectives or by individuals alike; 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.

Subsequently, Chapter V will examine the moral argument that supports the treatment of cultural groups as moral entities and collective rights-holders. This will include a brief presentation of the communitarian critique of liberalism; an examination of whether the capability approach that focuses on genuine opportunities for the development of human well-being can be extended from individuals to collectives; the rationale behind the policy of preferential treatment in democratic systems, otherwise characterised by the principle of non-discrimination; and finally some examples of collective rights in contemporary nation-states. Chapter VI will capitalise on the conceptual and ethical insights of Chapters IV and V respectively. Against that background, it will examine the argument for treating nation-states as moral collectives and whether it is possible to make a parallel between them and cultural groups. In Chapter VII, I will give a short overview of the global system of trade based on the principles of multilateralism and non-discrimination. I will argue that a system where nation-states are perceived as purely legal and formally equal entities fails to address the genuine political and socio-economic capabilities of these collectives. Moreover, this failure ultimately impedes the well-being of their citizens. I will conclude the chapter by presenting some of the measuring tools available for epistemically assessing the differences in the collective capabilities of nation-states understood as entities of moral importance.

CHAPTER IV: COLLECTIVE RIGHTS: THEORY

1. What are Collective Rights?

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 national and international welfare and justice have not met with success by relying on the language of *individual* rights alone. For the purposes of this thesis, rights will be understood as feasible and enforceable claims that are accompanied by duties.[95] Contemporary democratic societies are characterised by the rationale that the only moral entities that should be protected with rights are individual human beings. However, in recent years, 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 in the individual if they are to be successfully safeguarded. These moral interests in question are generally associated with common membership in various self-identifying collectives, most notably cultural, linguistic, national, religious, ethno-tribal, and family collectives.[96] In the specific context of this thesis, this raises a question: are singular human beings the only ones entitled to claim rights on the basis of their moral status or can the same be said for a collective of human individuals e.g. nation-states?

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 collective rights allocated to entities with legal personalities are said to be parasitical and therefore reducible to individual rights. However, 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. It is necessary to establish a theoretical, moral, and legal

[95] This position essentially commits me to a positive law interpretation of rights. 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 throughout this thesis, rights will be understood as a socio-institutional mechanism of protection, which allocates the duty bearer in the governing political authority. Namely, the theory of collective rights investigated in the coming discussion should not be taken as synonymous with a theory of morality.

[96] From this point onward, I will use the term *cultural* to refer to self-identifying ethnic, tribal, religious and language groups (or their combination).

framework where some collectives are interpreted as moral entities and treated as rights-bearers, in and of themselves. The primary task of this chapter will be to clarify the idea of collective rights as a distinct conceptual category before investigating the normative implications of treating collectives qua moral entities as rights-holders.

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.[97] 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 fifth 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 species 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-profitable organisations), a political party, a municipality, a state, an international organisation, etc.

Unlike in legal theory and practice, the philosophical treatment of collective rights is not reducible to the existence of the legal personalities of non-singular (human) entities. The collectives generally considered legitimate right-bearers do not strictly speaking come about as creations of law, although their status as rights-bearers requires legal recognition. Their moral importance is principally linked to our existence as social beings (e.g. cultural groups or nations). Most theorists agree that collectives worthy of protection need to possess a recognisable sense of unity and identity, even though the exact measure of such qualifications often escapes the precision of conceptual definition or empirical methods of demonstration. Thus, collectives with rights are not to be exclusively identified with entities that have legal personalities and due to their nature, it will in fact be difficult to treat them in such a manner.

For example, the nation of Nauru is a legally recognised self-identifying political collective, which is why it is able to exercise its collective right to national self-determination.

[97] 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).

However, the *nation* of Nauru does not have a legal personality unlike the *state* of Nauru, which is the subject of international rights and duties *because* it has a legal personality. Collectives need to be legally recognised in order to be treated as the bearers of rights; the Nauruan nation was recognised in 1968. Nevertheless, international legal recognition is not what constitutes and maintains a collective that wishes to democratically govern over itself – this status is grounded on myriad pre-legal and sociological facts (Jovanović, 2012, p. 127). The international community recognised the people of Nauru to be a nation, which is why the UK, Australia, and New Zealand were pressured to withdraw from the governance of the island. However, no legal proclamation could create the people who wish to govern over their sovereign state. Thus, in order to claim the authenticity of collective rights, the collectives in question will not be singled out as only those whose coming into existence is necessarily related to their legal enactment. The justification of their status as right-bearers will derive from an *identifiable moral standing and from the irreducible importance they have to the advancement of human well-being*. Keeping this in mind, the idea of rights of nation-states qua moral collectives requires a normative evaluation that demonstrates nation-states indeed are collectives of moral importance. Additionally, it requires avoiding the equivocation of nations and nation-states i.e. the Nauruan collective right to national self-determination and the (hypothetical) collective rights of the nation-state of Nauru.

What is a *collective* right? Following Peter Jones (1999, p. 354), a collective right will be defined as a right possessed by a collective qua collective and not its members severally. Every (existing) collective is made up of particular individuals who are holders of various rights in their own capacity. However, a mere collection of these rights does not result in the fulfilment of collective well-being, which is connected to individuals by virtue of their membership. It is a prerequisite, the argument goes, to treat collectives as right-holders in their own right, because although the individual is a fundamental moral unit, the collective is a fundamental moral unit of social life,[98] and the individual cannot be meaningfully understood without referring to his/her social dimension. A good example of the distinction: the individual has a right to freedom of religion and a right to participate in the cultural life of the community. These rights are listed in the UDHR (UN GA, 1948, Art. 18, 27),[99] ensuring that people are allowed to honour deities or participate in cultural activities without prohibition and discrimination. Still, it is recognisable

[98] One way of expressing this is: "for individualism, it is the organic person or citizen who is individual and whose good, whose interests and whose rights are foundational, whereas the political theory of groups as fundamental possessors insists that it is the group which is individual (the fundamental moral particle of social life) and that its good, its interests and its rights are foundational" (Sharp, 1999, p. 7).

[99] Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, *either alone or in community with others* and in public or private, to manifest his religion or belief in teaching, practice, worship and observance; Article 27: Everyone has the right freely to participate in the *cultural life of the community*, to enjoy the arts and to share in scientific advancement and its benefits [italics mine].

that an integral part of exercising these rights necessitates a collective participatory exchange. Although a solitary individual can be religious or be embedded in his or her culture,[100] these individual interests depend upon existing religious or cultural collectives for their expression and materialisation. As a result, to protect the individual right to religion or culture seems to involve the protection of these collectives as the facilitators of those conditions necessary to the fulfilment of individual rights. To protect the national right to self-determination requires more than protecting the individual right to freedom of thought and association. It requires recognising the moral importance of the collective, whose very preservation is not achievable merely through the conceptual and legal mechanism of individual rights.

When are collective rights actually possessed by a collective qua collective? One of the objections to the idea of collective rights as distinct from individual rights is the perception that so-called collective rights are nothing more than the rights of individuals who belong to a collective or a group of collectives. A second objection follows and asks whether collective rights are not being equivocated with an individual right to a collective good. It is evident that every person partakes as a member of various collectives just as every political community joins individuals in group categories for moral and legal purposes. Furthermore, certain individual rights can only be exercised on the pre-condition that collective well-being and goods are made available to individuals. To illustrate these points, firstly, the adult citizens of Nauru (18 years or older) have certain rights which minor citizens do not; are these collective rights of "adult citizens" ones that "minor citizens" do not have? Secondly, assuming that a habitable environment is an undeniable goal worthy of pursuit, is it then a collective right of the nation-state of Nauru to have a clean and unpolluted environment even though this can obviously also be enjoyed by Nauruans individually?

In order to clarify the first categorical challenge, it is necessary to differentiate between collective rights proper and the rights of individuals as classes of subjects. David Miller rightly points out that there is a degree of confusion between collective rights, group-differentiated rights, minority rights, etc. He writes:

> We need to distinguish between a category of persons, understood to mean all those people who fit a particular description, such as being under twenty-one or having red hair, and a group proper, understood to mean a set of people who by virtue of their shared characteristics think of themselves as forming a distinct group. Thus, we can say

[100] It should be noted that because of its all-encompassing nature, the phenomenon of culture can contain areligious element, as well as many others that are used as devices for individual and collective differentiation. It is important, nevertheless, to separate some categories of social life for clarity in our analysis. The classical definition of culture is well captured in Tylor Edwards' words: "that complex whole which includes knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by man as a member of society" (1871, I, p. 1).

> that it is a condition of something's being a group that the members should identify themselves as belonging to the group, and to that extent be conscious of their membership (2002, pp. 178-179).

Every legal system tries to capture the reality of the diverse roles of human beings; hence, it "sorts individuals according to the particular characteristics deemed relevant to the regulation of social life" (Mitnick, 2002, p. 55). As such, individuals acquire special rights through membership once they fulfil the legally stipulated conditions – they acquire rights as minors, students, voters, aircraft mechanics, lawyers, members of parliament, etc. Typically, a person who has completed a driving test acquires a driving licence and the right to drive a particular class of vehicle. Since this right is based on membership in a collective (namely membership in the collective of "drivers"), does it constitute a collective right? Among others, questions of this type have motivated a general scepticism towards the idea of collective rights. Every person belongs to some group category on the basis of which they will be entitled to a set of rights or exemptions from otherwise prescribed duties. To use Kymlicka's (1995) established terminology, these rights can be understood as "group-differentiated" rights; that is, as rights that individuals have because they are members of groups. Of course, Kymlicka is not concerned with groups of students, voters or drivers but with cultural groups and national minorities. Nevertheless, he remains wary of the claim that collectives qua collectives can have rights, while he also admits that his focus in the discussion of collective rights is normative rather than theoretical. Other authors with more interest in conceptual analysis recognise that, for example, cultural groups are not like groups of students or voters; they argue that the exemption from wearing a motorcycle helmet for Sikhs is enjoyed individually, just as students individually enjoy the right to take books from the university library. These are collective rights only in an uninteresting sense.[101]

A plausible method of addressing this problem is given by Miodrag Jovanović (2012, 120-129) who differentiates between types of rights and the types of legal norms that regulate rights.[102] Legal norms prescribe a set of conditions that constitute a class of subjects and they define the *legal status of individuals* as a "cluster of rights and duties that a subject has" if they fall within that legal norm. These norms create legal categories by stipulating the necessary requirements individuals must fulfil in order to qualify. The law creates these subject classes for a socio-legal indispensable operational purpose, but more importantly it also simultaneously

[101] Members of the Sikh religion in New Zealand and Canada are exempted from mandatory helmet law because it prevents them from wearing a Dastaar or a turban – a clothing item regarded as an integral part of the Sikh religious practice. This example is commonly referenced as both the case of individual or collective rights, but here Brian Barry (2001, p. 112) uses it as an instance of the former.

[102] It is worth noting that I will rely heavily on this specific argument by Jovanović throughout this thesis. For a possible critique of Jovanović's position, see Dwight (2013).

creates these groups, which can be thought of as "the sum of all individuals who meet [legally] required conditions." However, these rights remain individual in type, not because it is individuals who can potentially exercise them, but because these rights and duties are meant *to serve the benefit of individuals and not these legally constructed groups*.

This last point returns us to the aforementioned claim that collectives qua moral collectives with rights are not meant to be identified with (traditional) non-individual legal persons. Groups as classes of subjects are necessarily brought into being through legal means, unlike some morally relevant collectives that can be said to exist in a sociological and pre-legal sense. Thus, the question of the type of right – individual or collective – is not answered by looking into who is effectively exercising the right. It is answered by identifying the justification basis for demanding others to act or refrain from acting in particular ways. If the justification is based on the preservation of the collective well-being, then the right in question represents a collective right. Classes of subjects serve the primary purpose of defining and protecting the rights and duties of individuals and not a group of those individuals who share the same legal status. Indeed, classes of subjects can be collectives, but these entities (just like individual subjects) by definition come about as creations of law. Taking this into account, in order for nation-states to have collective rights, i.e. to possess them qua collective and not its members severally, it has to be shown there is a specific moral value vested in the collective that justifies the status of nation-states as right-bearers. The idea of rights of nation-states qua moral collectives has to primarily consider what is beneficial for nation-states i.e. a benefit that is intrinsically non-individual.

Following up on the above, the final point of clarification with respect to the meaning of collective rights concerns the "benefit condition of rights" (Green, 1991, p. 320), that is, the object of (collective) rights that can be enjoyed both individually and collectively. In agreement with the aforementioned criteria for differentiating individual from collective rights, I will suppose that the beneficiary of *collective goods* can be both an individual and/or a collective. Ultimately, it is what grounds their justification for sustenance and provision that determines their status i.e. whether these are individual or collective interests. Throughout philosophical literature, the object of protection of collective rights is sometimes referred to as shared goods, communal goods, common goods, participatory goods, public goods, or just collective goods. This lack of uniform vocabulary certainly adds to a degree of confusion when discussing the nature of collective well-being, which is supposed to ground the justification for the claims of collectives qua moral entities. We do not find this problem in economics where there is a well-established terminology that differentiates between public goods and common-pool

resources.[103] Although these two most famous instances of collective goods can also be of interest to philosophers, they are usually concerned with another kind of non-economic good when discussing the object of rights of collectives qua moral collectives. Philosophers generally draw attention to a set of recognisable characteristics that sufficiently differentiate one (cultural) group from another i.e. to a good of *common membership* in cultural groups. For the sake of textual clarity, this type of good can be referred to as shared moral good.

The collective self-perception of cultural groups is one of the most discussed examples of a shared moral good, which cannot be thought of in the classical socio-economic terms of ownership and consumption. In principle, shared moral goods arise through memberships that have an integral and cohesive force for the successful identification and coexistence of many individuals. Cultural groups have been deemed to possess an intrinsic value because they operate as a platform for moral and political reasoning. For example, Kymlicka writes that "Cultures are valuable, not in and of themselves, but because it is only through having access to a societal culture that people have access to a range of meaningful options" (1995, p. 84). Appreciating cultural groups as moral collectives can be derived from (at least) two distinct assertions, the first being the importance of collective self-identification for authentic human development, and the second, which points out that every individual is equally socially embedded and that no cultural collective has moral priority over another. The importance of cultural groups as moral collectives will be presented in more detail in the next chapter. What is important at this stage is to take notice that although shared moral goods can be enjoyed both individually and/or collectively, their status as the object of collective rights is grounded on them being collectively owned.

What does it mean to say that common membership is a *good* that is *collectively* owned? In the first sense, it means that collective self-perception (membership) is in a certain sense also produced and maintained. And secondly, they appear to be collective goods par excellence because, as Denise Réaume (1998) points out, they are both collectively produced and collectively enjoyed. In her discussion on collective rights, she intentionally chooses to focus on the nature of the good claimed and not specifically on the nature of the right-holder. Thus, for example, she identifies cultured society as a complex set of goods, which involves "activities that

[103] Both public goods and common-pool resources will be covered in more detail in Chapter VI. In brief, 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. Common-pool resources 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. Phosphate rock at Nauru is a common-pool resource.

not only require many in order to produce the good but are valuable only because of the joint involvement of many. The publicity of production itself is part of what is valued – the good *is* the participation" (1998, p. 10). Réaume refers to these goods as "participatory goods" although she admits that it is not their participatory nature that makes them morally valuable. It is rather that they have moral value because we recognise them as such (which indeed requires a separate moral argument that will be given in the next chapter). But assuming for the time being that the range of activities and goods that characteristically uphold collective self-perception are morally valuable, their production and enjoyment is intrinsically collectively shared. With that said, what would it take for nation-states qua moral collectives to be treated as rights-bearers? It would take establishing there is an identifiable morally relevant object of collective rights of nation-states that is characteristically collectively produced and enjoyed.

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Before concluding this section, it is worth briefly reviewing what has been presented as the basic theoretical framework for asserting that some collectives qua moral collectives should be treated as rights-bearers. Firstly, it is necessary to show that certain collectives should not only be identified as legal persons with rights and duties i.e. that their treatment as legal collectives only can have dire consequences for the well-being of human beings. In our specific case, to claim that the nation-state of Nauru is a moral collective means that its perception as a legal entity only can result in (preventable) morally adverse outcomes. Secondly, to assert that collectives qua moral collectives can have rights requires demonstrating that these collective rights are not reducible to the rights of individuals who belong to a particular collective. In other words, their justification is grounded on the preservation of a benefit that intrinsically belongs to the collective and not to its members severally i.e. the nation-state of Nauru possesses something of moral importance, which is tied principally to its collective being. And thirdly, in order to argue that rights can be held by a collective qua collective, it must be possible to identify the object of collective rights. One has to be able to determine what *collective* rights are rights to; one has to present a distinct object of collective rights of nation-states, such as, for example, a self-identifying common membership for cultural groups.

2. Collectives as Rights-Holders?

Making sense of the claim that collectives qua moral collectives should have rights requires examining whether such entities hypothetically possess what it takes to be rights-bearers in the same way individuals do. Some authors, such as Will Kymlicka (1995, 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. Although these two inquiries represent separate categories of the "rights talk", perhaps Kymlicka is too quick to dismiss how the theoretical groundwork for collective rights can have normative implications for actual socio-political relations.[104] If we want to avoid rights-proliferation and to "preserve the term rights to describe feasible and enforceable claims, accompanied by duties" (Dare, 2017), then it is important to assign rights to entities that are actually able to exercise and make use of them. Nevertheless, Kymlicka is right to point out that resolving theoretical issues as such does not explain "why some rights are unequally distributed between groups" and why "justice between groups requires that the members of different groups be accorded different rights" (1995, 47). Before answering these questions of normative importance, the rest of this chapter will analyse whether collectives are the kind of moral entities to which we can meaningfully assign rights e.g. whether cultural groups or nation-states can in principle be treated as rights-holders in the way individuals are.

What is the purpose of rights? A commonplace assumption is that rights serve the purpose of protection. However, the disagreement over what they aim to protect separates theories of rights into the will theory and the interest theory.[105] According to will theory, to have a right is to have "an option or power of waiver over the enforcement of a duty", which presupposes that the right-holder is a rational autonomous entity (such as an individual human being). The interest theory does not stipulate the "agency-condition" because it focuses on "the possession of morally important interests: interests that warrant especially powerful protection" (Dare, 2002, p. 194). The disagreement between the will and interest theories concerns the functional nature of rights, that is, the conceptual understanding of rights that has the purpose of providing both the necessary and sufficient condition for its application. Consequently, both theories aim to establish the *identity of the rights-holders* by focusing on what function rights should serve. Will theory specifies the protection of (traditionally) individual autonomy and the interest theory concentrates on the protection of the relevant individual (or collective) interest. Is the nation-state of Nauru qua moral collective able to fulfil the required conditions to be functionally considered a right-holder by relying on either of these two theories?

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[104] Kymlicka (1995) 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" (pp. 45-47). 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.

[105] These are not the only possible theories of the functions of rights but the most dominant ones. Leif Wenar (2005), for example, combines both of them into a "several function" theory of rights.

2.1 The Will Theory

The will theory of rights was famously developed by Herbert L.A. Hart (1982) who (as he himself conceded) relied on the Kantian emphasis on *the will* as that which makes agents capable of acting in a moral way (Kant, 2002, p. 50). Only an autonomous agent can be a moral agent since the ability to choose presupposes that the agent is not bound by naturalistic laws of behaviour. In that sense, the right-holder is a small-scale sovereign because he/she can decide whether to exercise control over another agent's duty (Hart, 1982, p. 183). Will theory draws its force from the ability to identify the (intrinsic) distinctive feature of right-holders, but also from its ability to identify the distinctive (moral) feature of rights – what rights add to duties. Namely, the duty correlative to a right can be enforced or waived depending on the right-holder's decision, whereas the same cannot be said for the duty-bearer – it can neither waive someone's right or its duty towards that agent (unless of course through fulfilling it).[106] Thus, for an entity to be a right-holder it has to be able to make claims and exercise choices – it has to possess genuine decision-making agency (Waldron, 2002, p. 203). The objection is that, unlike individuals, collectives fail to fulfil this condition; they can act but they do not have minds, they are not wilful agents, at least not in the degree individuals are.[107] In a certain sense, will theory presupposes not only an agency to act but the autonomous agency of a reflective being i.e. full-blown capacity to autonomy (Preda, 2012, p. 233).

However, a number of authors have argued that as long as it can be shown that a collective is able to act intentionally and make choices, it can be considered to possess the level of (collective) rationality required to be treated as rights-holder. This type of reasoning often relies on the existence of an accepted collective internal decision structure, which "accomplishes a subordination and synthesis of the intentions and acts of various biological persons into a corporate decision" (French, 1979, p. 212). The existence of a decision-making

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[106] For a more elaborate exposition of the will theory see Hart (1982, pp. 163-193, 1955); Wellman (1995, pp. 105-177); and Steiner (1994).

[107] Somewhat similarly, Ronald Dworkin and Will Kymlicka argue that because only individual human beings (and animals) possess sentience, they can be ascribed the moral status necessary for rights-holders. For example, Dworkin (1989, pp. 495-497) writes that an orchestra can only have a musical life, and not a sex life, blood pressure or worries, just like the nation can have a political life but not a sex life. Likewise, Kymlicka argues that collectives "just aren't the right sort of being to have moral status. They don't feel pain or pleasure. It is individuals, sentient beings whose lives go better or worse, who suffer or flourish, and so it is their welfare that is the subject-matter of morality" (1989, pp. 241-242). It is still possible to answer this challenge by pointing out there are harms (or interests to not suffer harms), which are not directly related to our sentient nature, such as deception or offensiveness. This argument is, for instance, developed by Keith Graham (2001, p. 27) who further claims that even collectives can be said to flourish, have goals or other aspirations that we normally assign to human beings. Nevertheless, it is counter-intuitive to say that there are harms individuals can suffer that are not related to their sentient nature, and surely some terms are used to describe the actions of both individuals and collectives. The question of language use is of less importance here compared to the question whether it is possible for a collective to flourish regardless of the flourishing of its constitutive members (forthcoming in the next chapter).

structure is also what makes agents responsible, that is, their ability to face a value-relevant choice, their understanding and access to the evidence required to make a value judgment, and their control over the executions of given decisions (Pettit, 2007, p. 175). For a genuine collective decision to exist, it is important that members agree on the procedure used to determine the expression of their collective intentional agency. These types of organised collectives should be treated as rights-holders because their decisions are not reducible to the decisions of their individual members (Preda, 2012, p. 248). It is worth noting that the formal features of the collective's decision-making procedure do not determine whether this collective agency will be understood as more or less individualistic in its character. As Tim Dare rightly points out, collective intention need not be identified with some majority-based procedures employed in democratic system of governance. What really matters is "the way in which the members of the group regard the decision procedures, whatever they may be" (2002, p. 193). Whether this be democratic voting or ritualistic visions only accessible to a village guru, the actual practice is irrelevant as long as the collective accepts it as legitimate.

