The Normative Dimensions of State Action

Mitchell T. Kaufman

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Reading Committee:

Michael Blake, Chair

William J. Talbott

Stephen Gardiner

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Mitchell T. Kaufman

University of Washington

Abstract

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Mitchell T. Kaufman

Chair of the Supervisory Committee:
Professor Michael Blake
Department of Philosophy

States tend to be the centerpieces of International Relations theory, as they are commonly considered the primary actors of international relations. As such, states are commonly analyzed as intentional beings that act on their own reasons, based on their own beliefs and desires. This treatment of states as intentional entities leads naturally to a treatment of states as responsible agents that must stand accountable for what they have done. It is on such a basis that retrospective moral and legal judgments are made of states; for example, when reparations debt is established between states after a military conflict.

The above perspective is very common amongst academics and laypeople alike; however, it seems to be in deep tension with our widely held interpretive model of interpersonal relations, where the individual is the primary actor and responsible party with respect to her own free agency. In short, state responsibility and individual responsibility often fail to align. This project attempts to clarify the tension between these levels of analysis, evaluate various defenses of state responsibility, and argue that an individualist methodological approach is required if normative IR theory is to remain consistent with basic interpersonal normative theory.

Part I: The State-Actor Model
Chapter 1: The State-Actor Model in IR

§1 – THE STATE-ACTOR MODEL

We live in a very complex social environment where people organize their behavior through numerous interconnected institutions, which enable increasingly large collective endeavors. Along institutional lines, our social world can be conceived of in various ways and divided up using various categories to craft a variety of conceptual schemes that help us organize and understand it. One of the most important of these conceptual schemes gives us the view that the global society is structured around distinct institutional organizations that we call 'states'. From this state-based perspective of the world, we envision humanity, at the global scale, being carved up as current maps depict, with much of international relations thought of as the interactions between the various states, coordinated by their respective governments, for the sake of their respective populations. This is a quite common and natural way of looking at things, and unsurprisingly so, since our language practices deeply reflect this perspective, even in the most pedantic contexts – academic writing and international law. Political scientists often treat states themselves as the primary actors in explanations and analyses of international relations, and normative political theory will discuss states as the bearers of rights, duties, and moral and legal responsibility. So, for example, it is common in International Relations Theory (IR)[1] to encounter statements like the following. "We associate states with war: they have claimed…a legal right to resort to it and to require individual citizens to wage it in their name."[2] "To say that states are equal under international law is only to say that they all have the same rights, duties,

[1] As is now common, I will capitalize 'International Relations' or 'IR' when referring to the academic discipline – including scientific and normative IR – and leave it lowercase when referring to the phenomenon itself.
[2] Hedley Bull, "The State's Positive Role in World Affairs." In, *Hedley Bull on International Society*, eds. Alderson and Hurrell (New York: St. Martin's Press, 2000), 146.

liberties, and immunities."[3] "A state will use force to attain its goals if, after assessing the prospects for success, it values those goals more than it values the pleasures of peace."[4]

The state is also the principal figure in much philosophical writing on the establishment of rightful international relations and global justice. Immanuel Kant, for example, carefully develops his account of the state as "a union of a multitude of human beings under laws of right,"[5] but then goes on to treat the state itself as the primary agent of international public right, or the right of nations. "Here a state, as a moral person, is considered as living in relation to another state in the condition of natural freedom and therefore in a condition of constant war."[6] John Rawls does much the same in the transition from his theory of domestic justice to his work on global justice in, *The Law of Peoples*. Rawls again employs his hypothetical Original Position (OP) apparatus for developing his international laws, but he explicitly rejects its outright extension to a global OP where all individuals represent themselves. Rather, he uses a second-stage OP involving whole peoples because, as he says, "This account of the Law of Peoples conceives of liberal democratic peoples (and decent peoples) as the actors in the Society of Peoples, just as citizens are the actors in domestic society."[7]

These examples of state-centered theory in IR coincide with the common treatment of the state as the primary actor in international law. For example, the Montevideo Convention on the Rights and Duties of States from 1933 says, "The federal state shall constitute a sole person in the eyes of international law."[8] Similarly, the Draft Declaration of the Rights and Duties of States adopted by the International Law Commission and submitted to the United Nations

[3] Allen Buchanan, *Justice, Legitimacy, and Self-Determination* (New York: Oxford, 2004), 312.
[4] Kenneth Waltz, *Man, the State, and War* (New York: Columbia,1969), 160.
[5] Immanuel Kant, *The Metaphysics of Morals*, Book I, Part II, Chapter I §45.
[6] Ibid. Chapter II §53
[7] John Rawls, *The Law of Peoples* (Cambridge: Harvard, 1999), 23. 'Peoples' are not identical to 'states' because of the former's stipulated moral character, but they are similar enough for my points here.
[8] From the website of the Council on Foreign Relations. http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897.

General Assembly in 1949 claims, "Every state has the right to independence and hence to exercise freely, without dictation by any other state, all its legal powers, including the choice of its own form of government."[9] Consider also the Charter of the Organization of American States (A-41) where international order is said to consist essentially of "respect for the personality, sovereignty, and independence of States," and where "The right of each State to protect itself and to live its own life does not authorize it to commit unjust acts against another State."[10] More recently, we can look to the International Law Commission's 2001 draft article entitled, "Responsibility of States for Internationally Wrongful Acts" which, as the title suggests, discusses the general conditions under which a state is responsible for certain acts and what the legal response should be in those cases.[11] Finally, this same conceptual approach to international law is taken by the International Court of Justice, which only accepts states as parties to cases before the court.[12]

As we can see, there are many examples in scientific and normative IR, political philosophy, and international law that treat the state as a sort of singular actor, agent, or type of institutional or legal person.[13] Moreover, much thoughtful scholarship ascribes beliefs, desires, intentions and other mental traits to the state, conceives of global justice as an ideal agreement between states themselves, and discusses the state in terms of *its* moral duties and rights, such as the right to a choice of *its* own form of government. This perspective then promotes certain

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[9] *Yearbook of the International Law Commission*, 1949. Annex to General Assembly resolution 375 (IV).
[10] Charter of the Organization of American States, Chapter II, Article 3 and Chapter IV, Article 15. From the Department of International Law website. http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm#ch4.
[11] *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two.
[12] Statute of the International Court of Justice, Chapter II, Article 34. http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0#CHAPTER_II.
[13] Some debate has taken place in International Relations about the so called, "level-of-analysis problem." As stated, it is common to treat the state as the primary level of analysis, but it is by no means universal. See David Singer, "The Level-of-Analysis Problem in International Relations," in *The International System,* Knorr and Verba, eds. (New Jersey: Princeton, 1961), 77-92. See also, Kenneth Waltz, *Theory of International Politics* (New York: McGraw-Hill, 1979), 93-99.

policies and practices, such as passing moral judgment on states for their actions and subjecting them to legal judgments and attending punishments including sanctions and reparations debt. In order to assign a label to this general state-centered conceptual framework for IR and international law – encompassing various subtypes in both scientific and normative IR – we may call this the *state-actor model*.

This model is obviously very widely utilized, and it has been the basis of a great deal of the work done in scientific and normative IR. Nevertheless, the state-actor model does invite some concerns. The debate over the appropriateness of theoretical focus on the state has been carried out to a fair extent in the political science literature, but it is less commonly discussed by those writing about the normative dimensions of international relations. The central question of this project is specifically whether the normative (moral and legal) applications of this model are appropriate. We need to determine whether the state-actor model is consistent with other well-established tenets of normative theory, which operate under a different model of interpretation. If the case can be made that an intractable tension exists between these two areas of normative theory, we should then like to look at what should be done in response to this problem.

The remainder of this first chapter will proceed as follows. We will first explore common ways of conceptualizing the state that lend support to the state-actor model and have helped it remain perhaps one of the most long-standing and widespread conceptual schemes humans have used. We can then explore some examples that suggest the state-actor model is in tension with basic, individualistic normative judgments that employ a different model of interpretation. Once the tension is intuitively apparent, we can move on to a general discussion of the available options open for addressing the tension and briefly explain the position that will be argued for throughout the project.

§2 – WHY THE STATE-ACTOR MODEL?

The fact that the state-actor model is so widely adopted in IR is not entirely surprising. There are a number of reasons that this model seems intuitively correct to us, and a number of factors that make it useful for understanding and analyzing *global interpersonal relations*.[14] For one thing, state institutional structures are now ubiquitous and they coordinate much of the interaction that goes on between persons, including some of the most constructive and destructive collective actions possible today. It is through states that we fight wars and develop the materials of warfare, enforce sanctions, create trade agreements, administer humanitarian aid, and develop international law. It is no wonder then that a state-centered perspective is deeply entrenched in our common language practices and that the state is the subject in so much of our discourse. It is certainly not just by the invention of the academics and intellectuals that we have come to treat the state as the central focus of much of our political thinking.

A major factor in this is that the state-actor model provides a useful shorthand for conceptualizing and describing the complex interrelations of the various persons involved in a given case of international relations. For the sake of simplicity it is certainly preferable to think of the action of a single state, as opposed to the actions of the potentially quite large number of persons involved in a given state action; and, for the sake of brevity, it is certainly preferable to speak and write accordingly. This ease of thought and expression comes at a cost in explanatory detail, but many important ideas can be expressed without the added specificity.

The above considerations notwithstanding, it is certain that not all claims about the state are made for pragmatic reasons alone, and not all such claims are meant to refer only to state

[14] I will sometimes use this locution in an attempt to be as descriptively neutral as possible. The phrase avoids implying that the interactions between persons referred to are necessarily the interactions between institutional collectives like nations or states, or their representatives (which is almost unavoidable when using the term ‘international’ such as with the phrase: ‘international relations’).

officials, their agencies, or any proper subset of the state's total population. The state-actor model is often used to refer to the entire state, itself, as a *collective* of persons, as a corporate *agent*, or as a social *system* that endures through time.[15] These uses of the state-actor model generally stem from at least one of a few perspectives one might take on the relationship between a group of persons, an area of land, and a sociopolitical system of rules. The perspective offered here are grounded in the ideas of the state as a complex collective group, as a hierarchical organization with popular sovereignty, and as an enduring institutional system that is conceptually foundational for analyzing international relations.

State as Collective: At a quite broad level of analysis, we can conceive of the state as a complex collective entity comprised of all of the individuals in the state. This perspective envisions the state as a group, and conceives of state action as the product of the multitude of individual actions of its inhabitants. The collection of all of these individual actions contributes to the various social structures in place in the state (e.g. its dominant values and beliefs, institutions, organizations, etc.), and these structures are causally relevant to the actions attributable to the state. Accordingly, an action of the state can be thought of as the final product of a large and complex web of interactions between the individual persons in the state, and, in this way, the whole collective itself and all the people participating in it can be implicated in that final product (in certain cases, at least).

To put this point counterfactually, if it were not for all of those individual persons performing their individual daily actions and believing their individual beliefs, the action of the state in question would not have happened the way it did. Or conversely, had enough individuals

[15] Although 'state' will not be more precisely defined until the following chapter, at this point we can see that the use of the term in this project will refer to what we might otherwise call a 'country'. That is, 'state' is not synonymous with 'government and its agencies' as some speakers may intend. Rather, 'state' refers to the combination of, in the least, a society, a set of government officials and related agents, and an institutional scheme that coordinates all of these individuals.

in the state acted in alternative ways, the state could have done otherwise. Therefore, the action in question may be ascribed to the whole collective that produced it, and although there may be many individuals in the state who will not be directly involved in the action, all individuals of the state are at least indirectly connected to it, according to this way of conceptualizing the state as a complex collective entity.

State as Sovereign: The majority of states in existence today have some form of representative political system, where officials are elected to public office (at least ostensibly). This feature of states lends itself to the idea that the actions of governments (actions of a set of individuals that are most readily attributed to the state itself) are authorized, at bottom, by the consent of the citizens, as delegated constitutionally and expressed through the voting procedure. With the rise of modern republican and democratic theory, we think of the people as sovereign and the state's sovereignty as a product of the popular sovereignty of the people. In a representative system heads of state act "in the name of" the people and, so, they act on behalf of the state itself. It is only through the state's institutions and the decision of the citizenry that the people in power have the authority they do, so we can refer to the actions of the government as the actions of the state itself because there is this important relationship between government and populace. Accordingly, it is quite common in the normative context to think of government action (or the actions of persons in related agencies) as state action, and therefore hold the whole accountable, rather than just the one part. In this way, the state is treated as a sort of corporate agent, and even perhaps an artificial or synthetic person.

State as Institution: A third perspective from which the state-actor model naturally follows is that of the state as a historically enduring, institutionalized, social system – one that provides a conceptual basis for explanatorily significant properties of the persons within it. On

one hand, the state, thought of as an institutional system, can act as a useful focal point for a long-term historical analysis of international relations. This allows us to have an intelligible, linear understanding of the history of certain groups over many years, and this sort of account seems preferable to the obvious alternatives, which might be more like disjointed sets of statements about particular individuals at particular times in the past.

Aside from this narrative aspect, state institutions provide conceptual grounding for any descriptive claims we would like to make about international relations in the first place. The persons involved in international affairs – those who declare wars, sign treaties, *et cetera* – would not have the formal relationship that they do if they did not acquire some relevant position in their respective states. In an important respect, the state is more basic than the state official. One cannot be a president or ambassador, or the like, without a state to be the president or ambassador of; and, thus, the state is lexically or conceptually basic in our understanding of international relations. Consequently, it is natural to refer to the state itself as engaged in those actions, even in the extreme cases such as where a single individual is the ultimate decision maker or actor, or where the actions in question extend over many generations.

§3 – A PROBLEM WITH THE MODEL

The state-actor model is deeply entrenched in our discourse and it does serve as a plausible candidate model for conceptualizing the complex relationships between persons of the globe today. However, the model seems to also bring with it certain cross-theoretical tensions that suggest the need for amendments to our theories in IR. More specifically, the use of this model in the context of global relations or IR may conflict with the dominant interpretational models of interpersonal interaction, or basic, individualistic normative theory. If there is

sufficient theoretical overlap in these disciplines, such that tension must be remedied for the sake of consistency, then adjustments will have to be made to this model or the others.

As we have seen, it is quite common in IR to think in terms of entire groups, systems, or institutions, and to describe and prescribe action at that macro-level. This creates the potential for conflict with our views of basic moral and legal theory, which are grounded at the micro-level of individual persons, understood through an *individual-actor model*. Our normative theories in IR may not cohere with our normative theories of individual behavior. That is, what we think is morally and legally true for the state (and other collectives) may be false (immoral and otherwise illegal) with respect to the relevant persons.

To motivate the tension on an intuitive level and allow us to see some of the potential implications of it, we should look at an actual case. Consider inter-state reparations debt for crimes against peace. According to the state-actor model, the following claims are taken to be true: In the First World War, Germany was guilty of waging an aggressive war and a reparations debt was established for it. In 2010 Germany made its last payments on this debt. If we continue this macro-level analysis regarding the normative issues, we may agree that the establishment of this debt and its repayment are morally and legally appropriate, given the circumstances.[16] We might think: "a country that wages aggressive war ought to be punished," or "countries that instigate war ought to pay reparations." Yet, if we consider what this case entails for the individuals involved we will see that there is a worry. One possible individualistic redescription of these events in 2010 gives us the following: in 2010 officials of the German government transferred funds from public tax revenue to the treasuries of other states so as to be under the control of government officials in those states, according to the policy set forth by persons

[16] I mean to refer to the establishment of a debt itself and its repayment only. It is certainly arguable that the terms of the Treaty of Versailles were unjust and that the debt in this case was too high. I am setting this issue aside for the purposes of the point here.

appointed to the Inter-Allied Reparations Commission, for the crimes of some (perhaps most) Germans during World War I. In effect, what we have here is the set of German citizens in 2010, the overwhelming majority of which were not even alive during World War I, paying for the crimes of now deceased Germans by transferring their money to treasuries that fund the operations of governments for states now almost entirely populated by people who were also not yet alive during that war. Perhaps justice can be served in this way, but it is not clear that it has been. In fact, it is arguable that a great injustice was done, as the terms established placed the punishment on ostensibly innocent people and the reparations payments went to others who were not obviously deserving of compensation.

The above case is one that may only look suspicious when broken down. One such breakdown shows the causal logic to be quite strange. Group *A* wrongs group *B* and many years later group *C* is forced to pay group *D* as part of the settlement. If this avoided our attention the primary reason may be that we continue to refer to group *A* and group *C* in this case as 'Germany' and we do the same with the other groups. That is, our language practices invite us to refer to the group as a single enduring entity, even across major changes to its composition. If *A* harms *B*, then other things being equal it is obvious that *A* is responsible for the harm. However, if *A* is a group and the composition of that group changes substantially, it is no longer obvious that *A* should have to suffer the consequences of responsibility.

Aside from the issues of war and reparations, there are many other more commonplace examples of inter-state behavior, or international state behavior, which are morally and legally suspect when conceptualized according to the individual-actor model. Some of the most compelling cases involve dubious trade agreements and other international legal agreements, sanctions, espionage, and other forms of sovereign debt. We do not have to look far to find one

of the many examples that can be offered that give us reasons for concern. A program of sanctions is being applied to Iran as this is being written in 2012, which quite clearly shows the worrisome connection between acts of governments, sanctions applied between states, and the resulting suffering of the population in the sanctioned state. The recent sanction regime applied to Iraq serves as another stark example.[17]

From a more general perspective, we can focus on sovereign debt itself as a potential problem for the state-actor model. The troublesome fact about sovereign debt is that the future people who will be responsible for these debts do not have any easily discernable connection to the debt on a personal level. Moreover, the potential problem is even more severe in cases where state officials in non-representative states (or those that do not have elected governments) incur debt that is to be repaid by individuals that clearly had no control over the arrangement even if they were alive at the time. Sadly, in many such cases these agreements use the natural resources of the state as collateral, and when unreasonably high interests rates combine with mismanagement of funds, and possibly outright embezzlement and fraud, the potential for default on the debt is very high. If default occurs, this may prompt the selling off of legal rights to the state's resources in exchange for debt forgiveness, and the result can be a great loss for the inhabitants of the debtor state.[18] Essentially, persons of wealth and political connection can use the state's legal institutions to extract great wealth, while the impoverished and disenfranchised

[17] By one estimate, as many as 576,000 children may have died as a result of the sanctions imposed on Iraq by the Security Council of the United Nations. See, Barbara Crossette, "Iraq Sanctions Kill Children, U.N. Reports," *The New York Times*, December 1, 1995, last accessed May 16, 2014, http://www.nytimes.com/1995/12/01/world/iraq-sanctions-kill-children-un-reports.html. A more recent account says much the same. John Pilger, "Squeezed to Death," *The Guardian*, March 3, 2000, accessed May 16, 2014, http://www.theguardian.com/theguardian/2000/mar/04/weekend7.weekend9.

[18] Bolivia gives us a sad example of this. Through a debt management deal with the World Bank and IMF, Bolivian officials 'privatized' the water supply, which actually means 'sold the rights to manage it to Bechtel Inc.' Juan Forero, "Bolivia Regrets IMF Experiment," *New York Times*, December 14, 2005, accessed May 16, 2014, http://www.nytimes.com/2005/12/14/business/worldbusiness/14iht-water.html?pagewanted=all&_r=0.

majority pick up the tab and suffer along the way.[19] Of course, such agreements will be authorized and enforced according to international law, in spite of the fact that the individuals involved in forming the contract did not really have the authority to bind the state's population to it. Cases of intergenerational borrowing are suspect, but the cases involving governments that are non-representative are even more troubling.

There is reason to doubt that what we tend to think is true of states is consistent with what we think is true of persons. Our theoretical frameworks for IR and basic normative theory of individual action are in deep tension. According to the state-actor model it could be true, for instance, that Saudi Arabia accepted a loan of ten billion dollars and that whoever takes out a loan must pay it back, but it may be false that the individual citizens of Saudi Arabia are obligated to pay that debt. Some people might think it is true that the U.S. and Cuba have a bad relationship and not think that this justifies an embargo on Cuban trade that prevents the people living there from accessing viable markets, which might greatly improve their quality of life. We might think it is a moral duty that the "developed states" of the world aid the "developing states," and, yet, this may not entail the right of one set of persons to use force to take resources from a second set of persons to give to a third set of persons.

Despite the above concerns, international relations, international law, and the theories in IR that stand in support, are still overwhelmingly based on the state-actor model. Our descriptions of most global activity are given in state-terms, and moral and legal accountability and obligation are often assigned to states themselves.

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[19] Uganda provides a good example. In 2012 many countries stopped aid payments to Uganda over allegations of corruption and embezzlement, and in 2013 the government increased borrowing in order to cover the budget shortfall from the loss of aid. The common taxpayer in Uganda has to pay for these debts, but it is clear that the politically powerful are enjoying the benefits of the money. "Uganda to Raise Borrowing After Corruption Cuts Aid," *Reuters*, February 13, 2013, accessed May 16, 2014, http://uk.reuters.com/article/2013/02/13/uk-uganda-economy-idUKBRE91C0G520130213.

§4 – THEORY AND PRACTICE

We have a theoretical *and* a practical worry here, and the two run together. On the theoretical (or purely academic) side, we might worry whether our theories in normative IR are, in actuality, quite poorly supported and based on a flawed analytical or conceptual foundation. This is troubling in and of itself, and the potential problem needs to be addressed. We need to know whether a claim of the form "State *S* is liable for *X*" is true or false, and this will depend as well on the truth of a claim of the form, "State *S* did *X*," which is also subject to competing interpretations. Backward-looking or retrospective normative judgments are essentially exercises in historical analysis. We can do much of moral and legal theory from the armchair, but specific determinations of moral and legal liability, like explanations and predictions in scientific IR, require an appeal to facts that are gathered and organized according to a theoretically supported method. The purported state action has to be dissected, as it were, and certain facts about the situation in question will have to be isolated as most relevant to the judgment. In order for this analysis to avoid being arbitrary and idiosyncratic, there must be an attending theoretical program that supports the method used, and this program itself must be justified according to still other standards. In some ways this is closely related to certain foundational determinations that must be established in scientific IR. Insofar as it is a scientific pursuit, theoretical work in IR must establish a starting point, or a conceptual scheme, which establishes the terms of the study, the basic assumptions of the program, the primary actors, variables, phenomena to be addressed, and so forth. Only then can one proceed to build an analysis that describes, explains, and predicts international relations. If we wish to present a foundation for *normative* judgments pertaining to state action, we must make the same sort of methodological determinations.

Our descriptive and normative theories in IR need not share an exact method because, after all, they are ultimately concerned with drawing different conclusions; however, in certain respects they must treat the state in very similar ways. Both the scientific pursuit of explanation and prediction and the normative pursuit of judgments of prospective and retrospective responsibility and liability require *description* at some stage of the process. Description, in turn, requires terms and a reference scheme, and it must presuppose truth-conditions for the claims made. In this way, both pursuits in IR require that we make some base assumptions and designate primary actors, variables, and phenomena to be analyzed. Just as a scientific explanation in IR must presuppose a level of analysis (such as a the system, society, community, group, individual, physiological, or psychological level), so must the moral or legal system in IR. In both contexts, we first establish foundational assumptions about the moving parts (explicitly or not), we then provide descriptions of the circumstances, which enables us to explain how the system works and how it is affected by changes to its inputs (or variables), and scientific work can then possibly make predictions, and normative work can then argue for the existence of particular obligations and particular judgments of liability.

The important difference between these two approaches to the study of social action is that the scientific approach has a larger range of potentially acceptable levels of analysis. The political scientist who wishes to explain some phenomenon of international relations, and perhaps make predictions in future cases, can focus attention on a number of different entities that might be causally relevant, and may even focus on such macro entities as the entire international system as a whole. Theories of moral and legal liability, on the other hand, do not have such a wide range of options. To be intelligible and actionable as a normative theory, *agents* must be the unit of analysis; and in practical moral and legal judgment *agents* must

ultimately be held liable. We must know toward which agents we should direct our reactive attitudes, moral judgments, and legal sanctions.