Even if one accepts a limited agency condition for ascribing rights, there are many collectives that are not able to act intentionally with a well-defined decision-making mechanism. The difficulty is that some of these collectives are recognisably morally relevant as the facilitators of conditions where the realisation of individual well-being is made possible. This is particularly the case with cultural groups, which although at times possess a decision-making structure as legally recognised entities, are not characterised by a managerial authority that makes judgements in the name of the collective. On the other hand, there are types of collectives that have a sufficiently developed internal decision structure but whose status as moral agents is normatively problematic, such as business corporations, political parties, etc. Some authors in fact do not see this as an issue; moreover, they aim to show how collectives with traditional legal personalities should be treated as moral agents because that entails being morally responsible for their actions. Their motivation is surely understandable, keeping in mind the degree of (harmful) influence these actors can have on humans and living beings in general. But ascribing moral status to these collectives because they have defined decision procedures can prompt collectives to request a revision of their status as rights-holders, i.e. to request rights that are normally allocated to individuals precisely on the basis of their moral status. The right of corporations and trade unions to free speech, that is, to openly support political candidates, has already been the controversial subject of a US Supreme Court ruling (Hindriks, 2014, pp. 1565-1566). It is not too difficult to imagine how this can be misused for various purposes.

Identifying moral status (hence possession of rights) on the basis of the ability to make intentional decisions and exercise choices points to a more general difficulty associated with the will theory of rights. Thus, one of the most common objections raised against this conceptual

understanding of rights is that it morally problematic i.e. that it fails to incorporate non-autonomous agents as right-bearers (e.g. infants, people with severe intellectual impairments, animals, and indeed collectives).[108] This objection can be dismissed as a question-begging one, since the conceptual strength of the will theory lies in its assertion that it is both necessary and sufficient to possess the capacity to make choices in order to be qualified as a right-holder.[109] In that case, the defender of will theory would have to account for the wider moral implications of such a view, and he/she could do so by claiming that, for example, non-autonomous human beings are the beneficiaries of moral duties born by the community of autonomous agents. Unfortunately, this strategy would take away the distinctive character of rights as the ability to exercise control over another agent's duty, because it would imply that those who do not hold rights can do the same – enforce duty onto others (Edmundson, 2004, p. 103).[110] Lastly, will theory does not sit well with the idea of inalienable (human) rights, since having a right entails a power to enforce or waive the fulfilment of duty that correlates to it. This feature of will theory allows the right-holders to effectively nullify their right and consequently the protection of their fundamental human interests, such as the right to life, the right not to be enslaved, the right to a fair trial etc. (MacCormick, 1977, pp. 195-199). As such, it appears to be critically at odds with the UDHR and the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family (…)" (UN GA, 1948, Preamble).[111]

Returning to our case study, it is tempting to infer that the nation-state of Nauru has the necessary collective decision-making structure since it has a government divided between six departments with five ministers and the president as the head of state. This feature would qualify it as a rights-holder according to those versions that allow agents' autonomy to be expressed in the form of collectively accepted and well-defined decision-making procedures. At any rate, this is why the state of Nauru has the capacity to enter into relations with other states – it has a government that is able to exercise its rights and confer duties upon itself. However,

[108] At this point it must be added that will theorists generally hold that non-autonomous agents can possess rights although not *moral* rights. This simply seems to be a necessary consequence of their initial Kantian assumption that only rational beings are able to act independently, hence that only autonomous agents are moral agents.

[109] One of the proponents of the will theory, Carl Wellman (1995, pp. 108-109), makes this argument when he claims that only a being capable of possessing the essential constituent of a right can be capable of possessing an entire right. Only agents that can be duty-bearers can also be right-holders because being under a duty presupposes the opposite condition – that the agent can be at liberty to the contrary. Preda (2012, pp. 235-237) challenges this conclusion by making a distinction between being under a duty and being morally responsible. Moral responsibility involves an *option* to comply or fail to fulfil the duty and this decision can only be accredited to autonomous agents. She argues that those agents with limited capacities can still be under duties although with no moral responsibilities, although this argument requires additional support for such a conclusion.

[110] For a critique of the will theory of rights that does not focus on the moral consequences of its view, see Kramer (2013).

[111] Hart (1982, pp. 192-193) does admit that the will theory of rights fits well with the "ordinary law" and that it is not well-suited for constitutional individual rights (referenced from Wenar (2005, p. 239)).

the legal person of the state of Nauru and the government as one of its five integral parts[112] is not the moral collective of the nation-state of Nauru. A nation-state has a legal personality because it is a state but its normative force for the theory of rights of collectives qua moral collectives is derived from the fact that it is a national kind of state. A nation-state consists of 1) the nation as a self-identifying political collective who wishes to democratically govern over itself and 2) the state as a socio-institutional collective, which incorporates resources needed for political governance as such. If there was no difference between states and nation-states, then there would be no significant difference between the period from the late 1800s until 1967 and the period that began in 1968 and continues to this day – the pre-independent and post-independent Nauru.

The government as the highest administrative authority is indispensable for any state, including the nation-state of Nauru. Proponents of the will theory would certainly not claim that governments are states but instead their constitutive parts; just the same, it is uncommon to think that rational autonomy is all that we are as individual human beings have i.e. moral agents. Still, it is the possession and exercise of autonomy that grant individuals their status as right-holders, and analogously it would be the government that would functionally enable nation-states the same. Although this might be conceptually feasible, it would also be normatively problematic. Namely, the idea that certain collectives should not only be treated as legal entities is motivated by the recognition that such perception can result in morally adverse outcomes for human beings. If the government as a collective internal decision structure would justify the collective rights of nation-states, then the same government would be able to either enforce or waive the duty that is correlative to the hypothetical right of their respective nation-state. According to will theory, whatever the collective rights of nation-states would be, the government of Nauru would be justified in nullifying them. For example, it would be justified in turning its state territory into a barren wasteland by excessively mining phosphate and selling it to interested buyers. If that is the case, what would be a meaningful reason to defend the idea of the collective rights of nation-states qua moral collectives? After all, this is the current state of affairs brought about by the existing global governing arrangements under which no involved party is held responsible for a scenario that arguably ought to be avoided.

2.2 The Interest Theory

It is possible but nevertheless problematic to defend the view that some collectives fulfil the limited agency condition needed to be treated as moral agents and rights-holders. It is, however, not necessary (or morally advisable) to accept this functional understanding of rights

[112] The other four being legal order and the rule of law; territoriality; citizenship; and capacity to enter relations with other states.

because the alternative interest theory of rights appears capable of avoiding the type of moral objections raised against its counterpart. Interest theory does not postulate what kind of entities should be entitled with rights since it starts from the premise that rights serve the purpose of promoting the well-being of the right-holder. If there is an entity whose interest represents a sufficient reason for imposing duties onto others, then the entity should be treated as a right-holder.[113] As such, the theory does not define which particular entities are worthy of protection, nor what kind of interest are considered sufficient to ground duties. This evaluation belongs within a broader normative framework based on either the moral or the legal system; it falls beyond the conceptual investigation that looks into establishing the identity of the rights-holders on the basis of the functional purpose of rights.

Interest theory's (innate) lack of moral characterisation of right-holders is unsurprisingly appealing to the defenders of rights for individuals with various forms of disabilities, future generation rights, animal rights, and indeed the rights of *collective* entities. Because the possession of rights is not associated with the small-scale sovereign's power to decide whether to exercise the right or waive the corresponding duty, this theory is able to accommodate inalienable (human) rights as rights of utmost importance. It is able to protect individual right holders in case they wish to revoke their (non-)waivable right, as long as there is an established benefit of sufficient importance for such a (paternalistic) measure. In principle, it should be able to do the same with collectives and hence avoid the problem illustrated above with the government of Nauru deciding to make uninhabitable the bigger part of its state territory. Furthermore, as a theoretical framework, interest theory is better suited for the protection of rights of cultural groups that are not characterised by formal and homogenous decision-making bodies. Altogether, it seems a much better choice for a conceptually feasible understanding of collectives as rights-holders.[114]

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[113] Joseph Raz gives a well-known (interest-based) definition of rights: "'X has a right' if and only if X can have rights, and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under duty" (1988, p. 166).

[114] It should be noted that the interest theory of rights has been criticised for not being able to account for third party beneficiaries – that is, for the allocation of rights that are not justified by the right-holder interest, at least not sufficiently enough to ground duties on others (Hart, 1982, pp. 174-188). Cases most commonly cited (Wellman, 1985, pp. 25-26; Wenar, 2005, pp. 242-243) are those where individuals hold certain occupational roles (e.g. judge) and when their possession of rights is primarily meant to protect the interest of the wider community (or third party in general). At first, this seems to make it possible for cultural groups or nation-states to hold rights that are not grounded on the preservation of their collective well-being (but some other (individual) third party). However, I believe this does not represent a genuine problem for the argument of interest-based theory of collective rights. Namely, the question of what type of right – individual or collective – is not answered by looking into who is effectively exercising the right. It is answered by identifying *what grounds the justification* for demanding others to act or refrain from acting in particular ways – collective or individual well-being. However, this cannot be resolved by conceptual analysis alone and it requires a separate normative inquiry with respect to whose interests are ultimately meant to be protected.

However, interest theory faces two interrelated difficulties that do not come up in the aforementioned will theory of rights. The first difficulty is a conceptual one; namely, can collectives qua moral collectives have rights or are their rights nothing more than a collection of individual interests – individual interest that is best served by assigning rights to collectives. The second difficulty is a normative one, that is, whether collective interest that is sufficient to ground duties to others has to be consistent with the interests of its individual members. It does not seem straightforwardly obvious that the interests of all individuals have to be protected in order to justify a corresponding duty for a collective right. And 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. Due to these (conceptual and normative) problems, some authors are wary of the idea of collective moral status and rights; [115] hence they argue that collectives should be merely thought of as "a convenient device for advancing the multiple discrete and severable interests of similarly situated individuals" (McDonald, 1991, p. 218). Others still wish to prove that collectives have a special ontological status, which cannot be completely reduced to the individual members of the collective and that it is possible to address the moral implications of such a view. The disagreement between these two approaches in literature separates the interest-based theory into the derivative (aggregate) and non-derivative (non-aggregate, fundamental) interpretations of collective rights.

Proponents of the derivative theory acknowledge the fact that there are some goods that do not, strictly-speaking, belong to individuals, but rather, to collective entities (e.g. culture or political self-determination). Still, because of the impact they have on individuals, they are nevertheless considered primarily individual rather than collective goods (Pettit, 1996, p. 287). In instances when these goods are non-individual (i.e. you need others to produce or enjoy them), the argument goes that *they are considered to be goods only because they are good for individuals*. Thus, this theory advances the claim that collective rights can only be said to exist if they correspond to the rights of individuals who form such collectives – collective rights are derived from individuals' rights as members of the relevant collectives. The existence and protection of collective interest cannot supersede the well-being of individuals; their desires, rights, and welfare cannot be sacrificed in order to enforce the continuity of the group

[115] Leslie Green (1991, p. 315) makes a similar point and argues that the idea collectives can have rights is not unfamiliar and that metaphysical scepticism about collective rights is guided more by normative and political concerns. Comparatively, the idea that collectives can have duties is not generally open to doubt; thus, the fear of collective rights is most probably related to the possibility of having individual rights outweighed by the collective ones. One such view guided predominantly by normative issues can be found in Tamir (1999).

(McMahon, 1994, p. 65).[116] Contrary to this view, the advocates of the non-derivative theory acknowledge that collective interests are not unrelated to members' individual interests; however, they argue that they are not reducible to individual interests, nor to their aggregate function. Collectives have primary interests in certain goods and certain individual interests can only be fulfilled on the precondition that certain collective interests are realised (Newman, 2004, pp. 141, 159). Is it necessary for the collective interest of the nation-state of Nauru to be consistent with the interests of its individual members or is its collective interest ontologically self-sufficient?

2.2.1 Derivative theory

Joseph Raz famously gives us an interest-based definition of the derivative theory of collective rights by stipulating that collective rights exists if "the interests in question are the interests of individuals as members of a group in a public good and the right is a right to that public good because it serves their interest as members of the group." Furthermore, he also adds that "the interest of no single member of that group in that public good is sufficient by itself to justify holding another person to be subject to a duty" (1988, p. 208). At least on the basis of this definition, it is clear that Raz takes public goods to be the (sole) object of collective rights, although on other occasions he appears to include other potential classes of goods, in particular what I have referred to as shared moral goods – national self-determination. Without furthering his exact position on this relevant matter, I have argued that the object of collective rights represents those goods whose protection can only be justified by making primary reference to the collective well-being (such are shared moral goods). The question is whether those collectives identified as moral collectives and the protection of their collective interests (goods) needs to be principally derived from individual interests of their members or not. Joseph Raz and other supporters of derivative theory of collective rights think it is necessary to make a conceptual connection between collective and individual interest in order to have a meaningful theory of collective rights.

There are three common objections raised against such an interpretation of collective rights. Firstly, derivative theory has been criticised for its inability to account for changes in the individual membership of the collective – the problem of the constant alternation of collective interest as individuals come and go. Unlike groups of unaffiliated individuals, collectives should be able to survive "generational change" and in that sense, they should not in theory be reliant on specific individuals who happen to be their members at a given time. The second challenge

[116] Or in the words of Jeremy Bentham: "Individual interests are the only real interests. Take care of individuals; never injure them, or suffer them to be injured, and you will have done enough for the public" (1843, p. 321).

for this understanding of rights points out that if collective interests can only be derived from individual interests, then it seems its outcome would represent the sum of the individual members' interests. Assuming this to be the case, would this require a conceptual and normative framework where individual interests are quantified, measured and added according to some mathematically established formula in order to identify the interest (sum) of the collective (Newman, 2004, p. 131)? To be sure, this is nothing other than an alternative version of the well-known objection raised against utilitarianism and how its insistence on calculating happiness is both conceptually and morally problematic.[117] It is possible to avoid this objection and require collective interest to include the interests of all its individual members but with the price of facing the third common objection – namely, that the derivative theory of collective rights does not have any explanatory power. That is to say, an aggregation of singular units (individuals) should be able to tell us something more than what singular units independently stand for – collective interest should tell us more than the individual interests which compose the collective. Otherwise, "it fails to *be* an *aggregation*, but becomes the sort of verbal trickery (in the way that an arithmetical aggregation of three plus three would be unsatisfactory if it were reported back as 'the sum of three and three'), a mere *pretence*" (Newman, 2004, p. 135).

Is there a workable solution to these challenges? Although the problem of generational change has been raised against the derivative theory of collective rights, it seems this objection has a stronger force against its counterpart: non-derivative theory. Namely, just as the assessment of individual interests is not static in democratic societies, fixing the collective interest would violate this principle. If the rights of collectives are derived from the rights of their members, they will then supposedly be more susceptible to these timely developments. In that sense, collectives do go through generational changes and derivative theory should be able to account for this dynamic. Furthermore, a proponent of the derivative theory of collective rights may argue that an aggregate collective interest is not meant to be interpreted as the mathematical sum of individual interests. It can alternatively be thought of as a framework against which individual interests are mutually assessed, possibly by a relational representation of individual interests who form the collective or something along those lines. These explanations, however, seem to be both conceptually and normatively unrevealing because they do not flesh out the peculiarity of collective rights in relation to their constitutive members. If collective rights are rights possessed by a collective qua collective and not its members

[117] It is conceptually problematic because it assumes that it is possible to quantify personal and collective well-being, and it is morally problematic because it allows the sacrifice of the few for the benefit of the many. Rawls famously writes: "In utilitarianism the satisfaction of any desire has some value in itself which must be taken into account in deciding what is right. In calculating the greatest balance of satisfaction it does not matter, except indirectly, what the desires are for. We are to arrange institutions so as to obtain the greatest sum of satisfactions; we ask no questions about their source or quality but only how their satisfaction would affect the total of well-being" (1999a, p. 27).

severally, then it is expected they should not be a speculative reiteration of individual interests wrapped up in a different package. They should be able to have explanatory power and to contribute to our knowledge of human welfare in ways that are not reducible to the protection of individual rights alone.

2.2.2 Non-derivative theory

Is non-derivative theory better equipped to support the argument for the protection of collectives of moral importance via the mechanism of rights? Non-derivative theory points out that there are some collectives whose creation and sustenance is not driven by specific temporary goals, and that these collectives essentially do not depend on the individuals who make up their collective composition (i.e. they are able to "outlive" their original members). They operate under different conditions from their constitutive members; their structure and actions cannot be intelligibly understood by making reference to their individual members and their actions.[118] For example, one author suggests the following three requirements for the identification of those ontologically unique collectives, namely 1) the existence of the individual's action whose main significance is acquired only when practised as a part of a collective action; 2) the description of the individual action, which differs from the description of the relevant collective's action the individual is part of, and 3) the existence of the collective, which is not dependent on the existence of the particular individuals who constitute it (Graham, 2001, pp. 22-23). As an illustration, the individual action of voting could be said to make sense only if the voter is understood as a member of a nation-state; the description of a Nauruan selecting one of the presidential candidates need not correspond to a description of the collective action of democratic self-governance; and the nation-state of Nauru would not cease to exist as their individual members change over time. Any collective that fulfils these three conditions will not be a simple collection of individuals or an aggregate that essentially depends on its constative members. It will be a non-aggregate, conglomerate collective (French, 1984, pp. 5-13), and from the example above, the nation-state of Nauru seems like a good candidate.

On the one side, there is an intuitive appeal to the non-derivative theory of collective rights since although it is individuals who make up collectives, some collectives do not seem to depend on any particular individuals who happen to constitute them at a given time. Yes, it is individuals who carry out activities within the collective, but their actions require the collective framework in order to be meaningfully exercised. Collective actions represent a combination of individual actions, but more in the form of a fusion, which brings about a distinct state of affairs

[118] "Wars are declared by states, policies are initiated by governments, cultural exclusion is practised by populations, and departments are closed down by the senate when no individual is empowered to do such a thing" (Graham, 2001, p. 26).

rather than a simple mathematical aggregation, which is divisible to its constitutive parts. On the other side, however, although collectives are formed by individuals who indicatively share some distinct characteristic, collectives are not homogenous or inseparable like individual human beings who are their composing members. Collectives are indispensable for the development of our moral well-being but they can be formed and used for various purposes. Some of these can be morally irrelevant, some can be morally praiseworthy and some can be morally deviant (e.g. football clubs (although this can be contested), charitable organisations, and organised crime groups respectively). If all three of these types of collectives fulfil the aforementioned conditions, then they all are equally deserving of a special ontological status where their interests are not reducible to the interests of their members.

This points to a more general problem with the non-derivative theory of collective rights, namely, how it is possible to maintain a functional relationship between individual and collective interests if the latter are not based on the former. This theoretical challenge has significant ethical consequences. For instance, when speaking about the protection of cultural groups, few people would deny that socialisation and exposure to knowledge, custom, art, morals, and law represents an integral part of individual development. However, this acknowledgement remains neutral to the content of knowledge, custom, law and alike – that is, to the content of the moral values one culture promotes. Surely there are cultural practices that are considered highly inappropriate to members of other cultures. Moreover, cultures change over time and many practices that used to be an integral part of one culture would likely be regarded unacceptable by the (descendant) members of the same cultural groups today (the problem of generational change – see above). The same problem can be hypothesised for the nation-state of Nauru and one can anticipate how the failure to explain the relationship between collective and individual interests can result in morally adverse outcomes. The collective rights of nation-states are not meant to legitimise the importance of collective benefit in such a way that the fundamental interests of citizens are discounted or ignored.

As a matter of conceptual consistency, if the collective interest is to be distinguished from the derived interests of individual members, then it must be possible for collective interest to remain in place although it clashes with the majority of the individuals' interests (Hartney, 1991, p. 300). Consequently, as a matter of ethical consistency, a defender of non-derivative theory would have to be ready to explain why we should seriously protect any collective if there were no individuals to benefit from it. Considering this, the most plausible defence of non-derivative collective rights would then be the one that limits the status of moral collectives to only those that have the purpose of promoting a certain moral value or end.[119] Even though there might be uncertainties with respect to what aims indeed belong to a moral realm, it would

[119] The whole argument with objections can be found in Graham (2001, pp. 28-30).

not in principle be problematic to claim protection for collectives of this sort. However, it is evident that such an understanding of collective moral status is different from the concept of the inherent moral status of individuals, and it is questionable whether such an approach brings anything fresh into the discussion. If moral status is assigned only to those collectives that promote moral ends, and these moral ends are characterised as such because they are morally relevant for individuals, then the rights of collectives will in effect be derived from the rights of their individual members.

2.3 Symmetrical Theory of Collective Rights

If the theory of rights of collectives qua moral collectives is meant to be more than "verbal trickery" and preferably an authentic conceptual and normative tool, it is necessary to devise a methodology that will be able to address the conflictual relationship between individual and collective interest. Is it possible to maintain that collective interest can stand opposed to the individual interests of its members, without succumbing to a utilitarian type of consequentialism? In order to do so, it is decisive not to commit a false identification of interests and rights. Namely, a collective interest that is sufficient to ground duties does not need to be derived from individual interests, but collective rights need to be derived from individual interests that are strong enough to hold others under duty (i.e. rights). Because interests as such do not impose duties, it is possible for two entities to have conflicting interests. However, the same cannot be said for conflicting rights, which is why a collective right and an individual right cannot have incompatible duties.

This line of reasoning allows us to preserve both the conceptual and normative consistency in the relationship between the individual and the collective, that is, a possible disagreement between individual and collective interest and mutual conformity between individual and collective right. Thus, the key normative question is to establish the extent of collective interest, which is sufficient to impose a restriction on the realisation of the individual interests of its members. And the novelty of collective rights lies in their qualification of individual rights because some individual interests that are strong enough to ground duties will not have the same status when individuals are part of collectives.[120] Conclusively, collective rights will be derived from collective interests that are consistent with the rights of their constitutive individual members. Collective rights will not necessarily conform to individual interests and ultimately, it is individuals that legitimise the promotion of collective interests

[120] I believe this approach is able to preserve our moral convictions, which at times can only be understood as a form of value collectivism. Miodrag Jovanović (2012, pp. 44-56; pp. 119-134) makes a point that only an acceptance of value collectivism can provide an adequate international and municipal legal framework for the protection of groups. These and other claims will be addressed more appropriately in the next chapter.

into collective rights, just the same as it is collectives that legitimise which individual interests will be protected with rights. I will provisionally refer to this understanding as an interest-based symmetrical theory of collective rights.