In the realm of personal moral and legal judgment it is assumed, at least tacitly, that individual human persons are agents and, so, act intentionally on the basis of reasons. Given this plausible background assumption, there is not much question about the locus of moral or legal liability. Our everyday moral and legal systems are not without their philosophical complexities, but the methodological assumptions involved are relatively straightforward. We use the individual-actor model where the context of analysis is interpersonal relations and the primary actor, and unit of analysis, is the biological person. This gives us a fairly simple picture from which to derive normative judgment, which does not exist in the international realm where we concern ourselves with the actions of collective entities like states. We may speak of the state as an agent or institutional person, but we should not unreflectively or uncritically accept that the state-actor model is isomorphic with the individual-actor model. Although the logic of the two models seems to function the same, the state-actor model masks a great deal of complexity, and the details ignored are actually vital for accurate normative judgment. Without explicit consideration of this information, there is a serious worry that we will not correctly identify who, exactly, is properly held liable for an action we attribute to the state. That is to say, there is a serious worry that our state-based judgments are false.

We should bear in mind, though, that the real danger of an ill-formed theory depends in large part on the practical consequences of implementing the theory. Of course, we should want to avoid making false claims, but practical matters of life and death are of graver concern. This is the point that needs to be stressed. The most troubling aspect of our state-based theoretical work in IR is that it affects real human beings when it is acted on, and unavoidably so. In effect,

measures such as sanctions and reparations applied to whole states impose a sort of universal liability onto all members of a state. Moral judgments often function much the same when directed at a state, and imply a shared moral responsibility across the entire population. It does not required great imagination to see how many innocent persons may be dragged into a state-specific analysis of international relations and global interpersonal relations. Since our basic normative theories give us fairly uniform and straightforward answers when it comes to the proper way to treat other individual human beings who do us no harm, the practical consequences of the state-actor model need to be carefully scrutinized. If we cannot show that all individuals affected by our state-based views are justifiably affected, then some adjustment to our established theory is in order.

§5 – LIBERAL INDIVIDUALISM

The framing given for the worry posed to the state-actor model is borrowed from what may be called the *liberal individualist tradition*. Though this position cannot be fully articulated or defended, it can at least be distinguished from some other traditions and its merits can be briefly mentioned. It is taken as a plausible starting point and basis for critique because of its widespread appeal and general plausibility. There are a few different branches of this tradition that one could identify, but for the purposes of this project it is important to understand liberal individualism as a commitment to *individual responsibility* based on *individual agency*.[20] We might contrast this view with a 'communitarian' view of collective responsibility, but the fit is not ideal. There are many views that work under the label 'communitarian' that do not necessarily endorse the sort of responsibility of the collective that is at issue here. Still, there are clear strands of the communitarian camp that can be used for contrast. Narrative views, for example, may hold that the individual is born into a community that has its own historical

[20] More will be said about the particular sort of responsibility at issue in the following chapter.

narrative that is normatively relevant. As a member inducted into a sort of group or collective, the narrative of the group becomes one aspect of the full narrative of the individual, and so impacts the individual's moral properties.[21] In certain ways, then, on the narrative views an individual may be responsible for something she did not do, and even for something that happened long before she was born. The individualist view of responsibility rejects this. The individual must have *done something* (or suitably failed to do something) in order to stand in a responsibility relationship. Responsibility is closely linked to agency.

The liberal individualist tradition can be seen as based primarily in action, and more specifically, intentional action. It is the purposeful behavior of individuals that serves as the basis of what is a *personal* responsibility. Traditions that are now quite foreign to most of us – from the days of smaller communities, such as tribes or villages – often invoked a sort of universal responsibility in the community. In certain ways, the liberal tradition was developed in response to such views, and in order to carve out a space for the individual to be free of the demands of other in the community. This was often especially true for individuals who wanted to be free of the control of certain rulers who might invoke a communal responsibility to, say, pay taxes or fight in conflicts, even though the individual did not feel solidarity with that community and did not care for living under that ruler. Liberalism was also in part a response to other forms of communal responsibility, such as family responsibility, blood feuds, or vendettas. In a blood feud, for example, if one is the family member of someone who wronged another family, she may be the target for reprisal. She need not have done anything wrong to anyone in order to be targeted. She must simply be related 'by blood' to the one who did the wrong. Such feuds can carry on for generations, since persons in each group will tend to feel that they have been wronged when an ostensibly innocent member of their group suffers the consequences of the

[21] Alasdair MacIntyre, *After Virtue* (Notre Dame, 1984).

reprisal. The retaliations may tend to be reciprocal, and always based on a given side at a given time feeling that they must avenge the death of their innocent member, even though doing so often means the death of some innocents in the other group. Obviously, this cycle has a tendency to continue indefinitely. Instead of being born into ones responsibilities, under the new individualism the individual would be allowed to create her own.[22] Family member or not, she is not responsible, and does not stand accountable, for what others do, unless there is some additional factor that will serve to make a minimal connection between her will and the group.

Liberal individualism is not universally conceded, of course, but it does have a long tradition in social and political theory. It is a clear starting point for much of modern political thought, for example in the work of Hobbes, Locke, and Spinoza, and it occupies a large part of legal theory as well. H. D. Lewis nicely sums up the plausible character of the view and the fact that it is often largely taken for granted when he says:

> If I were asked to put forward an ethical principle which I considered to be especially certain, it would be that no one can be responsible in the properly ethical sense, for the conduct of another. Responsibility belongs essentially to the individual. […] I should like to insist that belief in "individual," as against any form of "collective," responsibility is quite fundamental to our ordinary ethical attitudes.[23]

Such an individualism links responsibility with agency, and so an actor's intentionality and will. It insists that the individual is accountable for all and only what she does (or perhaps fails to do), or for those actions and events that have some connection with her agency. From this tradition sprang the ideas of political obligation from the social contract tradition (which required something like the individual's consent for there to be binding rules on her), further developments in democratic theory (where the individual is supposed to exercise her individual

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[22] This was true for some individuals, anyway. The beginnings of the liberal tradition notoriously include blatant oversights of certain classes of people; for example, women and slaves.

[23] H.D. Lewis, "Collective Responsibility," originally printed in *Philosophy: The Journal of the Royal Institute of Philosophy* Vol. 24, no. 83 (1948). Reprinted in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics*. Eds. May and Hoffman (Savage MD: Rowman & Littlefield, 1991, 17-33), 17.

autonomy through her share in a collective governing process), and now the more well developed liberal political tradition of limited government and freedoms of speech, press, conscience, *et cetera*.

The liberal individualist focus on agency and intentionality provides a solid foundation from which to build ideas of responsibility, and a target for our normative responses. When we show indignation, give acclaim, praise, blame, reward, and punish we often have more than expression of our preferences in mind. As a normative process we also intend to convey information and mold future behavior. The individualist tradition does that by identifying the relevant agency involved in a case and directing the normative responses toward its source. In this way certain retributive, reformative, and deterrent functions of normative responses are satisfied. It is from this starting point that we are going to inquire whether the state itself is the proper referent of normative judgment. We will do this by seeing if the state is either a group of people where all members collectively stand in a normatively relevant relationship to some action ascribed to the state, or whether the state itself can properly function as an intentionally acting agent that can bear moral responsibility of some sort and reform itself in response to our normative measures taken against it.

§6 – DISSOLVING OR RESOLVING THE TENSION

The connection between what we might call the *collectivist* methodological tendencies in IR and the *individualist* methodological structure of basic normative theory are not particularly well developed in the theoretical literature, and this oversight is significant. The fact that individual citizens are invariably held liable for actions we ascribe to their state shows the need for careful analysis of these issues to ensure that these practices uphold proper standards of justice. If the conjunction of the individual-actor and state-actor models entails logical

inconsistency then we must admit this problem and address it. One possible response would be to argue that the perceived tension in not in fact problematic because our state-based theories and our individual-based theories are actually in agreement. In the following chapters I will consider some theories of collective action that might enable us to take this route, thereby showing the congruence between our claims about the state and our practices of holding states liable, with their attending effects on individuals. If any of these attempts is successful, then we will have dissolved the tension. However, if this first tactic fails we will have to amend our models in order to maintain a coherent system.

If the tension cannot be dissolved and adjustments must be made, we must determine which model is more foundational and use this determination as the basis for proposing changes to the other dependent model, or jettisoning the dependent model altogether. When looking at these two models in particular, there are a number of reasons that our basic normative theories, and the individual-actor model they employ, must be the theoretical foundation for our theories of group interaction (especially for the state). First, the state is an abstract idea that denotes a group of persons living within certain geographic boundaries and sharing certain institutional relations. The land of the state and the persons inhabiting that land are real, physical things; the state is simply a mental representation of the combination of such factors into a single abstract entity. The persons of the state are historically and ontologically prior and independent of the state and also *necessary* for there to be a state. The state is certainly not necessary for the existence of persons. Second, the actions that we attribute to the state must necessarily be the actions of a subset of persons within that geopolitical system that we assign statehood, and even the most ardent collectivist will not deny this. Third, as mentioned above, the persons of the state must ultimately bear the force of our normative judgments about the state. There is no

independent thing, 'the state', that can be held liable for its actions. Rather, the judgments we make about state liability will necessarily affect the individual persons in the state. Insofar as these persons are affected, they must be affected in ways that are consistent with the conclusions reached in interpersonal normative theory, lest we allow for there to be multiple answers to questions of the kind at issue here. If we ask, "how should we treat individual *A*?" it is unacceptable for the answer to be both that *A* should and should not be treated in manner *M*. Consider a more specific case to make the point. We may suppose that state *S* is developing a nuclear facility that many in the international community fear will lead to a weaponized system that may endanger many lives. In response it may be suggested that sanctions be applied to *S* to restrict trade between members of *S* and members of other states in order to put pressure on *S* to desist its nuclear ambitions. We may then ask of citizen *A*, "should *A* be allowed to trade on the international market?" The answer to this question cannot be that *A* should and should not be allowed to trade. We are assuming here that *A* has done nothing wrong. The nuclear ambitions are not at all a concern for *A*, and she just wishes to live out her life and conduct her business in the place that she finds herself. Her government makes decisions without her input and yet sanctions applied to *S* affect *A* and prevent her from earning a living. It does not seem that normative judgment against *A* is warranted and yet the policy toward *S* entails that *A* cannot trade on international markets. Something has gone wrong. It cannot be true that it is both morally acceptable and morally prohibited to forcibly prevent *A* from trading.

What we conclude about *S* entails consequences for *A*, and those consequences must be justified *for A*. The reverse does not hold. There will not be a case where the individuals in the group are not properly treated in manner *M*, but the group itself is properly so treated. This is conceptually confused and borderline unintelligible. All of this is to say, again, that the micro-

level of the individual must take precedent over the macro-level of the entire group. The demands of consistency must be met at the collective level.

Lastly, from a practical standpoint, the normative judgments we make about the state can only have practical relevance if the persons of the state are persuaded by them and so change the behavior of the state by changing their individual behavior. The state cannot be convinced of the norms binding on it and the state cannot rationally regulate its behavior without certain persons within it doing so. This being the case, we can infer that a normative judgment that appeals to the intentions and actions of specifically identifiable individuals will be more practically efficacious than the alternative. If we do not identify the correct individuals to blame and hold liable, and instead put responsibility onto the state itself, then not only will our judgment be technically incorrect (if all citizens are not actually legitimately liable) but its practical significance or moral efficaciousness will be lost because the persons upon which judgment should be placed (and the persons who can change state behavior through changes to their own behavior) will not be identified and held accountable.

These considerations taken together should convince us that what we take to be normatively true about states must conform to what we take to be normatively true about persons, and not the other way around. Persons are historically, conceptually, and theoretically foundational to the state, normative theories can be devised independent of the existence of states, and so the moral and legal rules of interaction between persons are necessarily basic. Thus, the moral and legal rules for states must be derivative from the rules for persons, and so consistent with them. The rules for global interpersonal interaction must be the foundation from which we build the rules for collective action.