To take a commonplace example, the family is normally considered a collective of moral importance and not a legally constructed entity. This is also acknowledged in UDHR as well, where it says "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State" (UN GA, 1948, Art.16). The social institution of the family differs cross-culturally but the collective interest of the family is always associated with the integrity that is achieved through the cooperation of its members. The family has a right to maintain its existence, although it is certainly conceivable that such a collective interest can be at odds with the individual interests of one (or more) of its members. It is not difficult to imagine how certain interests of, for example, children would be better served if they were to grow up in families other than their own (or perhaps an environment where there is no family in the common sense of the term[121]). However, many of these interests are not sufficient to ground duty for the legal authority to intervene and find an adoptive family or foster home; that is, such intervention would represent a violation of the individual rights of parents but also the collective right of the family to protection from society. But, in a situation where the parents treat their children in a violent and abusive manner, the interests of the children would (arguably) outweigh the collective interest of the family as a social unit, and consequently the interest of the parents. The right of children to be protected from harm and mistreatment cancels out the right of the family to protection, together with the individual's rights to parenthood (UN GA, 1989, Art. 4, 19, 20). Therefore, the collective right of the family to protection from interference can at times come into conflict with the individual interests of its members, but it cannot be incompatible with their individual rights. Rights entail duties and the government cannot simultaneously perform the duty of protecting the integrity of the family and of protecting the right of children to proper care (and, in the case of family, abuse).

The rights of individuals are qualified as constitutive members of the collective because they are principally allocated to them in the virtue of this membership. At the same time, collective rights are enacted when serving the collective interest does not clash with individual interests that are sufficiently strong to ground duties – that is, with the individual rights of the members. In a certain sense, this model of thinking about the relationship between individual and collective interests/rights is no more than a reiteration of the same idea that underpins the social contract theory. Although classical authors tend to use the term (natural) rights for the hypothetical pre-political state of nature, it is really the unrestrained interests of individuals

[121] Interestingly, this idea is not recent and Plato famously writes about the abolition of the family in *The republic* (Book V, 449a-472a).

that become qualified in the form of rights once they enter a contractual relationship. Thus, in one of its most famous contemporary variants, Rawls' (1999a) theoretical device for establishing the principles of justice (the OP) is based on the premise that individuals try to maximise their self-interest and that such a tendency needs to be limited. In a democratic society, the possibility of political community and social co-existence is either pragmatically or normatively interpreted as a trade-off. Is it not the case that the rational maximisation of individual interests negates the possibility of democratic governance (e.g. the social contract)? Both hypothetically and historically, there has never been a case of individual rights without the collective to enact and by so qualify the extent of these rights. And this qualification in itself dialectically presupposes that there are collective rights in place that can legitimately limit individual interests and subsequently define their rights. Keeping this in mind, it is somewhat surprising that there has been so much resistance to the idea of collective rights due to the fear of potential conflict between individual and collective interests when this conflict is in fact constitutive in democratic theory and practise.

In the aftermath of this discussion, let us briefly apply the theoretical groundwork of the (interest-based symmetrical) theory of rights to collectives qua moral entities. Cultural groups and nation-states have collective interests that fundamentally contribute to our well-being but that cannot be protected by using the mechanism of individual rights alone. If it is estimated that these morally important interests are sufficiently strong to ground duties for their protection, then they ought to be qualified as collective rights. Their protection is justified as long as their provision serves the collective well-being and they are consistent with the individual rights of the collective members. It is possible to have conflicting collective and individual interests because interests as such do not impose duties. When individuals are part of collectives (e.g. cultural groups or nation-states), some of their interests will not be assessed as sufficiently strong to ground duties. In that sense, whatever the object of the collective rights of the nation-state of Nauru could be, it is possible that its protection can stand opposed to the interests of Nauruan citizens, but it cannot be inconsistent with their individual rights. Having said this, the remaining chapters of this thesis will be dedicated to matters of more direct ethical relevance, or in Kymlicka's words "why some rights are unequally distributed between groups" (1995, p. 47). Since treating collectives qua moral collectives came about in the context of relations between cultural groups in closed political communities, I will analyse these moral arguments before applying them against the background of international relations and the nation-state of Nauru as the chosen case study.

CHAPTER V: COLLECTIVE RIGHTS: CULTURAL GROUPS

The aim of this chapter is to present the moral argument that underpins the treatment of cultural groups as collective rights-holders and how this status is institutionally recognised in democratic countries. The ultimate goal is to draw a parallel between cultural groups in a (closed) domestic political setting and nation-states in contemporary international relations. 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 nation-states moral entities. 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. Once this has been covered, it will then be possible to fully appreciate the normative and institutional ramifications that relate to the acknowledgment of collectives of moral importance – be that cultural groups or nation-states. Finally, these considerations should put us in a better position to examine the case of the nation-state of Nauru whose 1) living habitat has to a great extent been destroyed through the actions of its democratically elected government, and whose 2) socio-economic development is significantly lower when compared to many other countries in the world today.

1. Cultural Groups as Moral Collectives

For the longest period of its existence, the democratic (especially liberal) tradition has been chiefly concerned with the freedom of *individuals* in a socio-political setting i.e. which restrictions are legitimate, or morally justifiable, and which ones are unwarranted interference in the freedom of individuals to act as they wish to (Mill, 2001, p. 6). Thus, although the existence of cultural groups and nation-states was considered indispensable to successful human co-existence and even freedom (e.g. social contract theory), the main focus of democratic theory has always been the protection of the individual. It is only recently that philosophers and political thinkers started protesting against such an "atomistic" Lockean worldview, which positions the individual as ontologically and morally prior to the community. These authors (see below) pointed out that socio-cultural context is inseparable from moral and political reasoning, that communal membership forms a substantial part of our individual identity, and that demanding to universalise all individuals according to some abstract model that fails to take into account these facts represents a violation of our moral status.

This later-termed communitarian critique of liberalism can be roughly divided into three categories: ontological claims regarding the social nature of the self, methodological-

epistemic claims about the importance of socio-cultural context for moral and political reasoning, and normative claims that emphasise the value of community for the well-being of individuals (Bell, 1993; Caney, 1992). Although all three are interrelated, it is the last category that primary relates to the following discussion. The debate between the liberal *pursuit of one's happiness* in a value-neutral environment and the communitarian *socio-cultural meaningfulness of individual choices* largely depends on the matter of degree of these claims. In a certain sense, the origins of the communitarian approach can be identified throughout different philosophical traditions, ranging from Aristotle to Hegel, and from Heidegger to Wittgenstein. However, the contemporary usage of the communitarian school of thought is associated with thinkers such as Charles Taylor (1979), Michael J. Sandel (1982), Michael Walzer (1983), and Alasdair MacIntyre (1984), although most of them never identified themselves with this label.[122] This peculiarity testifies that the liberal tradition does not per se disqualify the importance of a collective framework for the well-being (and autonomy) of individuals. It would be wrong to characterise communitarianism as a view that challenges the primacy of individual freedom against communal good. For communitarian thinkers, it is not a question of individual or collective importance but rather the degree of that importance in their co-creating relationship.

Notwithstanding the lack of sharp distinction between liberalism and communitarianism, it is generally considered that the latter initially came as a reaction against the conceptual negligence of liberal thinkers of the social embeddedness of the self and the socio-culturally conditioned personhood. In particular, it was a reaction to the most recent version of it, exemplified in Rawls' (1999a) model of the OP as a starting point for a theory of justice. Is thinking about justice beginning with individuals who are stripped of all knowledge of the self 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. Communitarianism thus challenged the principal possibility of thinking about justice in a non-contextual and non-collectivist manner. It pointed out that the democratic (liberal) community is also a cultural community and as such it strives to assert its "individualistic" distinctiveness.

From a theoretical perspective, the communitarian critique of liberalism pointed out 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

[122] It should be noted that from 1990s 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).

called into question the ability of the classical democratic institutional mechanisms to accommodate the growing claims of minorities situated within multicultural nation-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 colonised world specifically attracted attention because of the fundamental cultural differences existing between the (European-based) majority and indigenous minority, and where the assimilation of minorities effectively resulted in their cultural annihilation. The post-World War II era started seeing the slow vanishing of cultural groups not as a result of forceful conversion or they (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.

Challenged with these accusations and recognising how collective membership is important for the well-being of individuals, a number of writers focused their attention on the question of whether certain collectives of moral importance should be treated as rights-holders. This question is significant, because if it is indeed true that there are some (fundamental) interests that individuals can only realise in a collective setting, then it seemed some of the collectives should be protected by assigning them with specific rights. Thus, for example, if the cultural membership through which individuals "form and revise their aims and ambitions" (Kymlicka, 1989, p. 135) and share culture, language and history is arguably morally relevant for the well-being of individuals, then democratic countries must "adopt various group-specific rights or policies which are intended to recognise and accommodate the distinctive identities and needs of ethnocultural groups" (Kymlicka, 1998, p. 143). The nation-state has to treat some collectives preferentially and provide them with additional socio-political resources in order to prevent their disappearance. It has to factor in their genuine capabilities to maintain their identities, norms, beliefs, and practises against the all-pervading dominant culture.[123]

[123] It is worth noting that one can identify two distinct claims at work, the first being that certain cultural groups within established nation-states do not share a democratic framework of moral and political thinking, and the second, which points out that some communities are disadvantaged by the sheer numbers in the democratic majoritarian-based system of political deliberation. These two issues need not overlap, because there might be cultural groups that fit sufficiently within the democratic framework but they nevertheless have a distinctive character that is different from the majority culture. Since the ultimate goal of this thesis is to investigate whether a moral and political analogy can be made between cultural groups in closed political societies and nation-states in contemporary international relations, for the most part of the discussion, it will be enough to assume common democratic character of all relevant parties.

However, assuming it is true that on some fundamental level a cultural framework turns our thoughts into a particular kind of thoughts (Taylor, 1997b, p. 132), it is not straightforwardly obvious why one background of meanings should not be replaced by another. It is not necessary to perform genocide in order to perform culturicide[124]; thus, some account is needed to show why our moral interest is tied to the existence of multiple cultures. Throughout history, the political responses of dominant cultural groups have often involved either total negation or assimilation of the divergent and smaller cultural collectives (Addis, 1991, p. 1223). It may well be argued that the democratic principle of individual equality is conceptually incompatible with the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such" (UN GA, 1948, Art. 2). But the policy of assimilation might not be so self-evidently undemocratic, keeping in mind that for the longest period it was the official way of dealing with (minority) cultural groups. The roots of this political programme are certainly to be found in 19th century subjection of national identity to cultural membership. Democratisation ran parallel with nationalisation and national/cultural uniformity was considered *that* which provided the socio-political inner stability and external vitality in international relations. This requirement of social uniformity and the disregard for the democratic principles upon which nationhood as such is based resulted in either the latent or forceful transformation of various cultural (ethnic, religious, linguistic etc.) groups into a dominant (now classified) "national" culture.

Only recently have democratic countries started to recognise and accommodate cultural groups with the socio-institutional resources needed to prevent more hidden causes of their assimilation and disappearance. Generally referred to as the policy of cultural pluralism, this approach is alleged to be not only compatible with but also complementary to democratic theory and practise. It can be said that cultural pluralism has both an instrumental and an intrinsic value (Gill, 2001, p. 185). In the first case, it provides a greater variety of contexts within which individuals (can) make meaningful decisions. The existence of multiple cultures enriches human understanding and life in general; thus, the destruction of cultural groups robs both the existing and future generations of the opportunity to experience, question and learn.[125] A democratic society should not only offer means to individuals to make choices regarding the conception of a good life, but it should allow them to have the genuine opportunity to choose (in Rawls' words) between various comprehensive doctrines of the good. Secondly, the moral

[124] Or *ethnocide* as Anthony Smith refers to it (1986, pp. 96-97).

[125] This reference is of course taken from Mill's defence of the liberty of thought and discussion: "But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error" (2001, p. 19).

justification for the protection of non-dominant cultural groups can also be derived from the recognition that no comprehensive self-identifying collective is of greater moral importance than another. Cultural groups have an intrinsic moral value for their members because they are vehicles through which they can realise their full moral capacities and "establish institutions and manage their communal life in ways that reflect their communal values, traditions, and history – in short, their culture" (Tamir, 1993, p. 70).

Because they fundamentally contribute to human well-being, cultural groups are perceived as collective entities of moral importance. The good of common membership in cultural groups is made of beliefs and practises that provide the very substance of collective self-perception. This good of common membership is collectively produced and maintained; i.e. it is collectively owned. Cultural groups are perceived to have a moral value, in and of themselves; consequently, and importantly, they are not treated as traditional legal entities. Collective legal entities have legal interests only, which allows their executive bodies to make decisions in the name of the collective with no moral constraints (and within legal boundaries). However, cultural groups have *moral interests*, which is why their protection at times justifies putting restraints on their decision-making bodies (in case one exists). For this reason, for example, it is not possible for Māori tribe (*iwi)*-leaders to alienate collectively-owned land of their members in New Zealand. This is because land ownership has moral importance for Māori, which extends beyond mere private ownership of land. Ownership over land has not only instrumental but also spiritual value; it makes up beliefs and practices, that is, the good of common membership in a Māori cultural group.[126] Moreover, once it is accepted that (to continue with the example) the Māori as a cultural group is a moral entity, it becomes relevant to address its genuine capability to maintain its well-being as a moral category. If one cultural group is significantly disadvantaged in comparison to others, this effectively means allocating more socio-economic resources to it in order to restore its (equal) moral status. But why would one cultural group qua moral collective be underprivileged in a system of governance where everyone's rights are equally respected?

2. Democracy and Capabilities of Cultural Groups

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. Traditionally, both modern and contemporary proponents of democracy (and social contract theory) paid little attention to the existence of non-dominant cultural groups within democratic states. This is perhaps not so surprising if one recalls that the idea of individual equality came about as a reaction against the governing entitlements obtained through collective membership.

[126] See Chapter III, footnote 93.

In pre-democratic societies, one was (naturally) born into an aristocratic collective and this (natural) fact consequently determined his or her socio-political status. As opposed to this, the new system of democratic governance was not predisposed to any existing collective membership to give political legitimacy to its rule. The social contract is a contract between individuals and not classes of individuals, which is why it first and foremost legitimises individuals as the bearers of rights. From a socio-historical perspective, the idea of the social contract and democracy was originally driven by a desire to liberate individuals from political oppression and not to accommodate multiple cultural groups that exist under the jurisdiction of political sovereignty. Hence, it was not anticipated that smaller cultural groups would be significantly disadvantaged in a majoritarian-based system of democratic governance i.e. that their protection via the mechanism of individual rights would not adequately address the issue of their disappearance through latent cultural assimilation.

Undoubtedly, the system of democratic governance always brings about majority and minority groups. In a certain sense, such a governing system requires the creation of a majority (hence minorities) in order to perform its function. It is generally considered that democracy is not meant to produce political one-mindedness, but rather the conditions where equal consideration will be given to everyone's right to pursue their interest. Thus, most commonly, the perpetual creation of those who are "underrepresented" has been justified through the principle of individual equality: that is, one person, one vote. And the danger of the tyranny of the majority (Mill, 2002, p. 8) has been (more or less) successfully addressed through the idea of the inherent human rights of every individual. Democracy embodies the principle of decision-making equality of resources, but not equality of welfare as such (Lee, 2001, pp. 126-127). Nevertheless, due to various socio-historical reasons, it appears there are nation-states where certain individuals always fall within the category of a voting minority. If this truly is the case, then the principle of individual equality becomes only an academic claim and the understanding of society as a cooperative venture for mutual advantage de facto unwarranted. One way to address this problem is to argue that in democratic societies, every individual has "an equal a priori probability of influencing any particular legislative choice" (Beitz, 1983, p. 72). Indeed, everyone has equal *potential* to influence public policy, but this route does not take us any step closer to *genuine capability,* where certain fundamental interests of individuals and collectives are accommodated.

However, it is easy to imagine many instances where some individuals or groups will arguably remain underrepresented in a democratic system of governance, and many of these will not be taken to represent pressing issues for a modern nation-state. In most (if not all) democratic states, extreme far-right movements have only a fraction of public support and this is perpetually manifested in their inability to influence the legislative body. But it is not

necessary to belong to, for example, extreme nationalists, white-supremacists or racist groups in order to be underrepresented. Anarchists have been traditionally powerless to ascertain their ideology through the voting system and in most of the Anglo-Saxon world socialist political parties and their voters have been traditionally cut-off from public offices and positions. On the other hand, environmentalist (green) political parties have managed over time to increase their legislative presence, which attests that it is possible for a voting minority to gradually influence public opinion. These examples show us there are ways for one group to improve its representation status through political participation; moreover, the decision-making equality of resources can (perhaps) be legitimately defended as the freedom to access public debate and hence influence the populace.

But is it correct to equate self-identifying cultural groups with interest groups unified by a common concern and/or ideology?[127] It does not make much sense to speak of one common goal in such cultural communities, since their identity, aspirations, norms and beliefs subsist in all-encompassing qualifications of various types. But more importantly, membership in cultural groups is like no other because it gives "access to a range of meaningful options" (Kymlicka, 1995, p. 84) and because it "greatly affects one's opportunities, one's ability to engage in the relationships and pursuits marked by the culture" (Margalit & Raz, 1990, p. 449). After all, these kinds of collectives do not need socio-political resources in order to expand their memberships through persuasion and plausible argumentation. They need resources to preserve their collective identities, which are recognised by their members to have moral value, in and of themselves. Although the role of the democratic state is not to advance any particular conception of the good, it is expected that the cultural market will more often than not be characterised by unequally positioned cultural groups. These contenders cannot fulfil their interests by relying on the universal right of individuals to pursue their desired goals and associative membership. Acknowledging that it is against the democratic principle of equality to make *individual* cultural membership politically relevant, it appears necessary to grant privileges to certain underrepresented cultural groups in order to prevent moral harm and ultimately their disappearance. It appears necessary to address the respective differences in the capabilities of underprivileged cultural groups to assert their legitimate interest via a democratic system of governance.

If one accepts that self-identifying cultural identity revolves around specific behavioural norms and paradigms of thinking, and that these provide moral substance to our social existence, then it seems reasonable to devise some institutional means to preserve cultural

[127] See Lee (2001) for a more detailed discussion on the distinction between cultural groups (which he calls identity groups) and interest groups typically unified by some common concern (e.g. political parties or organisations).

collectives from disappearing. Today, there is widespread acknowledgement that equality of rights does not axiomatically translate into equality of opportunity. One way to address this problem is by relying on the theoretical framework of the capability approach, which indeed has been increasingly popular in both the literature and institutional practise.[128] The capability approach was originally introduced as a way to think about the well-being of individuals, but recently its application has expanded to include collective entities as well. In its (individual) original form, Amartya Sen defined the capability approach as "an intellectual discipline that gives a central role to the evaluation of a person's achievements and freedoms in terms of his or her actual ability to do the different things a person has reason to value doing or being" (2009, p. 16). Without underestimating the importance of formal individual equality, the capability approach thus primarily focuses on what people are capable of doing and being, and not what legal entitlements officially allow them to do or be. In that respect, it is meant to be used as an all-encompassing normative tool for the analysis of various recognisably valuable aspects of human life, such as our health, education, family creation, social networks, political participation and other (Robeyns, 2017, p. 8).

The core aspects of human life, i.e. its well-being and quality, cannot be measured without taking into account the differences in individual abilities, as well as a variety of social and environmental factors (Watene, 2011, p. 5). Once these relevant differences are factored into the calculation of resources needed to obtain a legitimate life goal, it becomes clear that some individuals require alternative treatment in order to realise their potential. Thus, the capability approach has a rather intuitive appeal to it – it concentrates on what people can realistically be and do with the opportunities that are made available to them. When addressing the normative matters of institutional arrangements and social policy, it presupposes that the perception and the estimation of human flourishing is hollow if one confines it only to our equality in rights. The capability approach tells us that we should direct our attention to what people are capable of doing once formal equality is established. These results, in turn, should be used as reference points when measuring the success rate in human development and social prosperity.

The capability approach is fundamentally characterised by the distinction it makes between functionings and capabilities, namely, between the achieved well-being and the genuine opportunities to achieve some well-being. Although generally used for normative

[128] The capability approach has been discussed extensively throughout various disciplines over the last two decades. Keeping that in mind, it is not possible to give an adequate but brief account without failing at least in some aspects of it. I will take for granted that in spite of numerous disagreements and predicaments associated with it (Rawls, 1999b, p. 13; Roemer, 1996, pp. 191-193), the capability approach can be successfully used for various functions of moral discourse and practice. This conviction is also recognised by the wider public and major global institutions, specifically the UNPD, which uses the capability approach as a normative method for the expression of human development.

purposes across many disciplines, it is first and foremost a conceptual distinction that is not committed to any particular moral conception of the good. Understood as actualised potentials, functionings come in the form of various "beings and doings" i.e. different states of being and activities that humans find valuable and worthwhile. They range from being healthy, being educated, being in love, being drunk, being wealthy etc., to activities such as participating in the political governance of your country, riding a motorbike, sleeping in your own house, fasting during religious holidays and the like. Functionings are a mixed bag of achievements and expectedly; some of them are commonly held to be more valuable than others. Their fulfilment, however, cannot be meaningfully understood in a context-free setting that takes no account of how and why people are able (or not) to be in various states or participate in particular activities.[129] In that sense, capabilities are indispensable for our considerations of functionings; they encompass the freedom to choose and the genuine opportunities needed for the accomplishment of the desired functionings.[130]

A famous proponent of the capability approach, Martha Nussbaum (2006, p. 75), claims that a society that fails to guarantee basic capabilities to all its citizens cannot be considered a fully just society. Can the capability approach be applied to collective entities, for example, cultural groups or nation-states, keeping in mind a variety of inequalities between them? To start with, individual capabilities and valued functionings regularly require a collective underpinning for their realisation in an instrumental sense. Furthermore, individual functionings sometimes attain their meaningful character only if they are carried out in the form of a collective action. The individual action becomes relevant and purposeful only as part of a collective action, regardless of how it is normatively assessed. Thus, in contemporary literature, the importance of collective capabilities has been mostly defended on the grounds that "some of the greatest intrinsic satisfactions in life arguably come from social interaction with others who share our interests and values – friends, families, communities, and other groups" (Evans, 2002, p. 56). Alternatively, one can argue that collective capabilities should be thought of as an

[129] "A person's capability to achieve functionings that he or she has reason to value provides a general approach to the evaluation of social arrangements, and this yields a particular way of viewing the assessment of equality and inequality" (Sen, 1992, p. 5).

[130] In principle, the list of human capabilities is almost inexhaustible; hence, as a normative framework, the capability approach primarily focuses on those that we value and consider essential for human well-being and development. Sen (1979, p. 219) admitted that the exact indexing of basic capabilities could prove to be a problematic exercise. Martha Nussbaum (1997, pp. 286-288) has produced a list of the "Central Human Capabilities", which she claims are based on both elementary biological facts about our species and an ongoing cross-cultural inquiry. Undoubtedly, there will be variances in people's capabilities and functionings regardless of the surrounding material and social resources. Thus, proponents of the capability approach do not normally adhere to the view that everyone should be provided with equal capabilities. In particular, Nussbaum's account is sufficientarian, meaning that it relies on the idea of a threshold that separates a dignified from a non-dignified human life (2009, p. 335). It is not guided by equality of capabilities, but equality in terms of the minimum conditions that should be provided to each person.

aggregate of individual capabilities – that is, that "they are the average of the capabilities (and sources of capabilities) of all the individuals in the selected groups (…)" (Stewart, 2005, p. 192). Lastly, Ingrid Robeyns (2017, pp. 116-117) has most recently defended the idea of collective capability only insofar as it designates the importance of collective action for the realisation of the group members' valuable capabilities.[131] Notwithstanding their differences, what is common to all these interpretations of collective capability is that they operate on the assumption that collectives cannot be conceived as an ontologically and morally distinct category from the individuals that compose them. In particular, collective membership can have consequences of moral importance because individuals are discriminated on the basis of this membership – they illegitimately get excluded from enjoying certain goods and benefits.