From this we can deduce the two possibilities regarding the potential conflict between the state-actor and individual-actor models in normative theory. Either our common descriptions of international relations, our common moral and legal theories about state behavior, and our international law – all of which are predominantly based on the state-actor model – are actually consistent with our foundational normative views that are formed according to the individual-actor model, or we will have to revise or jettison the state-actor model if the truth of the first disjunct cannot be established.

§7 – THE THESIS

Common international political and legal practices hold states liable for reparations, as the recipients of sanctions, and as the responsible parties for repaying debts, among other things. In the moral sphere states are often the recipients of blame, indignation, and other negative attitudes, even generations after the offense in question. The effect of these types of normative response is that individuals in the state suffer certain moral or legal consequences. This is a foreseeable effect of directing a response at the state itself. It is the body of taxpayers that must pay the reparations, go without some goods or services when sanctions have been applied to their state, and repay loans that government officials have obligated them to, perhaps long before their birth. And it is the citizens who must sometimes directly bear moral judgments due to their state membership alone. When we take the individual's perspective from within the realm of the effects of such state-based judgment, we have to question whether these normative practices and reactive measures are appropriate. That is, these responses seem out of place and unfair, and this suggests that our normative theoretical structure that applies to state action should be scrutinized. Perhaps we can just acquiesced in the common manner in which such cases are handled. Perhaps we have been doing it wrong all along.

It is at the intersection of two theoretical structures that this project has relevance. On the one hand, we have our common normative practices in international relations, the international laws that shape them and are shaped by them, and the theoretical backing of such institutions from scientific IR and a broad subset of political and social philosophy. Much of this material is built upon some form of the state-actor model. On the other hand, we have our basic moral and legal theories grounded in the individual-actor model. The development of the 'Western liberal tradition' in normative theory has brought along with it a central concern for the individual. With respect to certain forms of responsibility in particular, the individual is principally responsible foremost for her own intentional actions. In addition to this she may be responsible through her particular relations with others. The point thus far has been that it is a very open question whether the individual stands in relations to others in the state, or the state itself, in such a way that she is properly included in a judgment about it. The combination of these two overlapping theoretical levels in social theory suggests a worrisome logical tension, and this tension must be addressed by either showing that our state-based theories and practices and our individual-based theories and practices are in fact consistent, in which case the tension is dissolved, or that they are irrevocably in tension, in which case our state-based views must be amended to fit the individual-actor model or abandoned altogether. That it is the state-based model that must be amended, and not the individual-based model, follows from a family of related reasons having to do with the ontological and theoretical primacy of individuals with respect to groups, group actions, and responsibility.

In the following chapter the referent of 'state' will be specified in more detail as will the sort of collective and corporate actions that are ascribable to the state. Following this the sort of responsibility at issue in cases like those mentioned will be further elaborated. With a view of the

state, typical state actions of concern, and the basic normative structure at hand, we can then look at the various ways that one might argue in favor of retaining the state-actor model by showing it to be normatively consistent with interpersonal normative theory in the liberal tradition. In Part II we will explore what may be called the *bottom-up* approaches to state responsibility. These are views that would justify state responsibility on the basis of the collective responsibility of all state members. It would be on the basis of universal individual responsibility that the state itself could be said to be responsible. In part III *top-down* approaches to state responsibility will be considered. On these views the state itself is argued to be a sort of rational, intentional, moral agent – one that exhibits its own agency over and above the agency of the individuals within it. On some strong views of this sort the state is actually argued to be a *moral person*, and such a view would clearly entail the appropriateness of normative responses directed at that person, and so would clearly vindicate the state-actor model in normative IR if correct.

The central argument of Parts II and III will be that none of these possibilities can satisfy the demands of basic liberal individualism. The conclusion is not that it is logically possible for one of these views to describe a possible world where states meet the necessary and sufficient conditions for being responsible. The point is that, given the existent generalities of state structures, no state in existence or likely to come into existence will satisfy the conditions necessary for responsibility on liberal grounds. The thesis of Parts II and III can be considered conditional in nature. *If* we accept the legitimacy of liberal individualism, *then* we must abandon the state actor model, since it is not consistent with it. Many of us do accept the legitimacy of liberal individualism in many normative contexts, so it is taken for granted here that there are strong reasons in favor of that normative foundation. This being so, the arguments in the following chapters can also be thought to be arguments in favor of the abandonment of the state-

actor model in normative IR and its replacement by an individual-actor model. This conclusion then has many practical ramifications. Perhaps the most important is its implications for how international practices and institutional systems should be structured. In fact, it implies that a great deal of the common interactions today between states themselves, states and transnational entities, and international bodies, is fundamentally flawed an unjustifiable at the individual level on the basic liberal framework.

After it has been argued that collectivist and corporatist (holist) views of the state do not suffice for normative evaluation, Chapter 1 of Part IV will argue that an individualist analysis of state action is possible. The sides of the debates surrounding these methodological issues in interpretive social theory, political theory, legal theory, and IR are not formed simply through personal preferences or ideology. Individualists often think collectivist views are untenable, not just that they are less intuitive or desirable. Collectivists do not just prefer to take a view of the whole rather than focus on individuals; they tend to think that individualism is untenable. It is one thing to argue against holism, but it is another to show that individualism can work. The arguments in the first chapter of Part IV will attempt to show this by addressing a number of common lines of objection used against individualist views. In addition to quelling concerns about the tenability of individualism as a methodology for social action in general and state action in particular, IV-1 will also present the ways in which individualism can accommodate the extensive complexity and interconnectivity that exists within the state structure.

Lastly, in Part IV, Chapter 2 we will look a bit more closely at how an individualist account of state action and responsibility might work, given that the state is a unique collective that presents unique challenges for normative theory. Fortunately, individualist accounts of social action already exist and act as a useful starting point for this purpose. It will be argued that

the basic approach of the views considered is correct, but that minor changes or additions will be necessary to account for the specific character of the state and state action. With these minor changes to certain individualist approaches to social action in place, a comprehensive theoretical edifice for addressing the normative dimensions of state action could be constructed. The modest purpose of this project is just to help perform some of the foundational work that must be done in order to clear the way and set the stage for such a possibility.

Part I: The State-Actor Model
Chapter 2: The State, State Actions, And Responsibility

§1 – THE STATE

If we are to adequately answer the tension elucidated in the previous chapter, we will have to give careful consideration to the term 'state', how states are comprised, and how states perform actions. Only then can we adequately connect state actions with individual, collective, and corporate responsibility. We will begin below with some discussion of the historical development of the concept 'state', provide some distinctions between alternate uses of the word, and use existing analytical models of the state to argue for a general understanding of the referent of that concept. It will then be possible to give a more detailed analysis of the sort of responsibility at issue, and discuss the basis of and functions of such responsibility. Finally, we will also look at the actual logic of individual responsibility within the state so as to further clarify the tension at issue.

When defining 'state', the major difficulty facing us is that the term has many possible referents and the concept has evolved in theory, and in common usage, over thousands of years.[24] This evolution of referent is generally congruent with common developments that occurred within the governing institutions of societies from the early development of larger, more coordinated societies. Different societies have different specific forms and histories, of course, but certain trends toward what we now think of as a state structure can be identified. In many areas of Europe, for example, there was a shift from decentralized fiefdoms toward centralized kingdoms and we first see the idea of 'state' as referencing the ruler or 'sovereign' of the

[24] For a discussion of the historical progression of the concept of the state, see Quentin Skinner, "The State," in *Political Innovation and Conceptual Change*, (New York: Cambridge, 1989), 90-131. See also Gianfranco Poggi, *The State: It's Nature, Development and Prospects* (Stanford, 1990), Chapters 3 and 4, for an informative discussion of the historical evolution of state structures from feudalism to absolutism, to constitutionalism, to liberalism.

commonwealth, which was often a single person or perhaps family of people, and the *status* of his, her, or their rule. As absolutism gave way to constitutionalism the referent of 'state' could be extended to the broader organization of government, or the lawmakers. And with the development of republican and democratic theory came a new conception of sovereignty as *popular sovereignty*, where political power and control is thought to rest, ultimately, with the citizens. According to these more modern views, the government is thought to be subservient to the populace, and 'state' is intended to refer to the entire self-determined collective.[25] Although use of 'state' as synonymous with something like 'sovereign' or 'country' is common, there is another distinct conception of the state as a set of abstract sociopolitical institutions, separate from, and with authority over, all persons within its jurisdiction. On this view, the state is not the supreme ruler, or even the popular sovereign government. Instead, it is the *system* itself, which coordinates the behavior of all persons in a jurisdiction.[26] This systemic feature of states suggests that they are *corporate agents* that are causally influenced by the society within the state, but not reducible to it.

Although the referent of 'state' in common usage has had a discernable evolution, particular tokens are still speaker-dependent and contextual, and they can refer to a range of entities, real and abstract, that might be recognized as a state. For our purposes, we need to distinguish between 'state', 'government', and 'legislators' so that we can be more precise in our meaning of the referent of 'state' in this work.

Consider the sentence: (1) "State *S* passed a law forbidding *X*."

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[25] In this respect the classical referent of 'state' has often been a 'nation' or 'country'.

[26] It should be noted that this sketch of the historical and conceptual development of the term 'state' coincides with the three dominant conceptual frameworks that give intuitive plausibility to the state-actor model (state as collective, sovereign, and institution). See Part I, Ch. 1, §2.

As is very common in English, (1) treats 'state' as interchangeable with 'legislators'. We might do just the same with 'government' as in, "*S*'s government passed a law forbidding *X*." According to the usage of the terms 'government' and 'state' in this work, (1) would be false, strictly speaking. This is because, regarding the former, the entire government did not perform the action specified, and regarding the latter the entire collective, or the thing itself, did not pass a law forbidding *X* on *itself*. The legislators, which are part of the government, passed a law on themselves and everyone else.[27] Other parts of the government would then help with the bureaucracy necessary to implement and enforce the law. All of these officials in offices of state management can together be termed 'government'.

Consider also:
(2) "The state collected *X* dollars in taxes this year."
(3) "The government collected *X* dollars in taxes this year."

Sentence (2) must also be false, strictly speaking, because it does not make sense to say that the state collected *X* dollars in taxes *from itself*. If we wanted to take this literally, we could insist that no tax transfer is necessary since the transaction is rather like shifting money from your left hand to your right. What we must mean in (2) is that members of some agency of the state collected those taxes from themselves and others. In the US, this would be the IRS. This analysis of (2) implies that (3) is false as well. We would of course accept the truth of (3) in a low-stakes context of discussion, but not if we wish to be precise. Identifying the causal ancestry of 'state action' and parsing responsibility is difficult if we do not distinguish between the broader ranks of the state *apparatus*, which together constitute 'government'. The pieces of that apparatus can be referred to by their own labels, and thus we can narrow down the range of our

[27] We will treat 'legislator' then as a designation for 'law-creator', which can apply to congresses and parliaments, as well as to executives (or 'royalty') when they exercise such power in order to create laws unilaterally.

referents. When we wish to refer to the entire government, its institutional structure, and the society that lives under its control, we will refer to the state itself – the whole.

Now consider: (4) "State *S* is democratically socialist."

While (4) may be true of *S*, according to a treatment of 'state' in this project, we should still wish to differentiate between the state as the *whole complex* of land, persons, and institutions, and the *state structure* or *institutional form*. The structure of the state, including the major institutions, symbols, names, and written laws, is distinct from the persons that comprise the state and act together through its structure, though the structure does influences their development and interactions. It is true that taken as an entire complex of factors, the state will contain a political and economic structure, which can make (4) true, but let us include the modifier 'structure' when we mean to refer to the institutions, in distinction to the persons.

Lastly, let us also distinguish between 'democratic' and 'republican' forms of government. Though we would generally consider (4) to be true if the state in question were France, for instance, (4) is actually false – again, strictly speaking. A true democracy will be considered a direct democracy, where we can commit to a strong sense of rule by the *demos* or the people. The family of systems common around the world today includes what is sometimes called 'representative democracy', such as in the US. Under such systems the whole people are still considered sovereign, but they elect representatives that directly decide issues of state policy and action.[28] The term 'republic' will be used to refer to such systems, and 'democracy' will be saved for the (at this point) hypothetical possibility of *direct* democracy.

[28] This is true in the majority of cases, at least. Representative systems do sometimes allow for limited direct influence from the populace through referendums or initiatives. Switzerland provides a good example of a representative system that has measures in place for direct democracy at the federal level. Still, it too will be considered a 'republic' in this work.

§1.1 – The State as Whole

As a unique concept, in distinction from 'government' and related institutions and organizations, 'state' has a broader referent. Many examples from scientific IR serve to illustrate, and to help specify a working referent without a more sustained treatment. Our normative and scientific theories in IR need not use an identical concept of the state but the analyses will share features in common, and the scientific perspective is useful for orienting the discussion. Moreover, many theorists working on the normative theory of international relations already employ the concept in much the same way as the political scientists, so I will begin my analysis from this commonly accepted conceptual scheme and use it as a baseline from which to proceed.

This scheme that we will borrow from Alexander Wendt can be thought of as a unification of three main reference classes for the term 'state' in the canon of IR theory. Wendt labels these *Weberian*, *Pluralist*, and *Marxist*.[29] The Weberian tradition regards the state as an organization with a monopoly on the use of organized violence as it relates internally to coercion for social order and externally to interactions between the state and entities beyond its territorial boarders. For such an organization of violence to be a state, and not simply a powerful gang ruling by force alone, modern Weberian analyses include a legitimacy condition, which is satisfied if the administrative organization is considered to have authority – meaning, roughly, that the people consider their commands to be binding. From these aspects alone, we can see that the Weberian reference-scheme treats the state as distinct from, and ontologically independent of, the *society*. Rather, 'state' is akin to 'government', although with additional recognition of the institutional conditions that shape it.[30]

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[29] Alexander Wendt, *Social Theory of International Politics* (New York: Cambridge,1999), 198-201.
[30] For a short account, see: Max Weber, *Economy and Society* (New York: Bedminster, 1968), Vol. 1, 54-56.

The Weberian analysis has become dominant in IR, and this may be due in part to the theoretical, explanatory, and predictive usefulness of treating the state as an organizational actor that makes decisions and performs actions on the basis of *its* reasons. The emphasis here is on the corporate features of the governing organization that manages the society underneath it. In this respect the Weberian program is less concerned with the specific constitution of the populace and the relations between populace and government. Since on the Weberian view government officials have the supreme power and ultimately wield this power through implicit or explicit threats of violence, the state and its actions are analyzed through nearly sole focus on government form and the government reasons, intentions, and policies.

The Pluralist account of the state stands in stark contrast to the Weberian variety. Pluralists argue for a reduction of the state to interest groups, thereby putting an important emphasis onto the society that lives within the state and its particular political structure. In this way there is the need for some understanding of the domestic political system in order to understand how the international system functions, or how states behave. The governing class is not considered in isolation to the populace; rather, the actions of government are thought to originate with the populace – more specifically, the most influential groups. We can see a close relationship between the Pluralist view and the view of the state as a unified collective, which we discussed in the previous chapter. On the pluralist view, the state is a large collective composed of smaller collectives that vie for influence and control. So, the whole can be considered as a single until engaged in self-struggle, and its actions can be seen as the product of that struggle amongst the whole.

The Marxist variety of state theory focuses on the institutional structure of the state-society relationship, and in this respect it can be characterized as containing elements of both

Weberian and Pluralist analyses. Given that the structure of the state is of primary importance, this view is most akin to the treatment of the state as the system of rules itself that dictates the obligatory, permissible, and prohibited behavior of all individuals (citizens *and* government), as described in Chapter 1. Though, this is not to say that persons drop entirely out of focus – it is just that an emphasis is placed on the organizational structure of the state – its economic and political systems that organize persons' behavior. The classical Marxist tradition would place an emphasis on the economic conditions of the state, or the question of who owns and controls the means of production. This feature of the system is thought to be the basis of individual psychological conditions, and so be the basis of any action we might attribute to the state itself insofar as the psychological conditions of the persons in the state affect state action. The emphasis here is generally placed onto social-class perspectives, class conflict, and their impact on state behavior. Put one last way, the Marxist view has a tendency to interpret state behavior as the product of the *form* of the state, rather than of its micro-composition at the individual level. In this way a Marxist analysis might conclude such things as that a capitalist state will tend toward behavior *X*, while a fascist state will tend toward behavior *Y*, and a communist state toward behavior *Z*.

Insofar as we are attempting to capture the whole population of the state in our use of the term (as we must if we are to discuss this entity in a way that relates to the implications of the state-actor model), none of these reference schemes provides a complete picture of the state for our purposes. Yet, each scheme does offer important insights into some of the essential characteristics of states' structures and so their behaviors. The Weberian analysis specifies an important feature of statehood by focusing on the supremacy and finality of government command and the fact that edicts are ultimately enforced at the individual level by threats of

violence. States may be predominantly harmonious organizations (for the most part), but we should not forget that they are *ultimately* maintained by force. The Pluralist analysis focuses on the very relevant issues of politically influential groups and their effects on state action through the control of political parties and members of government. It is important to look carefully at a state's political institutions its 'pressure groups' in order to understand its policies and actions. And, finally, the Marxist analysis emphasizes the economic elements of the state structure, and although we need not accept the specifics of the Marxist position and its class analysis, we should agree that *some* account of the economic details of the state must be incorporated into any satisfactory, comprehensive analysis of state action. The political processes in the state do not occur in isolation from economic institutions and current conditions. To fully understand state actions we must also take into account economic circumstances in the state.

While it would be nice to specify necessary and sufficient conditions for statehood, that issue is beyond the scope of this project, and need not be specifically resolved in order to discuss generic state structure and behavior. We can provide an account of the state that is narrow enough to make it importantly distinct from other social entities, such as governments, and also broad enough to capture essential features of existing states, which are organized under a range of institutional structures. For the purpose of enabling fruitful normative theory about states a hybrid of the three reference schemes above will be used. Alexander Wendt offers an account of this sort that delineates the "essential state," or that definition of statehood that captures what is importantly common to all states – what Wendt believes to be a shared "core."[31] His treatment of the state is highly regarded and it provides a useful starting point from the scientific perspective that will be relevant to our judgments from the normative perspective.

[31] Wendt, *Social Theory*, 201-215.

The five properties Wendt attributes to the essential state are the following:[32]

(1) An institutional/legal order
(2) An organization claiming a monopoly on the legitimate use of organized violence
(3) An organization with sovereignty
(4) A society
(5) Territory

Taken together, these features of social organization pick out the entities in our world, past, present, and future, which exemplify statehood as the concept is typically used in IR.[33] Importantly, entities with these features can arise independently of other such entities, such that the existence of the state is not dependent on the existence of the state system. Rather, the actions of individual persons can be said to "construct" the state and, in Wendt's view, the actions of the individual states are what create the international state system, not the other way around. It follows that a state could form in isolation from other states and, therefore, there need be no diplomatic or economic connection between them.[34]

Another important feature of Wendt's treatment of the state (that makes it especially useful for our purposes) is that his conditions together rule out the uses of 'state' that refer solely to governments or abstract legal or political institutions. The moral and legal dimensions of state action, for the purposes are assigning liability, enforcing laws, and administering sanctions, must enable us to potentially extend the scope of the term 'state' to the broader society underlying it. It is ultimately the members of the underlying society who feel the effects of such practices. Wendt's definition of the state touches on all essential features of the entities in question and fits nicely with our picture of the society of states as you might see on a map. However, although he

[32] Ibid., 202.
[33] For a contrasting analysis of the contemporary concept of the state, see Christopher Morris, *An Essay on the Modern State* (New York: Cambridge, 1998), particularly 45-46.
[34] In this respect the conception of 'state' utilized here contrasts with the international legal description as offered, for example, in the Montevideo Convention, where it was determined that a necessary feature of statehood was a capacity to enter into relations with other states.

provides us with a useful starting point it has yet to be determined whether we should regard the state as a person, as Wendt does, or as a collective or corporate actor at all, and whether it is appropriate to assign liability to it.

Rather than give a full analysis of the state here, including an argument pertaining to whether the state exhibits agency through its actions or whether the state is an institutional person, we can instead let these points develop during the discussion of the different ways in which the state-actor model might be shown to be compatible with the individual-actor model. At this point it will suffice that we understand 'state' to pick out entire populations living in certain geographical boundaries and organized through certain legal institutions that are, at bottom, regulated by threats of violence from a governing organization that claims a monopoly on the legitimate use of force in that territory. Although it will not be a precisely defined category, 'state' will pick out all of the countries throughout the world that we typically associate with statehood. The important point is just that the term is being used here so as to represent the world as divided up more or less by the familiar countries on today's maps, so that we can ask whether it is appropriate to conceptualize the normative dimensions of international relations as being carried out by those entities.

§2 – STATE ACTIONS

Now that we have a clearer picture of what the state is, we need to say some more about when and how these entities act. That is, we need to know under what conditions we say something true when we make claims of the form: "State *S* did *X*." When 'state' refers to the entire adult population of an entity that fits the description given above, then perhaps the most uncontroversial example of a state action one can conceive of would be a *joint action* performed by *all* those state members. For example, if all full members of *S* were to voluntarily take up

arms to defend the state's territory from invasion we could correctly claim, "*S* defended its borders." This collective action would be quite large and complex, but it would still be certain that the description of the case was accurate. It is far more likely, though, that only some of the members of the state directly influence some result that we might assign to the state itself. Typically it is the actions of state officials or members of agencies that act on behalf of state officials, such as members of the military, that are treated as the actions of the state itself. Yet, even when state officials act, it is crucial that they act in an official capacity so as to 'carry' the entire state along with them, as it were. To clarify the point, consider two cases. In the first, the president of state *S* agrees to play golf with the prime minister of state *T*. Here the president of *S* acts as an individual and it would certainly be improper to say, "*S* agreed to golf with *T*." However, if we change the context a bit we can implicate both states, as wholes, such as if the president of *S* and prime minister of *T* agree to reduce holdings of chemical weapons. In the second example the two persons act in their official capacities as heads of state, and so the agreement they make is not between them as individuals but between their respective states.[35] This agreement is considered binding, at least indirectly, on both states, now and as far into the future as the agreement stands. It follows that a claim, "*S* and *T* agreed to a chemical weapons policy" has a clear meaning and will be true on some interpretations. Similarly, if the US Congress takes a vacation it would be wrong to describe the event as 'The US' taking a vacation, although if the US Congress were to declare war it would be acceptable to ascribe this act to the US itself, under at least some interpretations where the salience of the fact that war is occurring affects judgments about the populace of the US. The difference again is whether the acting

[35] It would be most precise to ascribe the agreement to the two governments or agencies of each state with purview over chemical weapons policy. Since the responsibilities involved are not within the control of common state members, such as citizens, we should technically not ascribe the obligations generated by the agreement to them, or only do so conditionally. For any given member of the state, *X*, *If X* takes on a role in the state that has influence on the chemical weapons stock in the state, *then X* is obligated by the agreement.

individuals are acting in an official capacity or not. To make a claim about the whole group based on the actions of only select members requires that those members have some sort of authority within the group that authorizes them to act on the *group's* behalf.

We need to be careful here, though, because there are many examples of actions involving state officials acting in an official capacity, which are nevertheless not properly considered actions of the state itself. Recall our previous example where the legislators pass a law forbidding *X*. In this case it is not true that the state passed this law on itself. Rather, a select set of individual state officials created this law and the action must be ascribed to them. This is true in many other kinds of cases. To clarify the point a bit, consider the case of the massacre at My Lai.[36] In this case soldiers in the US Army, specifically Charlie Company, killed many people in the village of My Lai in 1968. The orders to destroy this village do not seem to extend up very high into the ranks, and certainly not back to parts of the US government that would then implicate the US populace who elected that government. In other words, this mission at My Lai was not considered to be part of the general US war effort. Although the soldiers were operating in an official capacity as soldiers of the US military, their actions cannot be ascribed the US itself. That is, it cannot be true that "The US massacred the people of My Lai." Hence, it is not the case that all actions of state officials, or agents of the state, are actions *of* the state, even when done in an official capacity.