Inequalities of this kind can be associated with the social or legal devaluation of members of particular cultural groups, with spatial inequalities related to the fact that some groups live in inaccessible areas, economic inequalities in cases when members of groups generally have lower incomes compared to other groups, or with political inequalities if these members are deprived of the benefit of political participation (Kabeer, 2010). All these instances are problematic because they impede individual well-being, which consequently affects the entire collective (in case there is one). Discrimination on the basis of collective membership is not the same as the elementary inequality that can take place when certain collectives of moral importance interact with each other. It is not necessary to discriminate between individuals on the basis of their collective membership in order to cause one self-identifying cultural group to disappear. In light of this and for the purpose of terminological accuracy, when speaking about collective capabilities, I will be referring to the capabilities of collectives i.e. collectives as subjects and bearers of capabilities.

The progression from individual to collective capabilities has been initially influenced by the earlier established widespread critique of ethical individualism in the humanities and social sciences (Alkire, 2008). Although proponents of the capability approach never underestimated the importance of social values and structures, they have been generally understood as conceptually and normatively dependant on their contribution to individual capabilities (Sen, 2000, xii-xiii; 2002, pp. 79-80). At its core, the discussion over the primacy of individual over collective capabilities can be acknowledged as a variance of the disagreement between the derivative and non-derivative interest-based theories of collective rights. In the previous chapter, it has been argued that collective interests can stand opposed to the individual

[131] On this matter, Robeyns points out that clarification should be made between individual capabilities that are attainable only with the help of others (e.g. learning a language) and individual capabilities that are attainable only through collective action (e.g. the women's suffrage movement). Leaving aside the credibility of this distinction, the author takes both types to essentially represent a subset of personal (individual) capabilities.

interests of its members because not every interest is sufficient to ground duties – to make an interest into a right. In the same manner, it is understandable that not every capability should be perceived as a human interest that is strong enough to impose a duty; hence individual and collective capabilities can in principle clash with one another. However, since the capability approach is primarily concerned with only those capabilities, we find most valuable for human life, as a general rule, these will often be estimated as the most important interests worthy of protection. In that sense, those capabilities that have been instituted as individual rights will necessarily be factored into the assessment and content of collective capabilities – there can be no collision between capabilities once they are expressed and protected as rights. But ultimately, although the idea of collective capabilities is certainly guided by the enhancement of individual well-being and their freedom, it is not an imperative to conceptually or normatively reduce the capabilities of collectives to the capabilities of individuals.

Returning to matters of more direct importance to our discussion, it is commonly recognised that the development of individual capabilities and the freedom to pursue our valued goals is often dependant on our collective membership. The nature, intensity and social status of these collective belongings varies greatly and can span from a two-member family to a cosmopolitan sense of common humanity. Theories of collective rights generally limit their scope to self-identifying collectives of irreplaceable and irreducible moral importance, such as cultural groups (and in this thesis nation-states). The protection of these collectives can be defended on the basis of their instrumental and/or intrinsic value – instrumentally because they provide a greater variety of meaningful contexts and intrinsically because they are authentic frameworks through which individuals can realise their full moral capacities. The importance of collective membership for individual development is unquestionable due to the natural sociality of the human species. Collectives can have a positive effect on individuals because they facilitate the realisation of numerous individual capabilities and functionings. But apart from enhancing the individual well-being in that sense, self-identifying collectives are also able to contribute to individuals in another manner. Namely, as Frances Stewart notes (2005, p. 188), a person's well-being can be affected by how well the group they identify with is doing.[132] For example, family members take pride in the achievements of children and co-nationals feel dignified for the prosperity of their political collectives. Correspondingly, the substandard standing of self-identifying collectives prevents individuals from developing their capabilities, while also leading to their psychological desolation due to the intricate identifying relationship with the (poor performing) collective.

[132] Stewart gives an example of African-Americans in the USA and their high levels of depression that are associated with the standing of the groups as a whole. See also Brown et al. (2000).

Presupposing there is no moral primacy between one cultural group or nation-state over another, the achievement of greater equality between collectives can be perceived as self-serving. But greater equality between collectives brings about another favourable outcome in that it reduces the possibility of mutual conflict. It is true in a non-revealing sense that differences in cultural or political membership largely contribute to small- or large-scale conflicts and even wars. However, as a general rule, it is only when their coexistence is characterised by severe inequalities between them that collectives undergo mobilisation and eventually violent confrontation (Stewart, 2001, p. 2).[133] Although it is importantly related to individual capabilities, this unequal distribution of political or economic resources reflects the differences in collective capabilities. It is groups that are unable to develop their valued capabilities (Stewart, 2005, p. 192)[134], which consequently leads to individual unhappiness (due to the nature of self-identifying collectives). Therefore, firstly, collective inequality and suppression deprives individuals of many opportunities, which in turn negatively affects collective well-being and finally individual self-esteem. And secondly, because underprivileged cultural groups and nation-states are not able to defend their fundamental interests through democratic means, they effectively become cut off from the benefits of the adequate socio-economic conditions needed for their members to engage in activities they consider valuable. Such a situation fosters an environment where various individuals and collectives suffer from the underdevelopment of their basic capabilities, which eventually leads to a sense of despair and social antagonism.

Thinking about collectives and their respective differences in capabilities is especially important in the context of cultural groups and nation-states, and properly speaking, it does not make much sense to talk about cultural or political individualism. These collectives cannot be understood by relying only on the paradigm of ethical individualism because the concept of the cultural and the political are always collective in their nature. With this acknowledgement, it is worth asking whether the capability approach should be expanded to include cultural groups and nation-states as bearers of capabilities in their own right – namely, to recognise their respective differences in capabilities and how these differences manifest in their mutual interaction, positively or negatively. On the one side, the capability approach highlights the existence of crucial differences in the natural and social conditions (limitations) in the lives of

[133] "Men may and do certainly joke about or ridicule the strange and bizarre customs of men from other ethnic groups, because these customs are different from their own. But they do not fight over such differences alone. When men do, on the other hand, fight across ethnic lines it is nearly always the case that they fight over some fundamental issues concerning the distribution and exercise of power, whether economic, political, or both" (Cohen, A., 1974, p. 94) (referenced from Stewart (2001, p. 2)).

[134] Stewart refers to these as horizontal inequalities so they do not get confused with individual or household inequalities. Horizontal inequalities encompass political, economic and social elements and they generally adhere to group capabilities.

individuals i.e. the standing variations in individual abilities and genuine opportunities available to them. On the other, it emphasises the value of personal autonomy, that is, individual moral equality and the universal value of freedom to choose the direction of our development. Is it plausible then to make a parallel between the individual and the collective in this regard – to point out that fair terms of cooperation have to take into account the differences in the actual capacities of collectives to express their self-determination and pursue their legitimate interest?

It is commonly accepted that cultural groups and nation-states make an indispensable contribution to human well-being. Their capabilities and functionings will expectedly always vary but it is through their interaction that another issue of moral concern can come to the fore. Namely, the democratisation of societies gave rise to the problem of smaller cultural groups in a majoritarian-based system of governance i.e. the problem was created *through cooperation and not segregation of communities*. The interrelationship between collectives undeniably discloses differences in their capabilities and functionings, and great discrepancies testify that the formal equality of collectives is insufficient to foster favourable conditions for human flourishing. Against the background of globalisation and the democratisation of international relations, the increasing interconnectedness and dependence of sovereign nation-states has similarly exposed the relevance of genuine capabilities that pertain to these collectives. Does this mean that it is necessary to give up the idea of closer cooperation on a global level? Such a conclusion would amount to giving up the principles of democratic governance in closed political societies due to the issue of smaller and inherently underrepresented cultural groups. In order to facilitate a beneficial interaction, the theory and the political model of collective rights proposes to resolve this problem by endowing disadvantaged collectives with preferential treatment in certain areas of social policy.

3. Preferential Treatment and Collective Rights of Cultural Groups

The idea that the dominant culture can take care of itself and that smaller (democratically vulnerable) cultural groups require additional socio-political resources (Margalit & Halbertal, 1994, p. 492) can be brought into connection with policies of preferential treatment.[135] These policies were first introduced after World War II and 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). Although generally identified with the policy of affirmative action, preferential treatment appears to be only a sub-type of a much broader affirmative (or positive) action approach. Namely, various types of

[135] 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.

affirmative action programmes can be designed for the benefit of certain social groups that do not necessarily give raise to serious moral concerns. Governments often allocate special funds for educational (scholarship) grants, healthcare programmes or the economic development of particular regions[136], which are not accessible to all members of society. Recognising that some individuals by no fault of their own have less (or need more) means in order to secure their well-being, such measures represent an additional tax-payer expense but are generally socially accepted. The more controversial cases of affirmative action are those that result in the preferential treatment of individuals at the direct expense of other (non-preferred) individuals. These are the cases that debate whether they violate the principle of individual equality and merit on the basis of collective entitlement, which is otherwise considered irrelevant (i.e. illegitimate) in democratic societies.

Policies of preferential treatment are closely associated with the enactment of human rights laws and the post-World War II period of democratisation. These measures were seen as indispensable for the purpose of correcting the historical and systematic discrimination against women and members of cultural (often racial) groups. It was recognised that equality in rights does not straightforwardly entail equality in opportunity, and that the previously discriminated members of these groups lack the social and financial capital needed for the development of their individual talents and skills. Furthermore, it soon became obvious that the mere legal prohibition of discrimination was insufficient to eliminate the more latent socially embedded discriminatory norms. In practise, various methods have been used for the purpose of achieving genuine equality of opportunity, such as special quotas (number of places) for study or workplace admissions reserved for individuals belonging to disadvantaged groups; the allocation of "extra points" to applicants on the basis of their relevant (underprivileged) membership; and government recommendations for public and private sector to give priority to these individuals in terms of employment or work promotion etc. Regardless of the exact institutional practise, the general moral principle of the policy of preferential treatment is that members of underprivileged groups require indemnification as a matter of corrective or distributive justice. The justification for these measures is grounded on the premise that their disadvantaged position is in some relevant sense connected to broader socio-historical circumstances that have unfairly benefitted some groups whilst depriving others. From an instrumental point of view, they are seen as necessary in order to break the cycle of disadvantage (Sadurski, 1984, p. 576).

[136] For example, the Canterbury region in New Zealand that was struck by the 2011 Christchurch earthquake has been supported ever since in its attempt to rebuild the damaged infrastructure and social life in general.

Despite the fact that the vast majority of people are supportive of the end goal of policies of preferential treatment (the elimination of discrimination), the same cannot be said about the means and other social consequences of such rectifying procedures. The three most common objections raised against such policies are that 1) they are unfair and discriminatory because they rely on group entitlements (sex, race, ethnicity) instead of individual merit; 2) that they are ineffective because they stigmatise beneficiaries as incapable of otherwise obtaining their offices and positions; and 3) that they promote poor academic standard and professional performance since individuals are not only selected on the basis of their competence. These criticisms certainly require careful consideration but they go beyond the scope of this research, and they also fall outside of it (see Ballam, 1997; Fullinwider, 1980; Goldman, 1979; Woody, 2004). Namely, all of the aforementioned measures of preferential treatment primarily aim to promote the interests of individuals and not collectives. Although they take group membership as relevant qualifying criteria, they are not intended to promote the well-being of these collectives. They are designed with the aim of equalising opportunities for underprivileged individuals with those who were, so to speak, given a head start. They are not justified on the basis of moral importance, which is tied to the preservation of collective identity and well-being.

Thus, when individuals of the Māori (or Polynesian) cultural group are given beneficial access to tertiary study in New Zealand (Office of the Auditor-General, 2004), this is not done to advance promotion of their relevant collective self-identifying characteristics. Or when the governments of Norway (Schjødt, 2017, Ch. 6, § 6-11a) and France (European Parliament, 2015) require their public stock and state companies to be comprised of at least 40% women, it is not because they treat women as a separate moral group whose existence is threatened by their underrepresentation in the workforce. It is rather that there is a strong correlation between being a disadvantaged individual and being a member of some of these groups, which is why this membership is perceived as a good reference point. But ultimately, what grounds the justification of such preferential measures is the creation of conditions where individuals are able to genuinely develop their capabilities and exercise rights. For this reason, it cannot be said these rights are possessed by a collective qua collective and not its members severally; these are individual rights proper.

There are, however, instances where policies of preferential treatment are used with the ultimate purpose of fostering the interests of some cultural groups. For that reason, it was useful to briefly outline what grounds these policies in the matters of individual rights promotion because the starting premise of the moral argument remains the same: there are cases where entities of moral importance are systematically disadvantaged, although there is no formal discrimination or restriction, which prevents them from flourishing. The choice of which collectives are selected specifically follows the same analogy i.e. those that have insufficient

resources and institutional means to advance their interests in a majoritarian-based system of democratic governance. Since it is not feasible to accommodate a collective cultural heterogeneity that characterises every modern nation-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 minorities[137]; and 2) indigenous cultural groups that originally inhabited certain regions before colonisation and their incorporation into the eventually established democratic states. By some estimation, about 20% of the world population is comprised of national minorities and about 5% of indigenous groups, together making it one quarter of the total number of people in the world. Apart from being particularly "vulnerable to economic, cultural, and political pressure from the larger society" (Kymlicka, 1994, p. 24), statistics show that membership in these groups is often coupled with disproportionally high rates of poverty, health and crime problems.[138]

Nevertheless, there is no doubt that all potentially marginalised cultural groups are included in these two categories. Admittedly, there has been social and legal resistance to equate those who voluntarily moved from those who have been residing within state territories during pre-democratic times. The first case refers to immigrants who have presumably made a conscious decision to change their cultural environment, and the second refers to national minorities and indigenous peoples who were (involuntary) incorporated into a single nation-state (see Kymlicka, 1995, pp. 11-26). Only the second category is generally taken to legitimately give rise to policies of preferential treatment, most likely under the assumption that a well-informed agent is morally responsible for the consequences of his or her voluntary actions.[139] It should be noted, however, that the distinction between voluntary migration and forceful inclusion is not without its flaws, especially in the cases of fleeing refugees or African-

[137] 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 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).

[138] This is especially the case for indigenous groups since almost 80% of them constitute the world's extremely poor rural people or over 50% suffer from Type 2 Diabetes (UN, 2009).

[139] For the purposes of this research in political philosophy, I take it as a given that freedom of will entails moral responsibility. This doctrine pervades almost the entire Western moral philosophy, starting from (at least) Aristotle who wrote: "Virtue, as we have seen, has to do with feelings and actions. Now, praise and blame is given only to what is voluntary; that which is involuntary receives pardon, and sometimes even pity" (2009, Book III, 1.1).

Americans that constitute an exceptional case.[140] Notwithstanding, the rationale behind the policy of preferential treatment revolves around the fact that not every cultural group is sufficiently capable of pursuing its legitimate interest and that these collectives have a moral value, which cannot be safeguarded by protecting the individual rights of their members alone.

If the mechanism of individual rights has failed to protect the interests of certain collectives of moral importance, then perhaps it is unavoidable to treat these collectives as 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. What are some of the most common institutional models used for the accommodation of cultural groups qua moral rights-holders? In this respect, Jacob Levi's classification can be used as a useful starting point (keeping in mind that the author himself admits it is based on empirical rather than philosophical observations). Levi (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. It should be noted, however, that this list is not exhaustive. Indeed, it is not easy to categorise with conceptual precision all the mechanisms for cultural groups' protection. 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.

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;[141] f) representation refers to assurances that members of some cultural groups will be represented

[140] To this day, African-Americans remain the most economically vulnerable individuals in the USA. It is possible that African-Americans as a group have suffered more than any other as they have been forcefully taken from their homeland and enslaved, they were deprived of any means to sustain their culture and they were not allowed to integrate into the mainstream American culture. Although they have a distinct historical experience that shapes their collective identity, their interest has mostly been concerned with social and legal recognition as American citizens (Kymlicka, 1995, pp. 24-25).

[141] As a reference, special assistance to cultural collectives often includes funding for the preservation of language (schools, published books etc.) or for events, exhibitions, and permanent institutions of art-cultural character.

in central governing institutions regardless of the popular vote;[142] 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;[143] and h) exemptions refer to provisions that allow members of some cultural groups to be relived from abiding certain (otherwise universal) laws. All of these institutional responses represent instances of collective rights of cultural groups as they primarily aim to serve the benefit of collectives and not individuals. They are justified inasmuch as cultural groups are understood as ontologically distinct entities of moral importance for human beings.

The right to self-government potentially has the widest implications, being the strongest of all collective rights. For this reason, it seems that certain other types of rights of cultural groups in fact belong to the self-governance category, at least in some cases. This is particularly so with categories of external rules, internal rules, and recognition/enforcement, which at times closely resemble attributes of external and internal aspects of state sovereignty (Hinsley, 1966, p. 26). The right to self-government also poses the greatest challenge to the legal and political integrity of nation-states, more specifically when: 1) cultural groups wish to protect their interests by using methods that are at odds with the liberal democratic tradition; and when 2) cultural groups aspire to democratically govern over themselves (which leads to the creation of a nation and somewhat paradoxically a situation where cultural groups cease to exist in a politically relevant sense). Each in their own way, both of these represent instances of preferential governing status allocated to certain cultural groups.

In the first case, it is similar to how modern states treat non-citizens, cultural groups have been given rights to restrict liberty (i.e. mobility, property, and voting rights) of non-members as a part of self-governing package (Kymlicka, 1989, p. 138).[144] The second instance

[142] To name just a few, the Croatian parliament reserves eight parliament seats for national minorities, Cyprus reserves three seats for the representatives of religious communities, Māori in New Zealand have a number of guaranteed seats, which are established according to their population (at the moment, there are seven reserved seats). From a positive side, this mechanism is able to de jure provide representation for cultural groups and its focus is primarily on legislative and less often on judiciary or executive institutions. On the other hand, although widely used, it is often criticised for not being very successful in practice – that is, for only succeeding in promoting a cultural minority into a legislative minority (Horowitz, 1991, p. 136).

[143] For instance, most public institutions in New Zealand have their names written on notice boards in the indigenous Māori and in the English language. Another example that illustrates symbolic recognition in New Zealand is the use of traditional Māori customs for the opening and closing of most official functions and ceremonies.

[144] This trend is particularly observable in Anglo-settler states; hence, in the USA and Canada, non-native Americans are denied the right to purchase land (or reside without special permission) in Indian reservations or reserves respectively. Additionally, there have been cases where these groups claimed it is necessary to restrict both freedom of their non-members and members, where the latter would be limited from disassociating themselves from a cultural group's membership (and consequently internal rules that apply to members only). These demands have not been accommodated so far due to their principal conflict with the fundamental right of individuals to freely associate (see Donnelly, 1989, pp. 58-59; Kukathas, 1992, pp. 116-117). As a final note, it is also interesting to examine whether a series of laws

often involves (or resembles) a federal model of governance where political and territorial division between the central and sub-unitary jurisdiction is divided by following the presence of cultural groups.[145] Although the federal-like model of self-governance is arguably best suited for advancing the moral interests of cultural groups, it is often argued that this institutional arrangement eventually leads to secession; that is, the dissolution of the (federal) states.[146] Thus, it should be noted that in both of these cases, the right to self-government has potentially negative implications; either because it violates individual rights (to mobility, property, etc.) otherwise guaranteed by the general law, or because it exposes a deficiency with respect to the political integrity of the unitary state.

Interesting and important in their own way, these problems associated with self-governance of cultural groups will not be pursued further. Indeed, they fall outside the ultimate goal of this chapter, that is, whether the theory and institutional mechanism of collective rights of cultural groups can be applied to international relations between nation-states. Namely, nation-states are political and socio-institutional collectives that facilitate self-governance. Their status as such is not problematic, at least not in a sense that relevantly compares to the aforementioned issues with the self-governance of cultural groups. Admittedly, relations between collectives in closed political societies and between modern states are in many ways two significantly different contexts. It is thus observable how many other institutional models used for accommodating cultural groups either cannot be applied or are already in place in the context of international relations. For example, the category of assistance (which sufficiently corresponds to the idea of global distributive justice) has already been discussed as problematic in Chapter II and III of this thesis; the representation of nation-states in international relations is already set up according to more or less egalitarian principles (at least formally)[147]; and

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with regard to the mandatory use of French in the Canadian (French speaking) province Quebec also represents an attempt to restrict the liberty of group members in this unconventional sense (see Meyerhof, 1994; Reaume, 1994).

[145] This political arrangement is usually referred to as multi-national or multi-ethnic federations, although this terminology is not without its flaws. Some of the most famous examples are Belgium, Switzerland, Canada, Spain, the former Soviet Union, and former Yugoslavia.

[146] This is known as the paradox of federalism, or as Jan Erk and Lawrence Anderson refer to it, the paradox of collective representation, which perpetuates the very divisions it aims to manage (2009, p. 192). Namely, federal subunits share many attributes with internationally recognized sovereign states: they have well-defined borders, and they possess an institutional structure for administrating political, socio-economic, and cultural matters within these territories. Once cultural groups are provided with their own territory and the institutional means to govern over themselves, it appears that the measures taken to secure the moral interests of cultural groups eventually result in demands for full autonomy (secession). Although extremely relevant for contemporary political landscape of the world, this discussion falls well beyond the scope of this research (see Anderson, 2013; Duffy Toft, 2012; Hale, 2004; Norman, 2006).

[147] For example, all of the UN member states have equal representation in its main deliberative and policy-making organ – the UN GA. This, however, does not hold true with respect to the remaining five UN principal: The UN Secretariat, International Court of Justice, UN SC, UN Economic and Social Council, and UN TC (currently inactive). Additionally, it is worth mentioning that the distribution of most senior

finally the category of symbolic claims does not seem to generally pose a difficulty in the context of international relations (other than in exceptional circumstances, such as the naming dispute between Greece and Macedonia).

Nevertheless, it appears plausible to make an analogy between cultural groups and nation-states with respect to category exemptions as a form of collective preferential treatment. Exemptions from the general law refer to a cluster of special rights that relieve individuals of duties they would otherwise be obliged to fulfil by virtue of their citizenship. They are often given to members of cultural groups on the basis that the universal application of a law to all citizens does not take into account 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 practises, 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.[148] 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. Issues that particularly raise concerns are those exemptions that fail to meet the standard of democratic communities and their system of individual (human) rights.[149] Additional difficulties with this institutional model for the protection of collective rights are associated with the non-universal application (and hence erosion) of law; the question of whether some interests are too important to allow for exemptions (e.g. compulsory vaccination or mandatory schooling); and with the problem of clear legal identification of sincere and non-opportunistic members of the relevant cultural group (Levy, 2000, pp. 132-133).