The state actions that we are going to be concerned with, then, are those that are officially of the state, and so those that might implicate the entire population of the state. The prime examples for this purpose are activities like war, espionage, inter-state agreements, international state borrowing and lending, and sanctions regimes. We may accept that such examples are not

[36] For an account of the events and some examples of the philosophical questions involved, as well as there possible solutions, see *Individual and Collective Responsibility: The Massacre at My Lai*. Ed. Peter French (Cambridge: Schenkman, 1972), especially Ch. 1.

really describable as actions of the *whole*, but they may be treated as such insofar as the basis of the agency exhibited can be ascribed to all members of the state, or the state itself, or insofar as the related responsibility judgments can properly be ascribed to all members or the whole. The difficulty here lies in the fact that the state is an institutional, hierarchical, collective, and corporately organized entity. If it acts at all, it does so through the actions of many individuals and these singular actions can be quite loosely interconnected and take place over great physical and institutional distance and time. This, of course, complicates matters. To offset that this complexity we will begin with basic issues and try to use simple examples that trip away much of the ancillary factors so that we can focus on the agency underlying the action. From our understanding of the basic cases of state action and responsibility, we will be better able to evaluate the merits or demerits of the state-actor model.

§3 – THE TANGLE OF RESPONSIBILITY

In the following discussion we will compare and contrast 'responsibility' with related concepts from moral and legal theory and narrow down a precise meaning for the term. The issues being addressed here have to do with the appropriateness of holding a state responsible for some action in such a way that it (or its people) are open to moral or legal judgments, reactive attitudes, demands for justification or apology, and attending acts such as praising, blaming, rewarding, and punishing. That is, we are focusing on a broad range of normative judgment, and cases where such a judgment might properly extend, in substance or consequence, to all full members of the state in question. If Germany in 2010 is to justifiably pay WWI reparations to France in 2010, then the German citizens of 2010, or Germany itself, must be legitimately responsible for those payments. The worry about how such a case could be justified illustrates the central tension between contrasting models of interpretation.

If we are to dissolve the tension between the state-actor and individual-actor interpretational models in normative theory, one of two conditions must be established: (1) either all individuals encompassed within our state-based normative judgments and practical responses are justifiably included because we can give some account of how each person is connected to the state and its actions (the members of the state are collectively responsible), or (2) the state itself is a moral person or agent that is properly treated as a whole and so a proper target for moral and legal judgment, which itself justifies the related effects on individuals (the state is corporately responsible). Option (1) is a sort of bottom-up or micro-to-macro approach to establishing state responsibility, where the responsibility of all individuals involved entails the responsibility of the whole. In order for (1) to be correct a statement of the form, "State *S* is collectively responsible for *X*," or "All members of *S* share responsibility for *X*," will have to be shown to be true. Option (2) can be considered a top-down or macro-to-micro approach, where the responsibility of the state itself entails the derivative responsibility of all persons who comprise the state. To support such a position we will have to show that states have certain qualities sufficient to establish a sort of corporate agency that is supervenient upon or emergent from the agency of the members.

Before we move on to consider those possibilities, we will have to give a more precise formulation of the tension by explicating a few key concepts and looking at the underlying logic of the issue. To be clear about whether the state is a fit target for normative judgment we must first be clear about the different possible types of such judgments. Below we begin with a discussion of the basics of moral and legal responsibility in the interpersonal context, including the justification for our related practices of applying normative sanctions. We will then move on

to some necessary preliminary remarks about collective and corporate action and responsibility that relate more closely the state action.

§3.1 – 'Liability' as Broad Retrospective Responsibility

The term 'liability', which is itself an indicator of a form of responsibility, will often be used here to capture the broadest notion of moral and legal responsibility possible. This is so that we can determine whether any of the various forms of normative judgment can apply to the state. A statement of the form, "*A* is *responsible* for *X*" is often treated as interchangeable with "*A caused X*," "*A* is *guilty* of *X*," "*A* is *answerable* for *X*," "*A* is *accountable* for *X*," and "*A* is *liable* for *X*." This has the potential to create a great deal of confusion because the italicized terms can be used in significantly different ways and so have very distinct meanings. In order to avoid any misunderstanding we will have to distinguish these concepts. The central point to be made is that 'liability' as the term will be used here is the most general notion of all the distinct backward-looking normative concepts that can be expressed in terms of responsibility.

We should first distinguish a few different meanings of 'responsibility' that are importantly distinct.[37] At the most basic level of action we could use 'responsible' to mean 'causally responsible', which refers to mere *causal authorship*. We can say that one is responsible for some action or event insofar as she was a necessary part of the causal chain that brought it about. This type of responsibility is not properly considered a moral notion because it is neither necessary nor sufficient for the attending action to be open to moral scrutiny. If a muscle spasm causes *A* to spill a drink we may say that she is responsible for the drink being spilt, but only in a bare causal sense and not in such a way that she is open to moral judgment for it. Conversely, *A* may not be the causal author of an event and yet still be responsible for its consequences. For example, if *A*'s dog bites *B*, *A* is responsible to compensate *B* for the

[37] Joel Feinberg distinguishes five types of responsibility in *Doing and Deserving* (Princeton, 1970), 130-139.

damages. It is not relevant that *A* did not 'author' the biting. Her responsibility does not depend on that. As the owner of the dog, *A* must take responsibility for its actions. From this we see that causal considerations may be relevant to judgments of responsibility, but causal responsibility itself is neither necessary nor sufficient for normative responsibility. This fact is especially important for the case of state action, as it is likely that our moral and legal judgments about those actions pertain to individual persons who will not have had any direct causal involvement in the state action.

Beyond causal authorship, we use the term 'responsibility' to convey certain forms of *moral responsibility*. A central and important form of moral responsibility is what Thomas Scanlon calls responsibility as *attributability*.[38] If a person is responsible in this way then the action or event in question is attributable to her, as an *agent*, which can be appealed to as a basis for moral or legal judgments against her. The idea of the person satisfying the conditions of agency in this case (acting freely and intentionally on the basis of reasons) brings this notion of responsibility past mere causal authorship and into the realm of social behavior that is open to the normative scrutiny of others. That is to say, we are talking about behavior that can be questioned and criticized, we are talking about agents that can be pressed for a justification or excuse for what they have done, and if acceptable reasons cannot be offered these agents may be blameworthy or punishment-worthy.

Scanlon's notion of (attributable) responsibility brings us much closer to the concept of 'liability' as it is being used here, but it does not bring us far enough. Though it is a normative idea, attributability is a base normative notion. It only specifies that the actor was acting intentionally, as opposed to mere reacting or experiencing an involuntary bodily happening. Attributability identifies the actor's *will* as involved in the action, but for attributability

[38] See Scanlon, *What We Owe to Each Other* (Cambridge: Harvard, 1998), 248, and all of chapter 6.

responsibility to entail moral or legal responsibility (strong liability) two major components must typically be in place, which we may refer to as the *control* and *informational* conditions. The agent must have a certain level of control over what is being done and a certain amount of knowledge about the situation and the most probable outcomes of the available courses of action. When these conditions are not met, the agent is not retrospectively liable, even if the agent is (attributable) responsible. In the simple cases (barring potential complicating factors) if an agent (i) could not have done otherwise, (ii) if she was coerced, or (iii) if she justifiably did not know what she was doing then she is not liable for her actions. For example, if *A* is threatened with the death of her child if she does not steal, then we will not hold her morally or legally responsible for the theft because she did not freely do it, although she did do it intentionally (in a bare sense) and the action is therefore attributable to her as an agent. Similarly, if *A* has been systematically mislead into believing that stealing is morally desirable, we will not hold her liable for her theft (beyond a liability to return what was stolen) because she did not know that what she was doing was wrong. It is in this vein that we typically absolve those of limited cognitive ability of blame and punishment for their actions (e.g. children or the cognitively disabled), even if we want to construe them as agents of a sort. Volition relates directly to (attributable) responsibility, but only indirectly to liability. Thus, it is possible for *A* to be liable for an action or event that is not attributable to her, as well as that some action or event is attributable to *A*, although she is not liable for it. Like causal authorship, attributability is neither necessary nor sufficient for liability.

As for the notion of 'guilt' this is typically reserved for the legal context and, more specifically, criminal law. While 'criminal guilt' will overlap significantly with the 'liability' under the broad interpretation I am using of the latter, the two will often come apart. To be criminally guilty an individual typically requires the satisfaction of two "fault" conditions: *actus*

reus and *mens rea* – or guilty act and guilty mind. This is the moral component to criminal law and it parallels the control and informational components of liability for events one is (attributable) responsible for. The simplest cases of criminal liability are those in which the actor is (attributable) responsible for knowingly and willingly committing some action in violation of a statute. In such a case, both fault conditions obtain and liability (e.g. punishment) is justified on these grounds. In this respect, the easy cases of criminal liability involve a condition of moral failing, which is essentially (attributable) responsibility together with sufficient control, knowledge, and desire or intention. If one is at fault in this way then she is liable as well (as the term is being used here), perhaps in a variety of ways. However, one may be excused of legal liability if she commits a crime, but without meeting both fault conditions. If, for example, the person is not aware that her action was illegal, or she did that act without the intention of wronging anyone, she may not be liable. We typically set some sort of limiting condition of "reasonableness" onto this knowledge component, since one may not know the law even though we think she should. The point here is just that liability for a criminal action is very much like liability from (attributable) responsibility to the extent that it requires more than just the action itself. This fact can be seen in cases of justified law breaking, such as, for example, crossing the double yellow line while driving, in order to avoid hitting a fallen bicyclist.[39] This act isn't excused, insofar as we take that to mean that it was a wrongful act but not worthy of blame or punishment; rather, this act is justified. We take it that crossing the double yellow line was the right thing to do in this case. Here we have an instance of guilt without fault and so guilt without liability. Again, the control and informational components are crucial, and other circumstances may be extenuatory. What we find is that guilt is also insufficient for liability without the fault conditions that act as its moral underpinning in criminal law.

[39] I borrow this example from Professor Ronald Moore.

Guilt is also not necessary for liability. For example, one's liability can arise from suretyship. If *A* signs a contract accepting guarantor responsibility for the debts of *B*, then *A* is liable for those debts if *B* fails to pay them. This is a sort of *vicarious liability* seen here through the relation of contract. There are other form of vicarious liability that follow from relations of guardian (e.g. *A* may be accountable for the actions of her child), owner (e.g. *A* may be accountable for the actions of her dog), superior (e.g. *A* may be accountable for the actions of her subordinates in a hierarchical institution, or for failure to carry out her specified duties),[40] and perhaps controller (e.g. *A* may be accountable for the actions of another agent if she coerces her, brainwashes her, or otherwise controls her to the point that her actions are not really her own).[41] We can catalog these notions of liability that relax the conditions of fault, or do away with them altogether, as *strict liability*. When a person (or group) is strictly liable, no moral judgment need accompany the action or omission, in fact, no *direct* action or omission on the part of the liable parties need occur at all.

Although the versions of liability discussed above do not require fault, we should notice that they do require agency of some kind, or some other sufficient connection to the actions in question. Of all the concepts listed above, 'answerability' and 'accountability' are the most closely related to 'liability' as the terms is used here. Typically, to say that one is answerable or accountable for *X* is to say that she can be pressed for an explanation, excuse, or justification for *X*, and be subject to any punitive measures (moral or legal) following from *X*, if sufficient excuse

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[40] HLA Hart refers to these as 'role responsibilities' in *Punishment and Responsibility* (New York: Oxford, 1973).