There has been a growing interest in 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; Tierney, 2007). Since nation-states stand for collectives that epitomise democratic governance, it is not expected they

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positions across the UN has been traditionally dominated by citizens of affluent Western countries (Novosad & Werker, 2018).

[148] Peyote is a type of cactus that 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.

[149] For example, Muslim sharia law in India, which in practice deals mostly with family law i.e. Muslim Personal Law.

would require substantial exemptions in their interaction with other global actors.[150] Although this remains true in aspects that relate to the underlying moral and political norms of nation-states, this is not so obvious in the context of their socio-economic relations. Namely, under the supervision of the WTO, global 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 nation-states and foster fair terms of international cooperation. In spite of this, 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.

One can imagine that the nation-state of Nauru is not in the same economic category as (for example) Australia, and that Australian companies and other large MNCs hold a considerable advantage when compared to Nauruan ones (most probably in every sector of industry). This almost certainly being the case, as cultural groups are exempted from laws that (inadvertently) impose excessive burden for their well-being, is it plausible to apply this rationale to global trade and its "one size fits all" regulations? Should Nauru be exempted from certain trading rules that are in principle meant to contribute to fair trade although they effectively prevent it from pursuing its legitimate interests? In this regard, an analogy can be made between cultural groups in closed political societies and nation-states in contemporary international relations: there are regulations that represent excessive burdens for some collectives, which justify their exemptions from the general law. This topic will be dealt with accordingly in the final chapter of the thesis.

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In the aftermath of this chapter, it is worth answering the following questions previously presented as the theoretical framework for thinking about moral collectives as rights-holders. Namely, what makes cultural groups collectives of moral importance and not only legally recognised (collective) entities? Cultural groups are vehicles through which we acquire the fundamental context necessary for moral and political reasoning; they constitute an indispensable aspect of our understanding as moral beings. What is the distinctive object of collective rights of cultural groups, which cannot be attained using the mechanism of individual rights alone? Cultural groups produce and maintain the distinctive good of common membership that consists of authentic norms, beliefs and practises. Why are their rights possessed by a collective qua collective and not its members severally? No individual interests are strong enough to hold others under duty for the protection of the aforementioned; their

[150] This is of course under the assumption that the general principles of international law embody democratic values. For example, 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).

protection in the form of rights is justified inasmuch as it preserves the existence of the group. Finally, can cultural groups functionally be rights-holders according to the interest-based theory of rights? Cultural groups can functionally be rights-holders because they possess interests worthy of protection – that is, those elements necessary for collective self-identification (i.e. norms, beliefs, practises).

Can the theory of collective rights of cultural groups be applied to international relations between nation-states, keeping in mind their role in the provision of various goods of moral importance and their disproportionate socio-economic capabilities to pursue legitimate democratic interests? Had the nation-state of Nauru possessed the status of a moral collective, would it have been in a better position to 1) prevent the democratically elected government from destroying the living habitat of the island, and to 2) genuinely profit from socio-economic cooperation with other global entities? At the moment, Nauru exists only as a state with an international legal personality. It is perceived solely as a legal entity, which is why its government was able to surface-mine almost one third of the state territory and bear no consequences for its actions. Likewise, as a legal entity, Nauru cannot even in principle be a beneficiary of preferential treatment; i.e. in the system of global trade, it has the same status as any other state despite the fact it is significantly socio-economically disadvantaged. Are nation-states in the context of international relations sufficiently similar to cultural groups in a (closed) domestic political setting? In order to answer this question, one first has to show that Nauru as a nation-state is a moral entity. Moreover, that it fulfils the other stipulated conditions to be treated as a collective rights-holder.

CHAPTER VI: NATION-STATES AS COLLECTIVE RIGHTS-HOLDERS

1. Nation-state as a Moral Collective

In order to apply the theory of collective rights to nation-states, it is necessary to present an argument that will show nation-states should be treated as moral collective entities and not only as legally recognised collective entities. 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. Is the nation-state such a collective? It is certainly the case that its existence has far-reaching and omnipresent effects for our social life. Nevertheless, it can be said that a parallel between those generally taken as moral collectives (e.g. cultural groups and nations) and the nation-state cannot be made on the basis that the nation-state comes 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). At the outset, the nation-state appears to be an artificial collective with a legal personality comparable to other traditional collective legal entities.[151] Thus, on the one hand, it is acknowledged that nations understood as self-identifying groups who wish to democratically govern over themselves cannot be brought into social existence by means of legal proclamation.[152] On the other, the state created by their exercise of the national right to self-determination remains only as a morally neutral legal collective – a collective that has the infrastructural capabilities to facilitate governance. The conundrum then appears to lie in the fact that the state is for a nation no more than a vehicle to realise its interest; nevertheless, it is a necessary vehicle because a nation, properly speaking, cannot exist without the means to assert its common political aim through democratic institutions. Various interests of moral importance estimated as the objects of individual rights and collective rights cannot be safeguarded without the underlying institutional mechanism and the governing political authority as a designated duty-bearer.

There are many interpretations and theories of nationhood and statehood; it can be said with confidence that the two concepts are the most contested in modern political theory. What

[151] These being business companies, voluntary associations (trade unions, non-profit organisations etc.), political parties and likewise. However, 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).

[152] Although they have to be legally recognised in order to exercise their right to self-determination.

is a nation and what is a state, according to international law? Interestingly, international law has consistently refused to define both terms, which of course does not mean there are no acceptable guidelines for determining the existence of nations and states in legal theory and practise. Human rights instruments (e.g. UN GA, 1966a; 1966b; ICESCR, Art.1; ACHPR, Art. 21) make references to nations and their rights but they do not aspire to define what nations are. It is difficult to precisely establish what qualifies a group of people in a collective that can legitimately claim the right to self-governance. Be that as it may, I have argued that answering this question is superfluous because it is unreasonable to reduce collective self-identification to a set of empirical facts. Self-identification is necessarily reflexive and as such it can neither be forced nor prevented from taking place (see Young, 1990). But from a political standpoint (which possibly has the greatest impact on international law), there has always been another major obstacle in defining what nations are – namely, the possible subsequent legitimisation of various (national) secessionist tendencies that exist in many contemporary states. Since both the political self-determination of peoples (Art. 1) and the territorial integrity of states (Art. 2) are codified as rights in the UN Charter (UN GA, 1945), it does not look like this problem will be resolved in the near future. After all, the nation of Nauru was recognised in 1968, that is, almost 200 years after the American and French Revolutions and the idea that the only legitimate way to rule is through democracy. It took the League of Nations and its successor the UN 50 years to resolve the question of Nauruan nationhood, and although today nobody questions its existence as a nation, no determinate legal instructions were created during this period that can be applied to future cases.

Is international law at least more specific with respect to describing what constitutes a state? As previously mentioned, the most familiar definition contained in the Montevideo Convention on the Rights and Duties of States (1933, Art. 1) requires a state to possess a permanent population, a defined territory, a government, and the capacity to enter into relations with other states. However, while it may be possible for a state to possess all the necessary qualities according the Montevideo definition, James Crawford (2006, p. 17) points out that in practice statehood as a formal category is largely dependent on the recognition of other states and major IOs, especially the UN. Since 1968, the sovereign state of Nauru had all four qualifications and was able to enter political and economic relations with other global collective actors. Additionally, in 1999 it was admitted to the UN and today it is a member of several major IOs. Thus, on the one side, the notion of state is commonly used for operational purposes (Crawford, 2006, pp. 40-41), and on the other, it has no universally accepted (legal) definition. For example, when the governments of the UK and India asked the ILC to include the definition of the state in its Draft Declaration of the Rights and Duties of States, the Commission

made the decision "that no purpose would be served by an effort to define the term 'State'… [the term] is used in the sense commonly accepted in international practice" (1949, p. 289).

The operating definitions of nationhood and statehood in this thesis have not been precarious or controversial. The idea of nationhood was socio-historically linked to the goal of liberation from an oppressor, which can exist in the form of a privileged class (domestic, foreign or imaginably any other). In a conceptual and politico-normative sense, nationhood involves a form of governance that is democratic in its character. The whys and wherefores of nations are many and throughout this research, I have not attempted to identify the empirical factors that drive one group of people to identify themselves as a nation. There is no reason to believe that some existing nations will not break apart in the future and that new nations will not be born. But the question of why a socio-political phenomenon comes about is not the same as asking what justifies our perception of it as conceptually and morally distinctive from other similar phenomena. Every nation will be characterised by the presence of cultural groups because nations are communities of human beings. And indeed, any democratic form of governance will have to accommodate some cultural groups who are underprivileged in such a system, as it has been presented in the previous chapter. But the only politically relevant normative input that provides a nation its legitimacy in international law and relations is its democratic form of governance. The conceptual understanding of nationhood that has been endorsed in this thesis does not describe the characteristics that nations exhibit in their specific socio-historical and cultural context. All nations are made of cultural groups, but only cultural groups that adhere to a certain political order are nations. What nationhood does to a group of people is that it characterises their social co-existence and distribution of political power in the form of democratic governance.

In its authentic sense, nationhood requires the aspiration and willingness of individuals to democratically govern themselves, along with the institutional resources that are necessary for its realisation. In this thesis, the understanding of the state has been essentially associated with those institutional means that are taken to be indispensable for political and socio-economic governance as such. I did not attempt to identify the end-goal or purpose of a state; namely, the question of what one society perceives as legitimate rule has been separated from rulership itself. Forms of governance were not coupled together with the state as the sociological and material body that can successfully uphold them. Accordingly, this perception of the state focuses only on a set of observable characteristics that allow it to function as a type of political community. It is based on Max Weber's impersonal and non-organic definition of statehood that is devoid of any normatively purposeful elements; it is "action-oriented, anti-essentialist and empirically founded" (Anter, 2014, p. 94). Thus, throughout this thesis, what the state is has been treated primarily as a social fact. Any set of normative functions that relate to it

have been derived from its existence as a distinctive sociological phenomenon. Conclusively, such a sociological understanding of a state is also in line with the largely recognised operating definition in international law given in the Montevideo Convention on the Rights and Duties of States (1933).

On the basis of these accounts, Nauru was recognised to represent an instance of a modern nation-state. Namely, as a *state*, Nauru possesses: 1) a government with control of the means of violence – a coercive authority invested with the power to govern over the community (an organised body of individuals divided between six departments with five ministers and the president as the head of the state); 2) legal order and the rule of law – the existence of some established (written) set of rules according to which the government exercises its power (the Constitution and various bills and acts); 3) territoriality – a physical space with (more or less) defined borders within which the government maintains its jurisdiction (22km^2 of oval shaped island); 4) citizens – individuals who permanently inhabit the territory over which the sovereignty of the state is claimed and who are accredited with special rights, duties, liberties, constraints, powers and responsibilities by virtue of this membership (conditions for citizenship are regulated in Part VIII of the Constitution); and 5) the capacity to enter into relations with other states – an internationally recognised legal personality, which confers rights, duties and corresponding legal consequences onto a state as a subject of international law. As a *nation*-state, Nauru possesses a democratic form of governance, meaning that justification of its political authority is derived from the principle of individual equality of the people who formed the community (a publicly elected parliament, which is responsible for the appointment of the president and five ministers).

The reason the nation-state should be treated as a moral collective lies in its ability to provide protection of the morally important goods that comprise the object of individual and collective rights – rights that cannot be given substance without both a *democratic* and *an institutional* mechanism that characterises the nation-state as a collective. It is important to keep in mind that this does not amount to saying that governments of nation-states will in reality protect the rights of their citizens. It rather means that 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 (*nation*) and the socio-institutional means for its realisation (*state*). The question of whether as a matter of fact governments of nation-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 nation-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 nation-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 a 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 nation-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. Recognising the fundamental importance of education and an individual's educational needs presupposes that our valuable capabilities require the nurturing of skills such as (at least) literacy and numeracy. 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 nation-state and the protection of the right to education cannot be written off as merely contingent. Namely, in a nation-state, the provision of education to its members is arguably intrinsically linked to the nature of the collective in question. It is linked to the principle of individual equality and the need to foster the necessary conditions for the authentic participation in a democratic civil community (Dewey, 1916; Rousseau, 1921). 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.

As an illustration, the Republic of Nauru in its Educational Act 2011 (Part 3, Section 7) affirms that every child has a right to education and that the government, parents, teachers, school communities and non-government entities should work collaboratively to achieve the best educational outcomes for school-age children. Thus, according to the Act (Part 4, Section 8), each parent of a school-age child must ensure the child is enrolled in a school until the child completes the school year during which the child reaches 18 years of age. Parental non-compliance with this requirement allows the government to enforce the rights of children and

penalise said parents. But more than just protecting the individual right to education, the government, through its Department of Education, establishes regulations that determine what learning environments will receive the status of officially recognised educational institutions. It separates between general and special education, it determines study curricula, teaching qualifications that authorise individuals to work as teachers, certificates can be used as evidence of acquired knowledge and skills, work titles that adhere to a specific scientific area and level of study, and myriad other institutional mediums through which the fundamental right to education is effectively protected. This entire enterprise is facilitated by the nation-state as a specific political and socio-institutional collective.

To further understand the importance of the nation-state in the provision and protection of rights, we can look into some of the rights individuals enjoy as residents or citizens of a modern nation-state[153]: the right to life and liberty and security of person; the right to protection of health; the right to education (which typically entails education free of charge in general schools established by the state); a guarantee of equal rights of spouses and the right of children to be provided for them, primarily by their parents or by the state if necessary; the right to government assistance in case of an incapacity for work, loss of provider, or old age; the right to property protection and the guarantee of property succession; the right to engage in an entrepreneurial activity and to form commercial associations, followed by the duty of the state to provide conditions and procedures that circumscribe the exercise of this right (administration of economic activity and circulation and upholding the stability of the currency); the right to appropriate working conditions and the right not to be deprived of liberty on the grounds of an inability to fulfil a contractual obligation; the right to be judged by an independent court; the right to vote and be represented by the parliament; the right to freedom of thought and religion; and the right to be treated equally before the law and not be discriminated against on the basis of nationality, race, colour, sex, language, religion, political or other views, or on other grounds. The provision and protection of all these rights is arguably deeply connected to the nature of the nation-state as the facilitator of the democratic form of governance.

The nation-state also provides goods to its citizens that are intrinsically collective in their nature, namely public goods, common-pool resources, and shared moral goods. The first class of goods can be said to represent the object of the collective rights of nations, while the remaining two are generally taken to belong to both nations and cultural groups, depending on the case. To begin with, as economic categories, public goods are distinguished from private

[153] As an example, I have taken the Constitution of the Republic of Estonia (2015) for the following list of rights.

goods in that they are non-excludable and non-subtractable (or non-rival).[154] In the words of John Kenneth Galbraith, public goods "must be provided for everyone if they are to be provided for anyone, and they must be paid for collectively or they cannot be held at all" (1998, p. 110). In reality, there are not many public goods in the strict economic sense, hence, many semi-excludable and semi-subtractable goods are also generally considered public (that is, quasi-public goods). Typical examples of pure public goods are street lighting, national TV and radio, police service and national defence, unpolluted air; and examples of quasi-public goods are public roads, beaches, parks and natural sights, educational institutions, social services, healthcare and pension systems (country dependent), libraries, etc. Public goods are enjoyed by individuals but the fulfilment of individual well-being through their provision is justified on the condition that collective well-being has been accounted for.

From the perspective of political governance, one of the main differentiating factors between private and public goods lies in the tradition of relying on the state to manage and maintain public goods and to leave private goods to the market. Even in cases where private agents are put in charge of managing public goods, it is always the political authority that appoints them and hence legitimises their work. In contemporary nation-states, the existence of public goods is principally linked to the democratic management of the commonwealth (*res publica*) state. In that sense, it is not surprising that in pre-democratic times most of what today is considered public goods did not exist or existed only through the voluntary initiative of non-state agents.[155] Thus, upon closer examination, apart from being non-excludable and non-subtractable, 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 public goods if there is no recognition of the *public* as a politically relevant category, and such recognition is intrinsically linked with the idea of *nationhood*: a self-identifying and self-governing collective. In this sense, it can be said that public goods are collective goods that are specifically the object of the collective rights of nations. And importantly, their provision and protection as the objects of rights require the existence of a modern nation-state with enforceable institutional mechanisms.

Common-pool resources represent another example of collective goods whose possession is in most cases assigned to nations but also to cultural groups in some circumstances. Article 1 of the ICESCR (UN GA, 1966b) declares that all peoples may freely dispose of their natural wealth and resources. Most (if not all) mentioned in this article fall

[154] 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 (Desai, 2003; Samuelson, 1954).

[155] For example, the first hospitals in Europe were financed by the church and run by priests and so were usually the poor-houses.

under the category of common-pool resources, that is, a distinct class of goods, which typically includes 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. Because of their paramount significance for the human community as a whole, their management has been traditionally allocated to public governmental agencies, such as the RONPhos in our case study. An important characteristic of common-pool resources is that, unlike public goods, they are *non-excludable but subtractable*. Therefore, since their supply is limited, the overuse of common-pool resources prevents their timely replenishment, leads to scarcity and ultimately to their disappearance. To illustrate, the mining of phosphate-bearing limestones for the production of agricultural fertilisers is an example of common-pool resource exploitation. By contrast, harvesting of phosphorus so that 80% of the living habitat is turned into barren wasteland is an example of over-use of common-pool resources.

Numerous cases throughout the world demonstrate that the collective nature of these goods is not fully observed in practise. Common-pool resources produce collective benefit only insofar as no individual beneficiary seeks to maximise his/her self-interest. The sole pursuit of individual interest in the enjoyment of these goods leads to their eventual disappearance – the tragedy of the commons problem. In other words, their existence depends upon the appreciation of the welfare of the many; the justification for demanding others to act or refrain from acting in particular ways is grounded on the protection of collective well-being. Nauru is a prime example of the unsuccessful management of common-pool resources by governmental agencies. There is also no guarantee that private companies with lease rights over these resources will not seek to maximise their profit even if that involves destruction of the atmosphere, oceans, rivers, and flora and fauna in general. Analysing alternative models for the governance of common-pool resources falls beyond the scope of this research, perhaps the most promising approach being the polycentric model, which brings together the state, business companies (the market) and private individuals.[156] However, the disagreement over the best institutional arrangement for their management does not challenge the very collective nature of these goods. In a non-economic sense, the justification for the recognition of their collective

[156] "'Polycentric' connotes many centers of decision making that are formally independent of each other. Whether they actually function independently, or instead constitute an interdependent system of relations, is an empirical question in particular cases. To the extent that they take each other into account in competitive relationships, enter into various contractual and cooperative undertakings or have recourse to central mechanisms to resolve conflicts, the various political jurisdictions in a metropolitan area may function in a coherent manner with consistent and predictable patterns of interacting behavior. To the extent that this is so, they may be said to function as a 'system'" (V. Ostrom, Tiebout, & Warren, 1961, pp. 831–32). Elinor Ostrom (2010) points out that citizens and public officials who are in some way managing public service industries and common property systems use other models of organizational forms and not the market regulated or the state regulated ones. These other systems she refers to as polycentric managing systems – systems in which organizational units are spread out around several centers.

nature can be derived from various comprehensive conceptions of the good. But their *protection as objects of collective rights* of nations and cultural groups in principle requires an allocated duty bearer, such as the governments of nation-states. To be sure, this is not to say that the governments of nation-states will responsibly manage common-pool resources by default, just as there is no guarantee any government will necessarily protect the individual rights of citizens. The case of the government of Nauru certainly proves this point. It is rather that only in nation-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 collective that is better positioned to maintain the shared good of national self-identification and the exercise of democratic governance. If nationhood as a political category reflects how one society understands and governs over itself, is it possible for nations to exist without the means of asserting their common political aims through democratic institutions i.e. their states? Answering this question leads us to finally consider the existence of an identifiable morally relevant object of collective rights of nation-states that is characteristically collectively produced and enjoyed. Nation-states are morally valuable because their existence facilitates the protection of individual and collective rights. 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, then it is necessary to conceive of an entity whose resources allow it to perform such a task. The nation-state is such an entity – it protects rights because it is a *nation*, and it is able to protect rights because it is a *state*. With that in mind, it can be said that the object of the collective rights of nation-states qua moral collectives is *a good of democratic governance*. It is a collective *good* because it is collectively produced and enjoyed; it is *democratic* because nationhood as a conceptual and politico-normative category refers to the democratic distribution of political power; and it comprises *governance* because such a complex network of processes requires the state as a sociological and material embodiment that can successfully uphold them. Without a nation-state, there can be no democratic governance, and the protection of this morally important interest intrinsically belongs to the nation-state as a collective and not its members severally.

Does Nauru in its capacity as a nation-state actually sustain the interrelation between the duty-bearer, the rights-holders and the distribution of the aforementioned goods? It is hard to determine exactly how much the government of Nauru genuinely protects individual and collective rights because of the standing restrictions to entry and information to outside investigators, including UN officials. Keeping in mind that this act by the government in itself brings about reasonable suspicion, it is only possible to speculatively answer this matter. From the overall reliable information about the general circumstances of Nauru, it is known that its

citizens fare worse by various standards compared to the citizens of most other countries (UNDP, 2014). It might have been the case that the people of Nauru would find themselves today in the same condition even if phosphate rocks were never discovered on their island. Nonetheless, it still holds that the socio-economic downfall of post-independence Nauru is causally connected to the continuation of phosphate mining. Importantly for this thesis, the democratically elected government of Nauru was well aware that surface-mining would eventually leave only 20% of the Nauruan territory in a condition to sustain flora and fauna.[157] Nevertheless, the government of Nauru kept mining and interested buyers kept purchasing phosphate, all mindful of the severe environmental and social consequences of their actions. If the nation-state of Nauru had the status of a moral collective and not only a legal status, would its government be equally able to arrange the sales of phosphate e.g. to Australia and New Zealand? Would the government of Nauru be equally able to confer contractual obligations onto the nation-state of Nauru even though the implementation of these obligations would foreseeably and effectively erode the well-being of Nauruan citizens?

2. Legal entities and moral entities

Treating nation-states as moral entities has far-reaching normative consequences. Namely, it calls upon us to re-examine the juridico-institutional conditions under which governments as decision-making bodies are able to confer obligations onto their nation-states. In many aspects of international law and commerce, governments exercise practically unrestricted moral and legal authority with respect to contractual agreements between their nation-states and other entities. A managerial model of this kind typically characterises various legal collectives, i.e. business companies, voluntary associations, political parties, IOs, (and indeed states) etc. Although often in practise the executive organs of the aforementioned tend to be motivated by the best interest of their respective collectives, the welfare and protection of these entities is not conceived as a question of moral importance. It can become an issue of sentimental importance, perhaps in some cases to an extent that their disappearance would assume a moral character.[158] But strictly speaking, there are no moral requirements for these entities to publicly disclose the deliberative processes of their decision-making bodies; to prevent executive boards from discontinuing their companies' main business activities in favour of some others; to prevent them from forfeiting trademark identities by merging commercial entities; to specifically prolong the existence of bankrupt companies; to prevent the sale of their assets; or ultimately to prohibit their terminations. Legal collectives exercise rights and fulfil

[157] As a matter of comparison, this 20%, which comprises the narrow coastal line of the island, is almost five times smaller than the size of Sydney (Kingsford Smith) International Airport site.
[158] Say, if the current owners of the English football club Manchester United decided to sell off the club's assets and effectively terminate its existence.

duties under the assumption that they are not in fact moral entities in and of themselves; hence their collective interests do not have an irrevocable permanent character. Their particular existence is solely instrumental and thus replaceable – it comes about and perishes as a matter of law.

However, there are collectives that exist as a matter of pre-legal and sociological fact; their status as rights-bearers requires legal recognition but their existence proper does not. This recognition, however, does not in itself support the conclusion that such entities are indeed moral entities, and a separate argument is needed to show that some of these collectives should be treated as entities of intrinsic moral importance. Hence, for example, self-identifying cultural groups can be treated as moral entities on the basis that socio-cultural context is inseparable from moral and political reasoning (MacIntyre, 1984; Sandel, 1982; Taylor, 1979; Walzer, 1983). Moreover, an integral morally relevant part of individual identity is derived from this collective membership, and the prevalent liberal tradition fails to take into account the reality of the socio-cultural embeddedness of the self (Taylor, 1997a, p. 182). From an instrumental point of view, their protection can be justified inasmuch as the existence of multiple cultures afford us with a greater variety of "meaningful choices" (Gill, 2001, p. 185), or because their members' well-being can be affected by how well the group they identify with is doing (Stewart, 2005, p. 188).

Nonetheless, what is more relevant for our discussion is that a non-instrumental justification for the protection of cultural groups is derived from the recognition that no comprehensive self-identifying collective of this kind possesses greater moral importance than any other. Essentially, this is why cultural assimilation represents a form of moral harm from the perspective of an outsider (non-dominant) cultural group. But importantly, it is also what constrains the decision-making bodies of these cultural groups in pursuing policies that would directly result in their disappearance (Mutu, 2010). An understanding of the moral well-being of cultural groups assumes that although the position of governance is permanent, the appointment is always temporary; hence, no set of individuals is entitled to dispose of those interests that are considered integral for the self-identifying cultural group. If the nation-state represents a moral collective on the basis of its capability to uphold the good of democratic governance, would that not require national governments to govern under juridico-institutional conditions that are indeed democratic in their character? Would it not be inconsistent with the good of democratic governance as a moral category to institutionalise governance over nation-states as if they are only traditional legal collectives? In many ways, it appears that this is the prevailing modus operandi in the context of international relations and commerce. This is the model by which the government of Nauru was able to confer contractual obligations onto the state of Nauru. The government could have committed the state of Nauru to provide phosphorus

to interested buyers until there was no usable land left on the island. In this sense, the government of the nation-state of Nauru is no different than the executive board of (for example) a private company.

The recognition that the welfare of moral collectives should not be identified with the actions of their internal decision-making structures represents the underlying rationale of the interest theory of rights, which has been endorsed in this thesis. Namely, to treat an entity as a right-holder presupposes not only the conviction that it should have rights, but also that said entity is able to fulfil the required conditions to be functionally considered as one. In Chapter IV, it was pointed out that the theoretical groundwork for collective rights can have normative implications for actual socio-political relations – namely that the conceptual status of collectives as rights-holders should not be perceived as morally unimportant (see Kymlicka, 1995, p. 45). Endorsing will theory would lead one to accept that only entities that exercise recognisable autonomous agency could be considered rights holders.[159] Individual human beings indeed exemplify such entities, but so do some collectives with accepted and clearly defined decision-making procedures (Preda, 2012). However, in spite of its ability to identify the (intrinsic) distinctive feature of right-holders, will theory was dismissed for being empirically inadequate and hence normatively problematic. In particular, it was dismissed for failing to account for non-autonomous agents as right-bearers, such as infants, people with severe intellectual impairments, animals, and some collectives that represent an indispensable moral value for human beings (see Wenar, 2005). Cultural groups are the type of collectives that are often not distinguished by well-defined decision-making mechanisms, and whose existence is not made dependant on the agency of their decision-making bodies (in case they have one at all).

Thus, will theory unfavourably leads to a situation where those collectives we want to protect for their own sake are not safeguarded, while it also in principle permits legal collectives to be treated as moral agents, resulting in a series of problematic and bizarre consequences.[160] Will theory would allow the government of Nauru to pursue policies that are adverse to democratic principles of governance; to confer contractual obligations onto the nation-state of Nauru irrespective of the institutional conditions under which these decisions have been made; and to waive the duty associated with the protection of the good of democratic governance. On the other hand, interest theory is able to avoid this problem because it does not stipulate the "agency condition" (Waldron, 2002, p. 203) and it focuses on the possession of morally

[159] Because to have a right means to have an option or power of waiver over the enforcement of a duty (Hart, 1982, pp. 163-193, 1955; Wellman, 1995, pp. 105-177; Steiner, 1994).

[160] It is not difficult to imagine how corporations with clearly defined decision-making structures could then request the right to existence, such that it is not possible to dispose of their assets in the case of bankruptcy. Or how they could demand the right to free speech – that is, to openly support political candidates. See Hindriks (2014).

important interests: interests that warrant especially powerful protection. Interest theory does not postulate what kind of entities should be entitled with rights since it starts from a premise that rights serve the purpose of promoting the well-being of the right-holder. If there is an entity whose interest represents a sufficient reason for imposing duties onto others, then the entity should be treated as a right-holder (Raz, 1988, p. 166). The nation-state is an entity that upholds the good of democratic governance, which is why it provides morally important goods that comprise the object of individual and collective rights. As such, it should be treated as a moral collective in and of itself, and its interests should not be identified with the decisions of their decision-making bodies i.e. governments.

It can be argued that international law principally assumes that entities of moral importance hold rights against their governments. Universal human rights are the most notable example; they are taken to represent a "common standard" that affirms the moral worth and dignity of all human persons. Human beings have some interests of utmost moral importance such that they cannot be subordinated to the principle of political autonomy and state sovereignty (Cranston, 1973; Griffin, 2008; Nickel, 2007). Thus, human rights theory and legal instruments operate on a premise that it is necessary to prevent infringement on inherent freedom, and on the equality and dignity of individuals in case their (or foreign) governments attempt to do so. Governments of all states, regardless whether they are democratically elected or not, are under obligation to treat individuals under their jurisdiction according to the criteria set forth in the International Bill of Human Rights. Moreover, even if it is assumed for argument's sake that a democratic system of governance best corresponds to the demands of human rights, it holds that as a matter of fact every government can violate the rights of their citizens. In light of this, the ability of governments to protect rights and their possible involvement in rights violation is duly monitored by the global community.[161] International law also implicitly recognises that individuals are not the only entities of moral importance, and that collectives understood as such can hold rights against their decision-making bodies. All peoples and all nations hold the right to permanent sovereignty over their natural wealth and resources, and *no government is free to deprive the nation of its own means of subsistence* (UN GA, 1962, Part 1, Para 1; 1966, Art. 1). This being the case, it is not controversial to claim that neither the interests of individual citizens nor the interests of nations are identified with the actions of the governments of their respective states.

But the acknowledgement that nations are entities of moral importance that can hold rights against the governments of their states is not fully observed in international commercial law. From this perspective, states continue to be treated as the only relevant legal subjects upon

[161] Especially the UN and a number of influential human rights NGOs, such as Amnesty International, Human Rights Watch, Global Rights, the International Committee of the Red Cross, and others.

which rights and duties are conferred as a result of various arrangements of economic nature. This is presumably so because nations properly speaking do not have governments, legal order, territory, citizens, and the capacity to enter into relations with other global actors. Only states are characterised by these attributes, and ultimately this is why they are able to partake in the socio-institutional practises exemplified by contemporary trade exchanges and agreements. In that sense, nation-state or not, every state remains a state as a morally neutral legal collective with a government that operates more or less as a managerial executive board. Governmental jurisdiction has limitations with respect to dealings with its citizens and its nation, but not with respect to dealing with the state understood as a collective whose existence is purely instrumental and thus replaceable. However, once it is recognised that nations without their states cannot even in principle provide the morally important goods that comprise the object of individual and collective rights, it becomes clearer that treating nation-states as states only has dire consequences. In these circumstances, governments as decision-making bodies are able to govern, enter deals and confer duties upon nation-states as legal entities under institutional conditions that are arguably contrary to the good of democratic governance.

To a certain extent, this problem has not gone completely unnoticed in the normative theory of international relations, although it is discussed primarily with respect to non-democratically elected governments as the (il)legitimate representatives of states. Thomas Pogge (2008, pp. 118-123) in particular has argued that the global economic order is characterised by two aspects, which directly contribute to global poverty and socio-economic inequality.[162] According to him, the existence of "international borrowing privilege" and "international resource privilege" systematically tend to produce political instability and economic underdevelopment of currently impoverished states. International borrowing privilege stands for the ability of governments to borrow funds in the name of the states they represent, irrespective of how those that exercise political authority came into power. This global practice is considered problematic because it involves, on one side, individuals who used methods of warfare to acquire governmental power, and on the other, affluent nation-states and IOs that provide loans to states with *non-democratically* elected governments. The obvious issue with financial assistance of this kind is that its allocated funds are often used for the maintenance of a (sometimes openly oppressive) non-democratic regime. Moreover, this institutional practise further motivates other individuals to attain power by all means necessary knowing that they could borrow and confer payment obligations onto their states. Since under the institution of international borrowing, privilege loans are not credited to governmental

[162] Also see more recent work by Wenar (2013, 2016).

officials but to the state as a legal person in its own right,[163] all too often non-democratically elected governments produce large-scale debts that are ultimately serviced by their citizens.[164]

In a similar fashion, international resource privilege is a government's ability to freely make lease agreements or issue licences for the exploitation of natural resources within its territorial jurisdiction. Because such legal transfers of rights are not dependent on firstly establishing whether governments are democratically elected or not, this institutional practise suffers from the same problematic as the international borrowing privilege in that it promotes coup attempts and civil wars in resource-rich countries. Because peoples and nations hold permanent sovereignty over their natural wealth and resources, under international law, no government is entitled to make legal transfer of the aforementioned ownership rights. This, however, does not prevent governments to make contractual arrangements by which they can grant rights for their exploitation. Since most (if not all) that makes up natural wealth and resources falls under the category of subtractable common-pool resources, the right to harvest them and thus capitalise can be said to effectively result in ownership. Common-pool resources do not have an unlimited supply; their overuse leads to scarcity and ultimately to their disappearance. Once non-democratically elected governments issue the lease rights over them and the compensation so obtained is used for private rather than public purposes, and once these resources are exhausted without pause for their timely replenishment, together with the natural wealth and resources does the meaningful permanent sovereignty over them disappears.[165]

As already indicated, there is nothing controversial (from the point of view of international law) in treating states as collectives with duties and rights (and indeed it appears

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[163] The breaking point in the history of banking and the first creation of public debt took place in 1694 when a group of London and Edinburgh merchants/goldsmiths issued £1.2 million loan to the Crown and not King William III who was the king at the time. For more about the history of money and banking, see Ingham (2004).

[164] For example, in 1970, the total debt of the African continent was about $11 billion; however, by 2002, the total debt reached $295 billion. In the last 30 years, on $540 billion worth of loans, African countries have paid $550 billion in both principal and interest, and yet there is still a $523 billion dollar debt burden. Withstanding that over one half of the African population (over 350 million people) lives on less than a dollar a day, these figures are truly alarming (UNCTAD, 2004).

[165] It should be noted that lease agreements of this sort have also been a matter of controversy from another standpoint. International law guarantees permanent sovereignty over natural wealth and resources, while it also allows non-publicly controlled agents managerial rights over them (both domestic and foreign). The argument can thus be made that the latter practise is in direct conflict with the principle of common national ownership, and effectively principles of democratic governance. This issue can be further complicated by the fact that the exploitation of natural resources generally falls under the category of natural monopolies i.e. those industries where the most efficient (less costly) way of production or service provision requires one single economic entity (Baumol, 1977). As such, lease licences can lead to the considerable economic empowerment of their users that consequently translates into (illegitimate) political influence. This problem, however, is not limited to states with non-democratically elected governments and it represents a more general problem associated with the liberal-capitalist paradigm.

to be unavoidable). This practise, however, is built upon the idea that governments represent states regardless of whether they are institutionally representative or not. As James Crawford notes: "This basic rule drastically affects the point that the State qua community of persons has rights in international law, especially where the view or position taken by the government of a State diverges from the interests or wishes of the people of the State that government represents. And it is, so far at least, axiomatic that international law does not guarantee representative, still less democratic, governments" (1988, p. 55). It is truly difficult to show how what Pogge has referred to as the international borrowing privilege and the international resource privilege is consistent with peoples' rights to freely pursue their economic, social and cultural development. Natural wealth and resources belong to the people under the assumption that these collectives are legally recognised either as nations or cultural groups. The creation of public debt or the lease of collectively owned common-pool resources in states where there is no recognised public or other relevant moral collective as a political category seems outright contradictory.

Among other things, it is plausible that practises such as these principally motivated the creation of the African Charter on Human and Peoples' Rights (also known as the Banjul Charter).[166] Unlike other treaties contained in the International Bill of Human Rights,[167] the Banjul Charter is considered to have a distinctive collective dimension. In agreement with other human rights legal instruments, it asserts that all peoples shall freely dispose of their wealth and resources, and that this right shall be exercised in the *exclusive interest* of the people (Art. 21) [italics mine]. However, the charter adds the following articles otherwise absent in international law – namely, that in case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to adequate compensation (Art. 1); that States parties to the present charter shall undertake to eliminate *all forms of foreign economic exploitation particularly that practiced by international monopolies* so as to enable their peoples to fully benefit from the advantages derived from their national resources (Art. 21) [italics mine]; that all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common

[166] The Charter was produced and approved by the committee that was set up by the Organisation of African Unity (now the African Union), and it officially came into effect in 1986.

[167] International human rights instruments are sometimes separated into three generations: the first being civil and political rights (UN GA, 1966a), the second referring to socio-cultural and economic rights (UN GA, 1966b), and the third-generation encompassing rights that are characterised by the claims of collective rights (such as the Banjul Charter). The categorisation of the development of human rights into three generations was originally advanced by the Czech jurist and former UNESCO legal advisor Karel Vasak (1977). He associates the first generation with the legacy of American and French revolutions, the second generation with the Russian revolution and Western welfare states, and the third generation with the phenomenon of global interdependence. See also Lerner (2003).

heritage of mankind (Art. 22); and that States shall have the duty, individually or collectively, to ensure the exercise of the right to development (Art. 22).

The Banjul Charter is regarded as an attempt to express the idea that *peoples* can hold rights against their governments (Crawford, 1988, p. 64). This original claim in the charter, however, was not welcomed by the international community or by the academic public (Brownlie, 1988, pp. 11-16). At the outset, one problem associated with the idea that peoples can hold rights against their governments is derived from the difficulty in assessing the effects of collective rights beyond the framework of the state. In order for peoples to have rights against their governments, it appears necessary to move "outside the physical boundaries of the State, and to jettison the restrictive view that States are the only actors with the legitimate authority to create normative order" (Triggs, 1988, p. 143). Nevertheless, this requirement does not seem drastically different from the idea and the legal instruments of human rights understood as moral interests that should be prioritised against the principle of state sovereignty. The question would then be how to institutionalise the claims of peoples against their governments in the context of international relations. This matter also points to possibly the greatest difficulty with the Charter and its principal shortcoming – the lack of terminological clarification of its key novel term i.e. *peoples*. In particular, the lack of certainty whether the term is meant to apply to states as representatives of their peoples or peoples taken separately from their states. Because it is more likely that the Charter was motivated by the latter interpretation, it was objected that such a reading would render the charter inconsistent with the standing principles of international law (Brownlie, 1988, p. 12).[168] This is also related to the fact that for international relations to have some elementary reliability, the states must act through their government, and as James Crawford (1988) notes, "if a State's acts are ever to be definitive so too must the government's be" (p. 64).

These concerns related to the Charter are surely well founded and as such they also pose a challenge to the idea of the collective rights of nation-states i.e. the treatment of nation-states as moral entities whose interests are not reducible to the decisions of their governing bodies. It is thus worth noting that, unlike peoples, nation-states are clearly defined political and socio-institutional collectives. In that sense, it does not seem their ontological status or legal identification for normative purposes would represent an obstacle for either moral or legal discourse. With that in mind, it is likely that nation-states represent a more elegant candidate for many of the ideas the Banjul Charter arguably wanted to express. Moreover, the idea of nation-states as moral collectives does not postulate that governments do not represent their

[168] There was also some dissatisfaction related to the possibility of non-representative governments using such a legal document to pursue and justify economic and social policies at the expense of individual (human) rights. This view was particularly expressed by the representatives of the USA (Triggs, 1988, p. 142).

states in international relations. Nation-states are still *states* – they are still legal collectives and international subjects of rights and duties. The idea is rather trying to convey the status of nation-states *also as moral collectives* – namely, that the good of democratic governance should be used as a reference point when evaluating the institutional conditions under which governments confer contractual obligations onto their nation-states.

There is also, however, another important and rather evident distinction between nation-states and the cases described by Pogge; namely, nation-states have democratically elected governments and are not run by warlords. Nation-states in principle represent facilitators of the protection of individual and collective rights due to the nature of these collectives. Nauru has a democratically elected government. All the same, we should not forget that its territory is being turned into a wasteland through the cooperation of its government and phosphate buyers. Hence, upon closer examination, both Nauru and non-democratic states are sufficiently operationally similar with respect to how their governments are able to enter negotiations and make legal commitments in the name of their respective collectives. The relevant difference is that an institutional arrangement of a nation-state can be legitimately contended in case it is inconsistent with the good of democratic governance. The same cannot be said for states where the *political* distribution of power is not built upon the principle of individual equality. Ultimately, it appears that treating nation-states qua moral collectives leads to a certain moral undervaluation of states compared to other forms of governance. This indeed might be a limitation of the theory of collective rights of nation-states. Nevertheless, it is worth noting that this problem largely remains a theoretical one. There are hardly any states whose governments do not present themselves in an image of a representative national government. In this respect, it is plausible that the theory of collective rights of nation-states can effectively be applied to all states, regardless whether they have actual or makeshift democratic institutions in place.

3. The Good of Democratic Governance and Public Debate

If the good of the nation-state is contained in upholding of a democratic system of governance, then governance over a nation-state should be institutionally set up to be in accordance with this acknowledgement. Certainly, the question that remains to be examined in more detail concerns those specific governing arrangements that are arguably undemocratic in a fundamental institutional sense. In the context of this thesis, it appears that a number of institutional practises which involve mutual negotiations between governments (democratic and non-democratic alike) and other legal collectives[169] fall outside the reach of public consideration and scrutiny. This is particularly observable in cases where nation-states act in the capacity of economic agents and their governments act as the representative decision-

[169] These can be IOs, MNCs or domestic companies.

making bodies. Some of the typical examples include outsourcing government managerial functions to other legal entities (e.g. private corporations), often in spheres of economy characterised by natural monopolies[170]; agreeing to international financial arrangements by which governments confer debts to their nation-states; and signing trade contracts and joining long-term binding trade regimes (e.g. bilateral or multilateral trade agreements) that subsequently require altering domestic legislation.

What are the institutional conditions that characterise the commitment of nation-states to these obligations and why are they problematic? Whatever empirically causes one group to self-identify as a nation, it can be said that the exercise of the right to national self-determination conceptually entails subjection to laws that are enacted through a democratic process (Habermas, 2015, p. 34). The method of democratic rule exemplified through the workings of public legislative institutions (e.g. parliament) is *that* which gives legitimacy to a political power. In that sense, when governments act in their legislative capacity, their actions are always conditional on the transparency that is analytically contained in democratic governance as such. Parliament is a place where the social disagreement over the plurality of comprehensive moral and philosophical doctrines begets its political form – there is no secret debate or deliberation, and no secret laws that pertain to regulating social co-existence.[171] As long as the judicial and executive branches of government rely on legislation that has been publicly assessed and enacted, their workings are not principally treated as clandestine. It is only in exceptional circumstances that governmental secrecy is deemed justified. In this regard, it is useful to draw a distinction made by Amy Benjamin (2017a, pp. 4-6) between direct and indirect secrecy. Direct secrecy is certainly the most familiar form of it, and it generally involves matters that relate to the security of a nation-state. Governments classify some information as secret on the basis that sharing it publicly would jeopardise the safety and the overall well-being of the citizenry. Restricting information to the public can be well-grounded inasmuch as doing the opposite would allow potential evildoers to profit from it.[172]

By contrast, the less acknowledged type of secrecy is often not actually labelled as such; thus, indirect secrecy is usually referred to as "lack of transparency". Indirect secrecy comes about when governments refuse to extend the mechanism of transparency to activities that are

[170] Such as a health care system, road-building and public transportation, public utilities (water and energy) and natural resources, informational services (broadcasting and mail), etc.

[171] Indeed, it is difficult to see the need for creating laws whose content is kept secret to the public if those laws are meant to regulate the norms and practises of the same public (Fuller, 1964, pp. 91-91).

[172] For example, restricting information to the public often involves classifying some documents as secret or having briefings behind closed doors. One of the most common problems associated with direct secrecy is that such a practise relies on the assumption that the government can strike a balance between what information should and should not be disclosed to the public. Consequently, governments will tend to overplay this entitlement, which leads to a progressive growth of governmental secrecy. Nevertheless, even with its obvious downsides, it does not seem there is a substitute for direct secrecy (Benjamin, 2017a).

otherwise subject to public assessment. When nation-states act in the capacity of economic agents (especially in the context of global international), governments are able to settle to contractual terms and conditions without previously disclosing them to the public for their assessment. This is not the case when governments deliberate about economic laws and regulations that are evaluated extensively via the legislative institutions. Legislative proposals receive full consideration, which includes their examination by the selected committees, a series of proposed amendments, debate about contested issues and finally their acceptance/refusal by majority vote (Benjamin, 2017b, p. 50).

Thus, unlike in the event of direct secrecy, indirect secrecy related to matters of an economic nature cannot be justified under the assumption that sharing information about certain contractual terms and conditions would defeat the purpose of economic laws and regulation. It can hardly be said that the nature of economic regulation requires secrecy, and that doing otherwise would compromise the economic prosperity of one nation-state. Direct secrecy is tolerated because the goal of the enterprise (e.g. national security) is often unavoidably tied to the method used for its fulfilment (e.g. secretive). Can the same be said about matters of economic nature that involve negotiations between governments and other collective entities? Matters that involve conferring long-term obligations on nation-states that do not receive the full benefit of their public assessment prior to their enactment?[173] Is it economically "counter-productive" (like in the case of national security) for governments to withhold information from the public when they are deciding in their name? Or is this practise simply inconsistent with the good of democratic governance and its institutions and does it lead to a weakening of the nation-state as a facilitator of morally relevant individual and collective goods?