[41] For an account of different forms of liability, including a discussion of the collective context, see Joel Feinberg, *Doing and Deserving*, Chapter 9, "Collective Responsibility." The last example of controlling may seem to be something other than strict liability, since we may presume that the controller is morally responsible for the act of controlling, but I think we can still intelligibly speak of the controllers strict liability for the specific action of the controlled, in addition to the non-strict liability of the controller for her part in the controlling. To see this more clearly, consider the case of a CEO. This person may be morally at fault for accepting the position in a company that she knew to operate immorally, but her liability for the law breaking of her subordinates is still of the strict variety, nonetheless. If we focus on just the action of the second party, it seems there can be strict liability even when a separate moral failing is involved.

or justification cannot be provided. In this way the two concepts seem to rely on attributability, but they need not. Although it is a bit odd, one can be answerable or accountable in a 'strict' sense, such as if we say, "*A* is answerable for *B*'s debt because *A* signed the contract as the guarantor," or "*A* is accountable for *B*'s debt..." Although we could draw a sharper line between these notions, we will consider them to be essentially synonymous, especially 'accountability' and 'liability'.

'Liability' overlaps with all of the other concepts discussed, especially because the goal is to interpret the concept in the broadest possible way.[42] For the purposes of this work, 'liability' will reference a relationship between an agent and an action, omission, or event, such that the agent is the proper target for normative responses to the action such as a request for reasons, praise, blame, reward, punishment, or demands for restitution or reparation, when no defeaters are relevant that might counteract the judgment.[43] In this way 'liability' is an *outcome* concept.[44] It concerns a retrospective judgment that one is appropriately connected with those who helped *cause* the state of affairs in question – even if in a very indirect way. The term 'Responsibility' will be used to designate *moral responsibility*, as blameworthiness, for example, and '(attributable) responsibility' will be used to refer to that more restrictive notion based strictly on agency and where moral responsibility is left indeterminate.

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[42] There has been some debate lately about the conceptual relationship between attributability, answerability, and accountability. See David Shoemaker, "Attributability, Answerability, and Accountability: Toward a Wider Theory of Moral Responsibility," in *Ethics*, Vol. 121, No. 3 (April 2011), and the follow up by Angela M. Smith, "Attributability, Answerability, and Accountability: In Defense of a Unified Account," in *Ethics*, Vol. 122, No. 3 (April 2012).

[43] Defeaters usually take the form of a justification or excuse, but I will also discuss re-characterizations of events that might absolve one of liability (or show an initial judgment of liability to be mistaken).

[44] The point here parallels a distinction that can be found in many places, for example, in the David Miller's work, *National Responsibility and Global Justice* (New York: Oxford, 2007). He distinguishes between what he calls 'outcome responsibility' and 'remedial responsibility'. The former depends on one being involved in the commission of some action, or creating some state of affairs, the latter may apply regardless of one's connection to the harm done. Remedial responsibility can extend to people who are completely morally innocent and totally unconnected, which makes this weaker than even 'liability' as used herein.

On this understanding, 'liability' and 'accountability' act as umbrella concepts that encompass notions of moral and legal responsibility, accountability, and liability, all in the retrospective sense. Given the fact that the sufficient conditions for liability are broader in scope than those for moral or legal responsibility, it should be relatively easier to establish the liability relation in the case of state action. This issue will be explored in detail in subsequent chapters.

§3.2 – Collective And Corporate Responsibility and Liability

For the purpose of establishing liability for the state, we must also attend to a distinction between two sorts of normative responsibility that may apply to groups. These are *collective* and *corporate* responsibility, which can each refer to either causal responsibility, (attributable) responsibility, or liability.[45] Although it is often the case that these two labels for responsibility are used interchangeably, there are a few crucially different meanings that may be attached to them. As a first pass at clarification, we should consider Joel Feinberg's treatment of the issue of collective responsibility, which mentions importantly distinct meanings, but also conflates collective and corporate responsibility as the concepts are used here. He says:

> [W]e shall focus our attention on collective-responsibility arrangements. In principle, these can be justified in four logically distinct ways. Whole groups can be held liable even though not all of their members are at fault, in which case collective responsibility is still another form of liability without contributory fault […] or, second, a group can be held collectively responsible through the fault, contributory or *noncontributory*, of each member; or, third, through the contributory fault of each and every member; or, finally, through the collective but *nondistributive* fault of the group itself.[46]

The first type of collective responsibility Feinberg mentions is collective *liability*. This is a possibility when all members of the group are held to account in some way, though it need not

[45] The use of the term 'responsibility' in the collective or corporate sense is often intended to convey the idea of attributability, and so moral and legal liability on that basis. I will not give preference to that view here. Still, I will use the term 'responsibility' in explaining the collective and corporate notions, instead of 'liability', to not confuse the broad notion of 'liability' with the specific notions of 'collective liability', where the latter is supposed to refer to the liability of the group *itself* (not necessarily all members), and 'corporate liability', where in jurisprudence this typically means 'civil or monetary responsibility'.

[46] Joel Feinberg, *Doing and Deserving* (Princeton: 1970), 233 [his emphasis].

imply that all are morally responsible (at fault) or blameworthy. Feinberg even goes so far as to mention that cases of collective liability will tend to be those in which most of the particular members are liable vicariously; that is, where the fault lies with only some members and the rest are liable according to their relationship to those at fault. The second type of collective responsibility involves all members of the group being at fault, though some members may be at fault in spite of their lack of contribution to the action or result ascribed to the group. We can imagine cases where every member of the group engages in some condemnable behavior (and so is at fault), though harm is cause by the faulty behavior of only some of the group. In certain cases like this we would say that the group is responsible for the harm, meaning morally responsible, and blameworthy. Feinberg uses the example of drunk driving to clarify. It may be that there is only one accident some night that is caused by a drunk driver, but it will certainly be the case that other people were driving drunk that night. Those other people are equally morally condemnable to the one who caused the accident. We could say that the group 'drunk drivers' is collectively blameworthy. However, we also have to accept that this is the limit of such a judgment. We could neither extend moral responsibility for the particular accident of that one drunk driver to all other drunk drivers, as some argue, nor hold all other drunk drivers liable for the consequences of that accident. Even if the other drivers were merely lucky to have avoided an accident, that particular accident was not their *particular fault*. The third kind of collective responsibility mentioned is one where all members of the group engage in conduct that causally impacts some outcome. Here, no one's responsibility is vicarious, and the collective responsibility of the group is the aggregate of the responsibility of the individuals.[47] The last category Feinberg suggests is what he refers to elsewhere as "contributory group fault" that is

[47] Ibid., 243.

"collective but not distributive."[48] These cases are supposed to be those in which the fault to be assigned is assigned to the group, itself, as a collection of persons, even though not all members are personally at fault, and even in odd cases where *no one* is at fault personally. The example used to motivate this category of collective responsibility is the case of a train robbery. Suppose that one person holds up a train car full of people. Imagine further that had a subset of the people on the car (just about any subset of them greater than two) rushed the robber, they could have jointly overtaken him and prevented the robbery. Feinberg allows that this could have been risky, and that "one or two of them, perhaps, would have been shot," and yet he still concludes that it is correct to judge the entire group responsible for not acting together to stop it. No individual in the group is responsible because we cannot expect any single one of them to be a hero in that situation, but the *group* is responsible for not stopping the robbery because we can point to a "flaw in the way the group of passengers was organized (or unorganized) that made the robbery possible."[49] The group did not produce the necessary heroes when it needed to.

Feinberg draws some important lines above and his first three uses of 'collective responsibility' will fall within the scope of the concept as used here. In this project, 'collective responsibility' will be understood as responsibility that distributes across an entire group (although it need not distribute evenly). This allows for the possibility of collective liability, collective responsibility where all are at fault but only some contribute to some harm, and collective responsibility where all contribute and so all are at fault. This does not allow for cases of the fourth kind that Feinberg mentions. The possibility of non-reducible collective (outcome) responsibility of the group itself, where no individuals are responsible, will be discussed and rejected in the arguments of the following chapters.

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[48] Ibid., 248.
[49] Ibid.

Collective responsibility is most commonly associated with what we would call *joint actions*, which are, in the simplest cases, the contemporaneous efforts of two or more people directed toward a common end.[50] Examples of such action include two people moving a piece of furniture, going for a walk through the park, or painting a room. An essential element of the paradigm cases of such actions is the conditional nature of the participants' intentions. Each participant intends to do her part because of her beliefs and expectations that others involved will do their part. In cases such as these it is generally quite obvious that all participating members of the collective deserve roughly equal moral or legal appraisal for the joint action. This seems appropriate because of the group effort involved, including shared intentions and ends. So, for example, if two women steal a television together by jointly carrying it out of the victim's house, then both are responsible, morally and legally, for stealing the television. Thus, we could say that they bear joint, shared, or collective responsibility for that act of theft, and both are liable, other things being equal. This is obviously a case of Feinberg's category of collective responsibility where all members of the group bear contributory fault.

When a group pursues a project that requires multiple actions spread over time and space and directed toward multiple collective ends that are together constitutive of an ultimate collective end or ends, we may refer to this as a *joint enterprise*. Joint enterprises often involve conventions and many joint and individual actions, and they are typical of organizations.[51] A

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[50] This and other collective concepts have been analyzed quite thoroughly by Seumas Miller, *Social Action* (2001), specifically Chapter 2. I will rely on his work in describing the following set of relevant concepts. See also, Michael Bratman, *Faces of Intention* (1999) where he discusses 'joint activity', and Margaret Gilbert, *On Social Facts* (1978) where she develops the idea of a 'shared action'. What is said here about collective responsibility directly refers to groups that have been intentionally formed, but much the same would apply to what we might call an 'aggregate collectivity'. See Peter French, *Collective and Corporate Responsibility* (1984), p. 5. For example, a mob may destroy a part of town and we can ascribe this result to the group itself, and possibly blame each individual for what the group has done, even though there was no explicit coordination between the individuals involved. See also Larry May, *The Morality of Groups* (1987).

[51] It is worth noting that Miller also specifies other variants of joint actions or activities including, joint procedures, joint mechanisms, joint practices, and quasi-joint actions. I will explicate these ideas as needed.

related notion is *joint activity*, which can refer to the behavior of the agents involved in a joint enterprise. A group of persons playing a pickup football game gives us a nice example of a joint enterprise. If we imagine that 20 people meet on the field and more or less spontaneously form two non-hierarchical teams and then play a game of football, then each team gives us an example of a shared project involving joint activity that can be labeled a 'joint enterprise'. Technically, there will not be many joint actions taking place in the game, such as if two of the players on a team were to score a touchdown *together*, but the various individual actions involved in playing football will all be performed for the common end of winning the game, with each individual understanding that what they are doing is conditional on the other players performing their roles (guarding their designated man, tackling the opposing player who has possession of the ball, blocking when ahead of the ball carrier, etc.). Thus, the outcome of the game can properly be ascribed to the team, which is to say, all of its members. If the team wins the game, then each player shares in this win. In other words, all the players are collectively (attributable) responsible for winning the game. We may not want to evenly assign the responsibility for the win to all members, such as in a case where one player was clearly the most effective member of the team, but it is important to note that collective responsibility is a species of joint responsibility and all members of the collective will bear some responsibility, although this can occur on a relative scale. Thus, in cases where a collective is of an aggregate sort, or where the action, activity, or enterprise involves a joint or shared effort, responsibility may be distributed across the entire collective. In this way, collective responsibility is a type of *shared responsibility*. When conditions of collective responsibility obtain, the case for collective liability easily follows.

We must distinguish what has been explained above from 'corporate responsibility', which is a related but importantly distinct idea.[52] As opposed to collectives that are aggregate or engaged in joint actions and activities, there are those that are hierarchical and institutionally organized, such as corporations, universities, or armies. Peter French terms these 'conglomerate collectivities' and argues that the identity of such collectives is not exhausted by the conjunction of the individuals comprising it.[53] When an action is attributed to a collective entity of this sort, responsibility for the action may not distribute across all members of the collective. Rather, we would say that the collective *itself* is responsible, and this judgment need not be reducible to judgments of individual responsibility, although in many cases partial reductions may at least be possible. What is important is that this notion applies to the whole, and this may not necessarily translate into a related judgment of individuals. As French puts it, "If a conglomerate is responsible for something, we cannot automatically conclude that 'Some individuals associated with the conglomerate are responsible for it.'"[54] This is not to say that there aren't cases where individual responsibility follows, just that it is not necessarily the case that any individual responsibility will follow. If such a thing were possible, this sort of corporate responsibility would be something like Feinberg's fourth kind of collective responsibility.