As opposed to direct secrecy, indirect secrecy cannot be justified instrumentally and as such it stands opposed to the good of democratic governance, which is the object of the collective rights of nation-states. However, the problem in this form of secrecy does not come about in the paradigm where nation-states are perceived as only legal entities and not as moral collective entities. Quite expectedly, there is strictly speaking no legal requirement for the executive organs of legal entities to share information on the basis of which they make their decisions. The facilitation of decision-making procedures by default demands a closed-door

[173] The author is familiar with a number of such contracts that the government of his home nation-state Serbia has signed in the past decade, for instance. The most notable are the privatisation of its national airline company with Etihad Airlines and the sale of formerly state-owned car factory Zastava Kragujevac to the Italian automobile manufacturer Fiat. The latter case has undeniably been a subject of controversy due to accusations that the contract committed the Serbian government to subsidise Fiat Serbia, to exempt it from paying income tax for 10 years, to permanently exempt it from paying social security and pension tax for its employees, and other. However, these accusations have never been confirmed since the government of Serbia *is not allowed* to disclose its contract with Fiat for public verification.

policy; hence, there is no question of (*political public*) legitimacy when the executive commits the private *economic* agent to contractually binding obligations. The same practise occurs when nation-states are treated as legal collectives only in what Pogge has named the international borrowing privilege and the international resource privilege. It is likely that the same practise occurred when the government of Nauru accepted contractual obligations to the buyers of phosphorus. There was no institutional framework in place that could facilitate the public disclosure of what the government was accepting on behalf of the nation-state of Nauru. No concerns could have been raised by the public about the possible environmental degradation that would undeniably come about as a consequence of Nauru fulfilling its legal obligations to its partners.

Thus, the idea of rights of nation-states qua moral and not only legal collectives is able to conceptually situate a number of practises such as these and normatively assess their legitimacy. The peculiarity of a nation-state under the current institutional arrangements is that its government can accept legal obligations towards third parties without previously disclosing the contractual conditions to the public. Perhaps this is even more problematic if one considers that legal commitments of this sort more often than not exceed the legislative mandates of periodically elected governments. More exact institutional responses that could facilitate genuine democratic method of governance over nation-states in this context certainly require a separate examination (and indeed fundamentally a different one). This can potentially be done by extending the jurisdictional capacities of already existing parliaments or it might require the creation of a separate set of institutions for this purpose. But it is worth noting that in a certain sense, the democratisation of societies and the introduction of democratic governance over people has not been equally followed by the democratisation of governance over nation-states. Although governments govern over people, they manage over their states.

That being said, the primary goal of this chapter was to put forth an argument that nation-states should be treated as moral collectives. In particular, it offered a novel interpretation on how the destruction of one country's living habitat through the actions of its democratically elected government could have been prevented. This is not to say that the government of Nauru would not in fact have popular support for its decisions had the conditions under which these decisions were made been any different. But it would be in greater accordance with the good of democratic governance if there was the benefit of public assessment whenever governments confer contractual obligations to their nation-states as legal collectives. At the very least, insisting on making public benefit explicit may have the effect of invoking Sen's (2009) notion of an "impartial spectator" and, in doing so, putting a stop to the occasional impulse of governments to act opaquely and without properly considering the interests of the democratic moral collective on which they ultimately depend.

CHAPTER VII: NATION-STATES AND GLOBAL INEQUALITY

> For a person's effective share depends on what he can do with what he has, and that depends not only on how much he has but on what others have and on how what others have is distributed. If it is distributed equally among them he will often be better placed than if some have especially large shares (Cohen, 1995, pp. 26-27).

> Economic systems, both national and global, are characterized not only by a (generally wholesome) competition understanding rules of the game, but also by a fierce struggle over the design of these rules themselves (Pogge, 2007, p. 139).

In the previous chapter, it was pointed out that treating nation-states as moral and not only legal entities calls us to re-examine the juridico-institutional conditions under which governments as decision-making bodies are able to confer obligations onto their nation-states. In the remaining of the thesis, I will examine how the recognition of nation-states as moral entities contributes to the global justice debate that was examined in Chapters II and III. In particular, it focuses on how the theory of collective rights of nation-states as moral collectives can address the problem of global inequality and poverty in a novel way. Recognising the moral standing of any entity has important normative consequences in that it justifies why some entities need more than others to fulfil their legitimate interests. The global justice debate generally focuses on the equal moral status of all individuals and the great disparity in living conditions across the world. Proposals to remodel global governing institutions primarily aim to advance the well-being of individuals (citizens) and not their nation-states understood as moral entities. For this reason, they often try to replicate the principles of distributive justice from a domestic to a global level with varying degrees of success. However, the theory of collective rights of cultural groups 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. If some of these mechanisms are extended to international relations, it should be possible to address the problem of global inequality without committing affluent nation-states to materially assisting those who are worse-off. It should be possible to address the fact that Nauru is significantly socio-economically underdeveloped compared to many other countries in the world today.

1. Nation-states and global trade

Throughout Chapter V, I presented an argument explaining why individual well-being is at times intrinsically connected to collective well-being – more specifically, how the meaningfulness of individual choices is derived from cultural embeddedness and how the

liberty to pursue one's goals requires membership in self-identifying cultural groups. It was therefore concluded that cultural groups should be protected by assigning them with a set of rights. This conclusion was made under the assumption that the dominant culture is generally able to take care of itself but that smaller (democratically vulnerable) cultural groups require additional socio-political resources. It was argued that is necessary to accept that a just relationship between collectives cannot be one where formal equality is deemed sufficient to achieve substantive equality of opportunity, and that a policy of preferential treatment is sometimes indispensable to restore balance to underprivileged individuals and/or collectives. In the framework of international relations, we can see this clearly when we look at those interactions where nation-states have formal equal legal standing but disproportionate negotiating power. International trade is such example – it is a form of cooperation (unlike military conflict)[174] that can bring about foreseeable negative consequences to participating nation-states due to their socio-economic disparity. For clarity in the argument, when speaking about the crucial inequalities that present an obstacle for an international venture of mutual advantage, I will be referring to their respective differences in wealth.[175]

Against this background, the idea of collective rights of nation-states is concerned with protection from those trade regulations that predictably produce negative effects in nation-states with lower levels of wealth. As a theoretical platform, it can be used to express and justify why some nation-states require preferential treatment 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 Nauru and Australia equal when they engage in any democratic 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 nation-states are sufficiently and/or similarly placed to reap benefits from the current global 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 nation-states as collectives of moral importance is appropriately captured in the system of formal equality of states as subjects of international law. If nation-states are moral collectives with drastically disproportional institutional and socio-economic capabilities, and if it is highly

[174] It is perhaps worth noting that I have not included asymmetrical military capacities in this brief analysis because I take that this form of interaction is not comparable to the deep-seated disproportion in the actual capability of cultural groups to assert their interests in a democratic system of governance.
[175] The issue related to whether the term *development* carries a connotation of superiority/inferiority to some nation-states compared to others will not be addressed here. I will also not delve into the discussion of whether our contemporary understanding excessively associates economic development with individual and collective well-being.

problematic to set up the political conditions needed for the legitimisation of the global redistribution of resources and wealth, then it is worth entertaining the idea that genuine international cooperation has to consider allocating preferential collective rights to nation-states.

Although traces of economic exchange between political communities appear very early in archaeological records[176], the centralisation of trade on a global level is a relative novelty in the history of the world. The pursuit of economic superiority has been the objective of every political entity all throughout history. Economic welfare would strengthen the ruler's internal and external sovereignty (Hinsley, 1966, p. 26); internally it would provide social stability and a means to supress competitors, and externally it would increase military capacities to expand the realm or defend it from foreign threats. Thus, from antiquity until the demise of the great empires, the practise of international trade was largely dominated by mercantilist[177] policies by which those who govern sought to maximise their power at the expense of other competing parties. In modern history, these policies in international trade saw their climax during the European colonisation of both the Eastern and Western hemisphere (around the same time the first large international trading companies were founded e.g. British East India Company and Dutch East India Company). After 1945, global trade began the process of liberalisation that assumed a more comprehensive form with the end of communist regimes and the establishment of the WTO. The mechanism of the free market also allowed international companies (now MNCs) to develop further, and in 2015 it was estimated that 69 of the top 100 economic entities were in fact corporations and not nation-states.[178]

1.1 WTO: Positives

In the aftermath of World War II, the necessity for the collective global governing role of nation-states was acknowledged. The democratisation of international relations led to the legitimatising of global non-state political actors, primarily the UN and its affiliated agencies. The IMF and the WB were created as the two major international financial institutions, but an attempt to create an equivalent organisation that would regulate global trade did not meet the

[176] In particular, along the river valleys of the Tigris-Euphrates, Nile, and Indus. For an overview of pre-modern trade, see R. Smith (2009).

[177] Of course, mercantilism in its authentic sense did not exist until 16th century. As a body of thought and official economic policy, it was endorsed by the European imperial powers from the late Renaissance to the 18th century. According to this economic model, a favourable balance of trade in international relations is one "in which the value of domestic goods exported exceeds the value of foreign goods imported. Trade with a given country or region was judged profitable by the extent to which the value of exports exceeded the value of imports, thereby resulting in a **balance of trade surplus** and adding precious metals and treasure to the country's stock" (Douglas, 2001).

[178] These calculations were done by an NGO Global Justice Now (2016) and they were based on the *CIA World Factbook 2015* and *Fortune Global 500*. According to these, the world top 10 corporations have a higher combined revenue than the combined governments' revenue of the 180 poorest countries.

same success. Thus, the WTO as the acting global trade governing body has been established relatively recently. Its predecessor was the General Agreement on Tariffs and Trade (GATT), originally signed in 1947 during (failed) negotiations regarding the enactment of the International Trade Organization. GATT (with its many amendments[179]) effectively served as an international trade organisation until 1995 when it was subsumed into newly-established WTO. As one of the most influential intergovernmental organisations today, the WTO describes itself as a system of trade rules i.e. as a forum for governments to negotiate trade agreements and a place for them to settle their disputes. Membership in the WTO obligates countries to abide by its regulations and procedures, while also giving them an opportunity to file official charges against members who, by their allegation, fail to conform to the WTO laws. There are currently 164 Member states who as of 2007 accounted for almost 97% of the global trade (WTO, 2018a; 2018b). Australia has been a member since the official commencement of the organisation in 1995 while Nauru is neither a member nor an observer at the present time.

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). Multilateralism in the practise of international relations and commerce aims to achieve the most beneficial policies through the collective coordination of all countries. It has both political and economic advantages over its alternatives (namely, unilateralism and bilateralism) because it essentially promotes cooperation between many agents. In a political sense, this serves the purpose of pacifying and/or equalising relations between modern states understood as self-interested agents. It binds the more dominant and developed countries into an inter-dependent relationship, while it also allows other (medium or small) ones to assert their interest through collective negotiations. Economically, multilateralism is associated with free trade and the idea that more agents involved in global trade will be useful to everyone. Every nation-state and every company will be good at something; everyone has a commodity to offer and it is only through competition that they will improve their products and services.[180] The Republic of Nauru Phosphate Corporation can offer phosphorus for the fertilisation of Australian soil and Australia and its companies can offer Nauru almost everything they require (including food and water). Understood as such, multilateralism is meant to address both power relations and economic prosperity. It is anti-unilateral, which means it aims to contribute to international stability and professional specialisation through trade; it is anti-bilateral because it is able to

[179] Most notable after the Tokyo Round (1973-79) and Uruguay Round (1986-94).

[180] 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.

avert two influential powers from negotiating favourable terms of (political or economic) cooperation at the expense of smaller countries.

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. Finally, the encouragement of development and reform combines the claim that the liberalisation of the market contributes to development while also recognising that some countries need flexibility in time for the full implementation of agreements.

The WTO operates as a facilitator of the global market and it also strengthens the integration of global trade. Together with the IMF and the WB, it almost religiously 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. Other than prohibiting foreign products and services outright, protectionist policies involve regulations designed either to increase the price of foreign goods in the domestic market or to decrease costs for domestic producers. Some of the most common mechanisms include tariffs, quotas, regulatory barriers, domestic and export subsidies, and exchange controls.[181]

[181] 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).

As a form of economic policy, protectionism can have both positive and negative effects. It is advantageous in cases where countries are purposely trying to strengthen one of their underdeveloped industries. Imposing import limitations allows domestic companies to catch up to their foreign rivals, assuming there is a significant competitive advantage between the two.[182] 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 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. Ultimately, market shrinking produces less investment in the improvement of products and services, and the loss of a competitive advantage of national over foreign companies. To put it simply, this is in fact the opposite of what protectionist policies aim to achieve i.e. promotion of domestic industries with the aim of making domestic companies equal contenders in the global trade market. Lastly, it is worth noting that the closing of economic relations with the outside world is often associated with the closing of political and socio-cultural relations in that context. For this reason, contemporary protectionist policies are also considered anti-democratic[183] and anti-cosmopolitan. They are not deemed to exemplify the principles of ethical universalism and they are even pejoratively identified as a form of economic nationalism.

1.2 WTO: Negatives

The WTO multilateral approach can be associated with the principles of democratic governance because it allows every nation-state to participate in trade negotiations, while it also assigns equal rights to all involved parties.[184] This appreciation is of utmost importance because it is precisely the "democratic" character of the WTO that has been accused of creating unfair conditions where everyone's interests are not equally safeguarded. On the one side, citizens of the more affluent nation-states (i.e. expansive domestic workers) have raised concerns with regard to regulations that allow the outsourcing of cheap labour. On the other hand, citizens of nation-states with lower economic standards of living have accused the WTO

[182] Also, in the case of developed countries, i.e. the problem of outsourcing cheap labour, protectionism has benefits in that it temporarily creates jobs for the domestic population.
[183] It is interesting to note that the nation-states with the longest liberal tradition also currently have the highest number of protectionist policies.
[184] 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).

system of allowing economically superior global agents (nation-states and MNCs) to legally impose their economic interest at the expense of the weaker ones. Both injured parties argue that the alleged system of equality of nation-states contributes to the condition of unfairness, not necessarily in its intention, but undeniably in its effect. While these criticisms are not unrelated to one another, keeping in mind the topic of this research, only the second one will be dealt with more attention: are nation-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 a considerable number of economic indicators that the liberalisation of global trade has not benefitted all parties equally. Already in 1997, the United Nations Conference on Trade and Development[185] (UNCTAD) 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 nation-state and every company can be good at something, there is a qualitative difference with respect to what they are good at. Namely, the great socio-economic disparity that exists between nation-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.

But despite the fact that the WTO systematically opposes protectionism, in reality, every nation-state (or a unified market) endorses a great number of protectionist policies. Interestingly, the greatest number of restrictive trade measures are employed by the most socio-economically developed states (Gowling WLG, 2017). This telling state of affairs has cast doubt on the effectiveness of multilateral free trade, but also on the sincerity of affluent nation-states in their disapproval of protectionist policies for those with lower levels of economic development. As it stands, Nauru is good at stripping layers of land and extracting phosphorus from phosphate rocks. It is also good at providing space that Australia can use to transfer their asylum seekers far away from the eyes of the public, and in the recent past it was also able to provide questionable offshore banking services. Should Nauru strategically develop some other

[185] UNCTAD is a permanent intergovernmental body established by the UN GA in 1964. It is part of the United Nations Secretariat and it the main UN body dealing with trade, investment and development issues (UNCTAD, 2018).

industries that will more directly contribute to the well-being of its people? More importantly, should it be allowed to do so through protectionist policies and without economic retaliation from its trading partners? Is there any other way to stop the devastation of its environment and its full dependence on imported goods?

Lastly, it is worth mentioning that the significant socio-economic disparity between countries produces another troublesome phenomenon in the context of international relations and commerce. Namely, through their strong social and financial institutions, economically developed states have managed to support the rise of MNCs whose yearly revenues (and sometimes even profits) presently exceed the GDPs of many nation-states. In agreement with the general goal of promoting economic multilateralism, the free market WTO policies in principle do not allow for the preferential treatment of domestic over foreign companies. Such regulations consequently make it possible for large MNCs to enjoy invulnerable commercial superiority in nation-states characterised by economic underdevelopment. In these cases, it is not unusual to see how MNCs have been able to easily outrival domestic companies and take over entire markets, to prevent the formation of smaller and medium size domestic companies,[186] and to retard a nation-state's production and make it excessively dependant on import of goods (just like it happened to Nauru).[187] Somewhat ironically, it is precisely large MNCs that are often granted preferential economic treatment through reduced taxes and governmental subsidies.[188]

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How is the system of the formal equality of states as subjects of international law unfavourably manifested throughout global socio-economic institutions? Why would the nation-state of Nauru's autonomy and its ability to provide morally important goods that comprise the object of individual and collective rights be compromised through its trading activities with other global entities? 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 nation-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 many instances, politically unstable and economically weaker nation-states have a history of being militarily dominated, socially discriminated and economically plundered by most of today's wealthiest nation-states. Nevertheless, upon closer inspection, it does not seem necessary to establish whether there

[186] Of course, this problem is symptomatic for both economically stronger and weaker countries.
[187] Because the argument primarily focuses on the systematic advantage of MNCs compared to domestic companies, I have omitted the issue involving accusations that MNCs do not follow international labour standards when they operate in economically weaker states. See, for example, Fifka and Frangen-Zeitinger (2015).
[188] See Chapter VI, footnote 172.

truly has been a historical injustice in order to acknowledge that some nation-states are better placed than others. Nauru and Australia would still be asymmetrically placed in their negotiating power even if the small Micronesian island was never colonised and surface-mined for phosphate. In that sense, the fact that their distribution of power is so uneven is, following Rawls (1999a, p. 87), neither just or unjust. But what can be considered just and unjust is how global institutions will deal with these facts through, among other things, the regulation of international trade.

Given nation-states' disparate ability to pursue their socio-economic interests through international trade, one can see how the mechanism of a global free market can effectively uphold what it is supposed to eliminate – global inequality and economic underdevelopment. The Ricardian model of free trade and comparative advantage unconditionally 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 underdeveloped and non-industrialised nation-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). Trade liberalisation assumes that all the parties involved have more or less equal standing – that all nation-states have relatively equally developed socio-political institutions, social capital and the technological development needed for production and export. An abundance of empirical evidence has shown the fallacy of this assumption and the increase of global trade has exposed these critical differences between nation-states more and more.

David Miller (2007, p. 76) correctly notes that gross inequalities between nation-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 global 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; Chang, 2008; Stiglitz, 2002, 2006). In the past, such measures have indeed been used by a number of currently affluent nation-states in order to facilitate economic development and modernisation.[189] Thus, as a matter of both economic theory and proven successful practise, it is not controversial to uphold protectionist policies until one nation-state is ready to progressively liberalise its market. Keeping this in mind and

[189] 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).

drawing on the previous discussion of the relevant differences in the collective capabilities of interacting agents, more normative research should be put into considering whether some nation-states should be awarded preferential status in order to authentically utilise the benefits of globalisation.

So far, not much has been said about the moral justification for the preferential treatment of nation-states on the basis of their asymmetrical collective 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 capabilities and replaces it with the formal equality of nation-states as international subjects of law. For nation-states participating in global trade, policies of economic protectionism should not by definition be considered as socio-economically damaging and politically anti-democratic. When the socio-economic disparity between nation-states has foreseeable negative consequences, nation-states should be free to adopt economically protectionist policies, which will serve as a form of preferential treatment in order to achieve fair terms of international cooperation. By relying on a comparison between cultural groups in closed political societies and nation-states in international relations, these protectionist measures can be thought off as exemptions from the general rule – the rule of multilateralism whose universal application does not take into account that some nation-states are significantly economically underdeveloped than others.

2. Measuring the Inequality of Nation-states

To speak about comparative differences in the socio-economic capabilities of nation-states seems like opening Pandora's Box. Not only is the number of possible differences expectedly high but also some of these escape meaningful quantification and hence cross-analysis between case studies. The social and material variations between nation-states that translate into capabilities are manifold and can be analysed from various perspectives. It is undeniable that most people would agree that Australia (not as a moral but as a socio-economic collective) is superior to Nauru – Australia is simply wealthier than Nauru. But is it possible to present these intuitions in a form that can be used as an operating normative reference point in international relations? Admittedly, establishing the exact key factors that principally contribute to the wealth of one nation-state is not a straightforward task. Oftentimes three qualifications are factored in for such an estimation: 1) geographical size and location; 2) population size; and 3) development and stability of their political and socio-economic institutions. Accordingly, Nauru is one of the smallest nation-states in the world that is more or

less isolated in the Central Pacific Ocean; its population size of about 11,000 people also puts it at the bottom of the list of nation-states by total population; and from what is known about its current state, it is plausible to say that Nauru does not exhibit signs of development or stability of its political and socio-economic institutions. Is Nauru not an affluent nation-state because it does not rank well on any of these three categories?

On the one hand, it is appealing to reach this conclusion while on the other, many cases (nation-states) show that geographical size, location, and population constitute neither sufficient nor necessary conditions of their wealth. Among other reasons covered in Chapter III of this thesis, it is precisely this assurance that drives many political and moral philosophers against the idea of global distributive justice. For instance, this is why John Rawls (1999b, p. 108) argued against the global redistributive proposal made by cosmopolitan writers; he claimed that the principal causes of wealth do not inhere in e.g. natural resources but in *political culture and the social institutions of one state*. Since there is no legitimate political control over other states and their management of socio-economic affairs, it is not possible to improve the economic circumstances of one state by the mere global distribution of economic benefits and burdens. In other words, it is not possible to materially compensate for the lack of political and socio-economic credibility and the case of Nauru in a certain sense confirms this conviction. Namely, after its independence in 1968 and instantaneous rise of financial foreign flows from (now nationally run) phosphate trading, during the 1970s and 1980s Nauru had one of the highest GDP per capita in the world. Its government was able to put aside US$1 billion in the Nauru Phosphate Royalties Development Trust, which was established for the rehabilitation of the island's soil and further economic development. Unfortunately, due to the government's poor management of their national and overseas investments, most of the money from the fund was used to cover expenditures thereby created.[190] Nauru was rich for a short time, but it was not strictly speaking a wealthy nation-state, and now it is neither of the two.

Notwithstanding that the key factors of wealth should be primarily associated with the development and stability of political and socio-economic institutions, it is important to keep in mind that the question of what makes one society wealthy is qualitatively different from establishing indicators that a society is, as a matter of fact, wealthy. Today there are a number of methods and statistical tools that allow us to present a whole list of social and natural global phenomena and their comparative analysis. They are used to show the respective differences in economic outputs, levels of education, access to healthcare and frequency of diseases, living conditions, distribution of income, etc. Although there are issues related to the interpretation of these data, there is also a constant effort by economists (and others) to devise them in order to improve their precision and validity. Ultimately, these methods are employed for operating

[190] See Introduction: Nauru, footnote 10.

purposes by governments, major international institutions, and large MNCs. I will present some of them in order to empirically substantiate the claim that socio-economic status and the capabilities of nation-states are remarkably unbalanced. The choice of these measuring methods is not meant to be in any sense comprehensive; they are meant to be used (at least) as starting guidelines for a demonstration that the formal equality of nation-states fails to achieve the goal of fairness in contemporary international relations.

We begin this examination by focusing on some considerable disparities in wealth distribution across the globe. Global inequality has continued to rise in the past 200 years, reaching its highest point by the end of the 20th century (Milanović, 2016, pp. 119-122).[191] The tools used to measure and report global wealth inequality have also further developed in the last two decades, with an increase in critical analysis literature across many disciplines. There are some very alarming figures: from 2015 onwards, the richest 1% of the population possess more wealth than the rest of the world population combined; eight men own the same amount of wealth as the poorest half of the world; over the next 20 years, just 500 people will leave an inheritance of over $2.1 trillion (this is equal to the GDP of India, a country of 1.3 billion people); and between 1988 and 2011, the poorest 10% of the world population saw an increase of less than $3 a year in their income, while the richest 1% saw an increase 182 times higher (OXFAM, 2017, p. 2). Global inequality is strongly tied to an even more pressing issue: global poverty. According to UN estimations, 766 million people (385 million of them children) lived on less than $2 a day in 2013. Poor nutrition is the cause of 45% of deaths of children under the age of five. Those children who survive in developing countries lose nearly $177 billion in potential lifetime earnings due to stunting and other delays in their physical development. On the other side, one third of the world's food is wasted each year. If we could recover only one fourth of this waste, it would suffice to feed nearly 870 million people. The projections do not provide any encouragement: unless something changes, 167 million children will live in extreme poverty by 2030, with an estimated 69 million children under the age of five who will succumb to preventable disease (UNDP, 2016, p. 29).

Although these facts and figures are indicative in various ways of the current state of wealth distribution and poverty in the world, it is difficult to utilise them for the purpose of showing the relevant and comparable differences between nation-states. Comparative estimations of this kind generally take into account individual income and net worth[192]; thus,

[191] Milanović also notes that "calculating global inequality is a relatively recent exercise that began only at the close of the twentieth century. Even the very concept of global inequality is new. Investigations of the topic have been stimulated by two related developments: globalization, which brought to our attention the problem of large differences in incomes between people living in different countries, and, for the first time in history, the availability of detailed house hold survey data for most of the world" (2016, p. 123).

[192] The Organisation for Economic Co-operation and Development (OECD) defines income "as household disposable income in a particular year. It consists of earnings, self-employment and capital income and

their uneven distribution among people holds within nation-states and among nation-states. To mention a few examples, in 2016, the share of income received by the top 1% of families in the USA was 23.8%. Together with the remaining 9% of the top 10%, they received 50% of the total income, meaning that the outstanding 50% of income was distributed between the bottom 90% families (Federal Reserve Bulletin, 2017, p. 10).[193] Perhaps it is even more remarkable that for the same year the three wealthiest people in the USA owned more wealth than the bottom 50% of the total population (160 million people or 63 million households).[194] By the same token, since 1991, wealth inequality has been rising in Germany and in 2014, three-quarters of households[195] had a net wealth below the country's average.[196] In New Zealand, the wealthiest 20% of households in 2015 held 70% of the total household net worth, while the bottom 40% owned only 3% of the wealth (Stats NZ, 2016, p. 3). No data is available with respect to the individual income and net worth of Nauru citizens but it is estimated that around 24% of the households live below the basic needs poverty line, with another 7.9% classified as extremely vulnerable.[197] And it is worth adding that the USA, Germany and New Zealand also suffer from the existence of poverty; namely, the relative poverty rate in 2015 for the U.S. was 16.8%, for Germany 8.4%, and for New Zealand 15%.[198]

But in spite of these great disparities that exist within nation-states (even among the most affluent ones), it is still the case that inequalities *between* nation-states are greater. The separation between developed, developing, and least-developed countries is perhaps the most famous terminology used to describe these disparities on the basis of socio-economic status. Although no universal standard of measure has ever been adopted to unequivocally correspond to each of these, the separation of the world into these categories has been operational since the 1960s (UN GA, 1968; 1969; 1971). Despite the intuitive appeal of these classifications, the

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public cash transfers; income taxes and social security contributions paid by households are deducted. The income of the household is attributed to each of its members, with an adjustment to reflect differences in needs for households of different sizes" (2018a).

[193] The report defines the family (primary economic unit) as an "economically dominant single person or couple (whether married or living together as partners) and all other persons in the household who are financially interdependent with that economically dominant person or couple" (p. 32).

[194] They are Bill Gates, Jeff Bezos and Warren Buffett. Reference is taken from Collins and Hoxie (2017) who draw their data from *Forbes 400* (2017) and the Federal Reserve's *Survey of consumer finances* (2016).

[195] Again, the OECD takes household total net worth as the "value of total assets (the total amount of financial assets plus the total amount of non-financial assets; note that this indicator only takes into account the value of dwellings from non-financial assets) minus the total value of outstanding liabilities" (2018b).

[196] Along with these figures, it should be taken into account that the top 10% of households held around 60% of the total net wealth (Deutsche Bundesbank, 2016, p. 58).

[197] The Basic Needs Poverty Line is made up of two components: the cost of a minimum food basket; and expenditure for essential non-food basic needs. See the UNDP (2014) for more detail about the measuring methodology employed.

[198] The poverty rate is the ratio of the number of people (in a given age group) whose income falls below the poverty line, taken as half the median household income of the total population (OECD, 2018c).

matter of statistical presentation and accurate measurement development is undeniably a difficult task. It is perhaps made even harder due to the socio-cultural differences in norms and expectations across societies which consequently manifest themselves in economic outputs and productivity. With this in mind, it is still useful to acknowledge some of the leading methodologies for the assessment of socio-institutional well-being that have been developed and applied by the WB, the IMF,[199] the United Nations Development Programme (UNDP), and Transparency International (TI).

The WB classifies countries on the basis of gross national income (GNI) per capita,[200] which is subsequently used to determine their lending eligibility, that is, their financial creditworthiness.[201] 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). According to these standards, Nauru ranks as an upper middle-income economy that is just below the highest category, to which Australia belongs. The comparative difference between the two nation-states is still exceptionally high i.e. about 5 times higher on the side of Australia.[202] The IMF calculates and ranks countries according to their 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 IMF does not have (publicly accessible) numerical standard according to which countries are sorted, but at the moment, there are only 39 member countries in the first category and Nauru is not one of them (IMF, 2018).

The UNDP 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

[199] For a good comparative analysis between these three institutions' methods of socio-economic measure, see Nielsen (2011).
[200] Eurostat defines GNI as "the sum of incomes of residents of an economy in a given period. It is equal to GDP minus primary income payable by resident units to non-resident units, plus primary income receivable from the rest of the world (from non-resident units to resident units)" (2018). GNI per capita represents the country's final income divided by its population – an average income of residents. It is calculated by using the World Bank atlas method (WB, 2018a).
[201] Countries with the lowest GNI per capita are eligible to borrow from the International Development Association (IDA countries); middle-income countries borrow from the International Bank for Reconstruction and Development (IBRD countries). Lastly, because of their creditworthiness, high-income (Blend) countries can get loans from both World Bank institutions (WB, 2018b).
[202] Nauru's GNI/n is $10.750 and Australia's one is $54.420 (WB, 2018c). It is also worth mentioning that Nauru is classified as upper middle-income economy although one third of the people in Nauru live in poverty (UNDP, 2014).

determining the socio-economic collective capabilities of nation-states.[203] 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). Unfortunately, there are no data available for the general HDI ranking of Nauru, although it is indicative that its ranking does not fare well throughout various sub-categories in the report.[204] On the other hand, Australia almost topped the list of 188 presented countries, being ranked the second just below Norway. The remaining two former Nauru trustee states (New Zealand and the UK) were also in the top category of very high human development.

The differences in income inequalities between nation-states are another potentially useful tool for epistemically assessing their socio-economic capabilities. One of the most accurate methods for measuring income inequality is using the Gini coefficient,[205] where a more equal distribution of income is presented by a lower Gini value. Following Branko Milanović, global inequality (i.e. income inequality among the citizens of the world) can be defined "as the sum of all national inequalities plus the sum of all gaps in mean incomes among countries" (Milanović, 2016, p. 3). By relying on the Gini measure of inequality of income, it is estimated that the global Gini value is around 0.65 (IMF, 2017, p. 2), compared to the OECD countries average 0.31 measured in 2015 (OECD, 2018d). As a comparison, the highest national Gini is held by South African Republic (0.63) with only 3 states following it with a value over 0.60 (WB, 2018d), indicating that the global Gini value is higher than those of the most unequal countries. Therefore, being appreciative of the fact that inequality exists within nation-states and that as such it poses a serious challenge for policy makers, it is still the case that global inequality is higher. Differences in per capita income between states accounted for about 65% of global inequality in 2013 (IMF, 2017, p. 2), although it is important to keep in mind that the Gini

[203] "The composite Human Development Index (HDI) integrates three basic dimensions of human development. Life expectancy at birth reflects the ability to lead a long and healthy life. Mean years of schooling and expected years of schooling reflect the ability to acquire knowledge. And gross national income per capita reflects the ability to achieve a decent standard of living" (UNDP, 2016, p. 3).

[204] For example, it has below 10 years (i.e. 9.7) expected years of schooling, which characterises only the bottom category (low human development).

[205] The Gini coefficient "is a ratio of two areas on a graph, which has income percentiles as the vertical axis and population percentiles as the horizontal axis. One line used in the graph is a line sloping at a 45-degree angle from the lower left corner to the upper right. It represents equality. At each point on the line the percent of the population (horizontal axis) is equal to the percent of total income (vertical axis). A second line used is the Lorenz curve, which is the actual distribution of incomes percent per population percent. It curves below the 45-degree angle line, showing that income is not equally distributed, for example that, say, 50 percent of the population receives 30 percent of the income. It curves sharply up at the top to intersect with the 45-degree line to show that 100 percent of the population receives 100 percent of the income. The Gini coefficient is the ratio. The numerator is the area between these two lines; and the denominator is the total area below the line. It measures inequality because if the Lorenz curve is identical to the 45-degree line then, the ratio is 0, or equality. The highest value, 1, is complete inequality, one person receiving all income" (Moellendorf, 2009, p. 154).

coefficient does not measure wealth and socio-economic well-being as such, but rather how it is distributed. Nevertheless, it is arguably an extremely beneficial tool for demonstrating both national and global inequalities, primarily because there is a strong correlation between the unequal distribution of wealth in one nation-state and its poor overall socio-economic well-being. The Gini population coefficient for Nauru is 0.52, which makes it one of the lowest ranked (bottom 10) nation-states in the world (UNDP, 2014, p. 14).

The unequal distribution of wealth is often followed by a high corruption index (TI, 2017). In the context of institutional political governance, corruption can be defined as "behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains" (Nye, 1967, p. 419).[206] TI defines it similarly as "the abuse of entrusted power for private gain" (2018). Since 1996, this INGO has been measuring and annually ranking "countries and territories according to their perceived level of public sector corruption." By 2015, it has managed to survey the public opinion on corruption of 114.000 people in 107 countries, showing that it is a universal phenomenon from which all modern states suffer (TI, 2015). Because it is such a complex social phenomenon, corruption is admittedly difficult to calculate and present in numerical terms. Over the past 20 years, TI has adjusted and refined both its sources and methodology. Its unit of measure, the Corruption Perception Index (CPI) ranks countries on the scale 0 (highly corrupt) to 100 (very clean).[207] Although it is not strictly speaking designed to present socio-economic well-being across the globe,[208] it is nevertheless one of the most telling mediums for the estimation of the relative capabilities between nation-states. If the principal causes of wealth are generally derived from political culture and credible social institutions, it is clear that high levels of corruption will also run parallel with the poor economic performance of one nation-state.

It is thus not surprising that high levels of corruption, great inequalities in distribution of wealth, and general economic underdevelopment often coincide with one another.[209] Somewhat expectedly, there is no information available for Nauru's CPI, which is indirectly

[206] I am aware that this definition has its flaws, namely, that it primarily focuses on public corruption and neglects private forms of corruption. See Thompson (1995) for more about this distinction.
[207] The following steps are followed to calculate the CPI: 1) select data sources where each data source must fulfil the required criteria; standardise data sources to a scale 0-100; 3) Calculate the average requiring minimum of three sources; and 4) report a measure of uncertainty in the calculation of the CPI for a given country or territory. For a more detailed account, see TI (2016).
[208] Nonetheless, it is very suggestive that "an increase in CPI by one unit leads on average to a 1.7% increase in GDP per capita growth rate" (Podobnik et al., 2008, p. 550).
[209] In the conditions of grave inequalities and poverty, the incentive for public officials to use corruptive means in order to improve their low standard of living is expectedly higher. In turn, such behaviour progressively weakens political and socio-economic institutions, including the criminal justice system devised to prevent and penalise corruption. Ultimately, the vicious circle where deviation from formal duties for private gain is created and exception becomes the norm (Leys, 1965, pp. 224-226).

related to the controversy surrounding the Australian immigrant detention camps. Since the government of Nauru has refused entry to outside investigators and has provided no information (including to UN officials) regarding the reported poor living conditions and bad treatment of camp inmates, it is unlikely that TI will be able to conduct a public survey on corruption in Nauru in the near future. However, this act by the government in itself is suggestive about the possible conditions in these camps, and in general about the lack of publicly accessible information that characterise nation-states with high levels of corruption. Australia was ranked 13th for the year 2017.

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As previously stated, the primary purpose of presenting this brief outline of the existing measuring tools was to illustrate that the socio-economic status of modern states can be empirically established via a variety of means. There are certainly other methodological frameworks that can also be used for this purpose[210] and most likely it would be advisable to integrate more of these into one whole for a more objective picture. However, it is still important to acknowledge an extremely high overlap between the top and bottom nation-states across all presented analysis, keeping in mind that the outlined measuring methods are, to a large extent, independent from one another. Recognising major quantifiable inequalities across the data, it is reasonable to expect a considerable disparity in the capabilities of modern nation-states in their mutual interaction. Once it is acknowledged that nation-states should be treated as moral collectives, it becomes necessary to address how their status as formally equal subjects of international law can lead to unfair terms of cooperation. The theory of collective rights of nation-states qua moral collectives does not require the citizens of affluent states to redistribute wealth in order to promote the well-being of citizens in less-economically developed states. As a conceptual and normative tool, it is able to provide justification for the preferential treatment of underprivileged nation-states without imposing burdens onto the citizens of more affluent nation-states. It only requires of the global community to acknowledge that some nation-states, due to their low economic development, need to be exempted from general anti-protectionist trading rules because they represent an excessive burden to them.

[210] Although in this context economic criteria generally dominates the means of classification of countries, there are other lists that are as indicative. For example, the WHO disease distribution analysis per country, or the World University Rankings lists by Times Higher Education or QS. It is remarkable how much overlap there is between these different records.

CONCLUDING REMARKS

The modern nation-state as a socio-institutional collective has grown stronger in terms of the effect it has on individual lives, but it has simultaneously grown weaker against the rise of global governing institutions and non-state political actors. Since the end of World War II, the actual capacity of nation-states to exercise self-governance has been significantly limited by global political decisions, economic flows, socio-cultural exchanges and environmental changes. Globalisation has made it clear that political governance will acquire a new dimension: firstly, by acknowledging the *collective* governing role of nation-states in both a domestic and an international context, and secondly by introducing non-state political actors in the realm of governance. At the same time, interrelationships between communities reached an unparalleled intensity, producing less problems than anticipated but still displaying the problematics that arise when participating actors increase interdependence and cooperation. Namely, the phenomenon of globalisation showed more apparent that the existing institutional models by which governments can confer obligations upon their states fail to meet the standards for democratic deliberation and participation. Moreover, globalisation and the democratisation of global trade exposed the respective differences in nation-states' capabilities to compete and pursue their legitimate interests against one another.

Within this system of closely interconnected international relations and global trade, the treatment of nation-states as only formally equal and as legal collectives predictably produces negative consequences for human welfare. It firstly allows governments to rule over states in a non-public manner similarly to how managers work in traditional private enterprises. Secondly, it creates unbalanced socio-economic development across the world because it disregards the actual capabilities of nation-states in their mutual competitive (economic) interaction. The primary goal of this thesis was to argue that nation-states should be treated as moral (and not only legal) collective entities – that is, to apply the theory of collective rights of cultural groups in a (closed) domestic political setting to nation-states in international relations. In this sense, the theory of collective rights of nation-states has the potential to offer a fresh perspective in thinking about some of the problems that exist within the normative theory and practise of international relations and global justice. These range from generally addressing how political and economic interdependence on a global level affects individual states and consequently their citizens, to examining how the unequal socio-economic placement of some countries and world poverty can be tackled with more success.

It is the author's conviction that thinking about nation-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. Choosing to use Nauru as an actual example served precisely the

purpose of making this discussion more accessible in that sense. The case of the latent disappearance of cultural groups has already shown that the mechanism of individual rights alone is not always enough to foster favourable conditions for human flourishing. By relying on that acknowledgment, I have tried to extend the idea of cultural groups as moral entities to nation-states, recognising the relevant similarities between two different contexts. It is perhaps worth noting that the argument presented here for thinking about nation-states qua moral collectives should be treated charitably. It is certainly possible to arrive at the same conclusion using different premises or by improving those offered here. Nevertheless, the lack of philosophical certainty at this point on the behalf of the author or any potential disagreement by the reader over some parts of this long argument hopefully do not stand as an obstacle to the idea of nation-states as collective rights-holders.

Since this thesis combines the literature on normative theory of international relations/global justice with the literature on collective rights of cultural groups, textual arrangement of the whole work proved to be a difficult task. The early chapters I begin by making it clear for the reader what is meant by a nation-state in order to provide an immediate clarificatory reference and avoid potential confusion. Thus, in Chapter I, I presented what makes a country a modern *state* and followed with an explanation of what makes a modern *nation*-state. I relied on Max Weber's sociological understanding of the state, which is also in line with the commonly recognised definition in international law. The state as a collective was essentially associated with those characteristics that allow it to facilitate political and socio-economic governance as such: namely a government with control of the means of violence, legal order and the rule of law, territoriality, citizens, and the capacity to enter into relations with other states. As for the nation in the state, I understood it as a group of people who democratically govern over their independent political collective. A nation has thus been taken to characteristically and intrinsically denote a group whose self-identification cannot be separated from an aspiration to institutionalise a democratic form of governance. In other words, a modern nation-state can in many ways be thought of as a synonym for a democratic country.

Throughout Chapters II and III, I presented a literature review of the normative theory of international relations and global justice. More specifically, Chapter II covered how authors operating within the cosmopolitan school of thought address some of the main global ethical issues today, such as the existence of socio-economically underdeveloped countries and world poverty. Cosmopolitanism generally holds that all individuals possess equal moral standing, irrespective of their political membership, exemplified by citizenship in modern states. Following John Rawls (because they are often supporters of domestic system of distributive justice), cosmopolitans tend to support some form of global distributive justice, keeping in mind

the existence of considerable disparity within socio-economic conditions across the world. However, not all supporters of the redistribution of wealth look favourably on extending the domestic principles of distributive justice to the whole world. Chapter III dealt with some of the objections from authors who argue that the peculiarity of common membership in a nation or a state gives legitimate reasons for dismissing the idea of global distributive justice. With some reservations, I estimated there is merit to these arguments given by liberal nationalists, statists, and John Rawls, if not for moral than at least for practical reasons. I concluded Chapter III by pointing out that the global (distributive) justice debate can profit by shifting its focus from individuals as the sole moral entities to collectives, in particular, nation-states. Moreover, I argued that this strategy should in turn also have a beneficial impact on the well-being of individuals.

Chapter IV and V offered a literature review on theory of collective rights. These chapters respectively covered two different "rights-talks" categories: namely, the conceptual and the normative. Chapter IV dealt with a series of theoretical questions that require clarification if one wishes to speak of collectives as moral entities and rights-holders in a coherent way. I gave an account of how the collective rights of moral collectives differ from the rights of traditional legal collectives, how to differentiate between individual and collective rights, how the object of collective rights should be considered, and whether collectives as moral entities fulfil the functional conditions to be treated as rights-holders. Answering these questions made it possible to analyse with more precision the subsequent arguments for cultural groups as moral collectives and rights-holders in that capacity (and indeed nation-states later in the thesis). Chapter V has therefore firstly investigated the communitarian critique of liberalism and the importance of cultural context for moral and political reasoning. It was then pointed out that smaller cultural groups are inherently disadvantaged in a democratic system of governance, and that additional socio-institutional resources are sometimes needed to prevent their assimilation and disappearance. The chapter finished with a brief overview of the existing types of collective rights in actual institutional practise in contemporary states.

Drawing from insights from the preceding chapters, Chapter VI presented an argument for nation-states to be treated as moral collectives. The nation-state is able to protect the morally important goods that make up the object of individual and collective rights – rights that cannot be given substance without both a *democratic* and an *institutional* mechanism that characterise the nation-state as a collective. This is not to say that the governments of nation-states as a matter of fact protect the rights of their citizens. It is important to keep in mind that nation-states should 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. I argued that the treatment of

nation-states as states only, i.e. as only legal entities, can have dire consequences for the well-being of the people. This is particularly observable in cases where nation-states act in the capacity of economic agents and their governments as the representative decision-making bodies. I pointed out that the institutional conditions under which governments are able to govern over their states as legal entities allows them to confer contractual obligations to their nation-states without previously disclosing them to the public for their assessment. In a certain sense, I showed that although governments govern over people, they manage over their states. I believe a lot more work can be done on investigating the exact institutional arrangements that could facilitate a genuine democratic method of governance over nation-states.

The final chapter of this thesis examined how the idea of nation-states as moral collectives can be utilised in the context of global inequality and world poverty. The theory of collective rights of nation-states can offer a novel normative framework for tackling some of the pressing issues generally discussed by cosmopolitans and global justice theorists. By acknowledging that a just relationship between moral entities cannot be one where formal equality is deemed sufficient to achieve substantive equality of opportunity, it is possible to justify socio-economically underprivileged nation-states requiring preferential treatment in the system of global trade. In this context, the idea of collective rights of nation-states was used to explain that certain forms of economic protectionism should be applied to nation-states with lower levels of wealth. Once nation-states are taken to be moral entities, such measures cease to be perceived as undemocratic and unilateral. They are rather seen as indispensable in restoring balance between nation-states and fostering genuine fair terms of international cooperation. This was also the primary goal of this thesis: to offer a moral argument that can justify why some aspects of international relations and policy should be remodelled in order to facilitate a democratic (and more beneficial) interaction between relevant political actors. It is my belief that thinking about nation-states as moral collectives can take us one step closer to achieving that goal.

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