It is important to stress the following point: even if we were to argue for some individual responsibility being connected to the corporate responsibility that is established, it need not be distributive as in the case of collective responsibility. For example, the actions that we ascribe to a corporation may entail the responsibility of just executive officers, such as in cases where we apply strict liability rules. Nevertheless, corporate responsibility may be grounds for *collective*

[52] For a discussion of the responsibility of states (a type of corporate responsibility) in international law see, Ian Brownlie, *Principles of Public International Law*. (New York: Oxford, 1998), 436-444, 449-460.
[53] French, *Collective and Corporate Responsibility*, 13. We should keep Feinberg's fourth category distinct from those discussed here under the 'corporate responsibility' heading.
[54] Ibid., 14.

liability, even though not all members are responsible. As said above, the conditions under which an individual or group is liable are easier to satisfy than the conditions of responsibility, so the relations need not extend over identical sets of people. This possibility is important for the case of the state, since state action will tend to be the actions of just a subset of the state. In order to justify treating the state itself as a corporate agent and holding *it* responsible or liable, something must be said to properly connect the non-acting members of the state to that judgment.

In summary, for our purposes here, 'collective responsibility' will be reserved for cases in which all members of the collective are responsible, in which case the collective itself is responsible, and 'corporate responsibility' will be understood as the responsibility of the collective entity *itself*. The kind of responsibility referred to in either case may be a strong form of (attributable) responsibility, moral responsibility as blameworthiness (perhaps without attributability), or a weaker notion of collective or corporate liability to sanctions of some kind. Lastly, in the case of corporate responsibility, it need not be the case that all (or even *any*) members are personally responsible. When groups are organized in certain ways, it is sometimes held that they can exhibit properties that are not in any way reducible to the properties of their members. It may be the case, for example, that a corporate entity can exhibit intentional agency, and so be responsible, although no individual in the group is responsible.

§3.3 – Prospective And Retrospective Liability

In this project we will focus only on retrospective (backward-looking) moral and legal liability and leave prospective (forward-looking) liability aside. Again, the first is a sort of outcome responsibility, whereas the second need not be anchored in any retrospective responsibility for some state of affairs, just a responsibility to do something about it in the 'present' or near future. There may be a worry about whether these two aspects of responsibility

can be properly dealt with in isolation of each other. It may be the case that we can only speak intelligibly about which set of persons is liable for an action or event in the past if we can appeal to the existence of prospective, forward-looking responsibilities that were operative at the time of the incident. This concern is addressed below.

First, it seems we need to be explicit about what a prospective responsibility is. A prospective moral responsibility can be most clearly understood by referring to it as an 'obligation', which is an inherently forward-looking concept that can be either 'positive' or 'negative'. If *A* has a negative obligation, then *A* must *not* performs certain actions and if *A* has a positive obligation, then *A must* perform certain actions. If *A* fails to uphold her obligations in either case, then *A* is said to be responsible for that failure, other things being equal. In such cases the obligation looks toward the future and what must be done or not done, and failure in either regard engenders a judgment, or establishes a property of the agent(s), based on historical circumstances. It is quite right that any moral or legal judgment about the past must appeal to the obligations that were in place at that time (at least implicitly), and in this respect anyone wishing to offer an account of who, specifically, is responsible for some set of actions or outcomes will have to treat the two spheres concurrently. That is to say, if we wish to make particular moral judgments, or even to develop a first-order account of what moral and legal obligations exist, we will have to take a particular moral system for granted, or develop our own. However, it is not the case that anyone wishing to discuss retrospective liability at any level must do this. It does not follow from any of the above that all analyses of liability need bother with establishing an account of obligations. Rather, for certain foundational projects at least, it will suffice that we provisionally assume certain obligations exist, or take certain moral facts as given, simply for the sake of argument. For instance, we might simply assume that *X* is immoral, assume that it is

correct to say that state *S* committed *X*, and then ask whether this can entail the liability of all members of *S* or *S* itself. In this way it is not important what the actual moral obligations for *S* are. Assuming the liberal basis of this project, we can draw conclusions about methodological and metaphysical questions that will apply regardless of which particular obligations exist.

The current project is a work in the metaphysics of collective and corporate agency, and resulting moral and legal liability, as these ideas apply to the state. In this way, it is a project about what normative analytical framework is most appropriate for analyzing state action and how this framework will inform our particular moral and legal judgments. Quite importantly, this is not an attempt to arrive at conclusions in specific cases, and this is not for the purpose of developing a particular first-order moral or legal theory. Rather, this work is only directed at the methodological questions whose answers create the foundation for any complete account of those other issues. Through a careful study of the problems inherent to collective and corporate action, as well as collective and corporate moral and legal judgment, the groundwork may be established for the further task of specifying an acceptable account of the contours of a first-order moral and legal system that applies to collectives like states. This later project cannot be attempted until a basic methodology has been established, and an account of prospective responsibility is not necessary to complete the initial task.

§4 – INTENTIONALITY, AGENCY, AND LIABILITY

We have to this point looked at the multifarious ‘responsibility’, but we have discussed neither the standards for the determination of responsibility, nor the purposes of such responsibility judgments. It is to these issue that we turn now, beginning with the notion of *intentionality*, which is itself related to an actor’s *agency*, which grounds that actor’s broad liability. We need to be clear on the basic conditions for when moral and legal liability apply to

actions, and how our practical responses to such cases function as regulatory elements in our larger normative systems. To investigate fully whether the state can be treated as the proper focus of certain normative judgments we need to see if the persons within it, or the *whole* entity itself, can satisfy the agency conditions, and also function properly as the targets of our reactive responses, such as when we distribute blame, punishment, and liability for redress.

'Intentionality' itself is about directedness. Roughly, a belief that the Moon is made of cheese is intentional with respect to the Moon and a desire to go to the movies is intentional with respect to that activity. An intentional *action* is one done with purpose – one that is aimed at some end. It is the sort of action that is attributable to an actor's will, and so it exhibits the actor's agency. The actor is therefore responsible for the intentional action, in the sense that the actor is answerable as the originator of the act.[55] With these conditions met, we can refer to the actor as the 'agent' of the action and normative consequences may follow for that agent according to the specifics of the case.

In interpersonal moral theory, intentionality is important because we are often concerned with evaluating whether an action was done on the basis of reasons, so that we can judge the agent's character and determine our attitudinal stance and practical policy response. An appeal to agency here allows us to distinguish between 'action' and mere movement. We don't wish to pass moral judgment on the simple effects of one's bodily activities, such as a muscle spasm or what one does while sleepwalking, for example, because these movements do not reflect the agent's deliberation, reasons, or willing. Thus, the movements do not reflect a part of the agent's life that she can take control of and redirect toward acceptable alternatives. Our reactive responses to unwilled movements could have no reformative effect if there is no choice involved

[55] See Scanlon, *What We Owe to Each Other* (1998).

to be critiqued and revised in the future, and a judgment of the agent herself cannot be warranted here because her character is not reflected in the case.

We also want to avoid passing moral judgment when agency was exhibited, but where a tangential result of that agency was not part of the agent's objective of the action, when the agent is otherwise justified or excused for not preventing that result. For example, if *A* is driving her car down the road and *B* steps onto the road directly in *A*'s immediate path, leading to *A* hitting *B* with her car, it is not the case that *A* hit *B* with her car *intentionally*. This is so, even though *A* was acting intentionally at the time by purposefully driving her car. Though the act of driving that resulted in *B* being hit is attributable to *A*, she is not liable for hitting *B* because she could not have foreseen that it would happen and she could not have avoided the result even if she realized it was about to happen at the last moment. Assuming *A* was not driving too fast, driving distracted, or otherwise acting negligently, *A* is excused for not avoiding hitting *B*, as she did not intentionally do so, hence she is not responsible.[56] Of course, the case would be quite different if *A* hit *B on purpose* – if she had that *intention* – and with no acceptable reason for doing so. We see here that considerations of intentionality are vital for a proper assessment of responsibility. Another similar sort of example that should be mentioned is a case where *A* acts intentionally to perform some action *X*, but where *A* is only performing *X* because *B* has coerced, deceived, or otherwise controlled *A*'s behavior. In such a case, even if it is true that *A* does *X* intentionally, in the sense that *A* did *X* purposefully, it is not the case that *A*'s own will is the originator of the intention to do *X*.[57] *A*'s will is only involved in doing *X* in a thin sense because *A* did *X*

[56] *A* might actually be *justified* in hitting *B* with her car under certain circumstances, if there was some weightier reason for doing so. For example, if *A* did so in order to knock *B* out of the way before she was crushed by a falling boulder. *A* is not *excused* in this case; she is *justified*. *A*'s intentions are important here.

[57] This important point about being the originator of an act is discussed by Manuel Velasquez in "Why Corporations are Not Morally Responsible for Anything They Do." *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics* (Savage, MD: Rowman & Littlefield, 1991, 111-131). Velasquez says, "the kind of responsibility for wrongdoing with which I am mainly concerned is the kind that lies at the core of the classical

intentionally, but not *freely*.[58] *X* is actually the product of *B*'s will and agency, as carried out through *A*, using *A* as a tool for that end. *X* may be attributable to *A* in such a case, but it is *B* who must bear the moral responsibility for *X*.

The above can be summarized by saying that the question of *why* some action occurred is essential to moral judgment. We want to know if the action was done for some *reasons* and we want to be able to evaluate those reasons and possibly rebuke the actor if the reasons are insufficient to excuse or justify the action.[59] As it turns out, this appeal to reasons is also essential in a great deal of legal judgment. The above considerations are a particularly important element in criminal law where punishment is to be the consequence for certain actions in violation of certain statutes. It is widely held that the justification for such punishment (in many cases of punishment, at least) is that the guilty party *deserves* to be punished, in part because she acted intentionally in committing her crime. Her *mens rea* demonstrates a sort of moral failing in addition to her formal rule violation, and so punishment may be warranted, where only something less than punishment would be appropriate if the *mens rea* condition were not satisfied.[60] On this basis the law distinguishes between liability to punishment and liability to civil fines, compensation, restitution, *et cetera*.

In a more fundamental sense, a basic agency condition is a requirement for all responsibility in moral theory as well as in law. In short, one must be capable of rational agency

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notion of criminal responsibility – The kind that we attribute to an agent only if the agent brought about the wrongful act or helped to bring it about through his own voluntary bodily movements (or omissions) and only if the agent intentionally brought about the act through those movements (or omissions)" p. 113.

[58] To say X acted 'freely' here is just to specify that she was not being controlled by another. The freedom of the action is distinct from whether it is intentional. One can act intentionally though not freely, such as if her action is coerced, and one can 'act' (perhaps 'behave') freely though not intentionally, as in the sleepwalking case above. I make no other comment here on the freedom of the will itself. I will simply assume the meaningfulness of judgments of free agency and related responsibility.

[59] See T. M. Scanlon, *Moral Dimensions* (Cambridge: Harvard, 2008), 10-11; Michael Bratman, *Intentions, Plans, and Practical Reason* (Cambridge: Harvard, 1987).

[60] For some discussion of this see: H. L. A. Hart, *Punishment and Responsibility* (New York: Oxford, 1968), particularly Chapter 5.

or she cannot be responsible in the first place. For example, one must be able to deliberate rationally and exercise her will through making choices on the basis of coherent reasons, or she may lose power of attorney over herself. A base ability for agency is also necessary in order to stand liable for torts. One need not exercise her agency in a particular case to be liable for some outcome, but she must be capable of exercising agency in principle if she is to be held liable at all. An example where this agency is considered lacking is the case of very young children, and for this reason (among others) they are not considered fit targets for either full moral condemnation or legal judgments. We should keep this in mind with respect to views that depend on the state itself being a moral and so responsible agent.

In all of the contexts mentioned above it is important that we correctly identify the agency involved in the case so that we can direct our responses to the proper parties – those who are actually (answerable) responsible and those who are in a position to alter the intentionality behind the willing that previously caused the problem. This is so whether the response is a demand for reasons, a private moral appraisal, particular reactive attitudes, explicit judgment, or other moral or legal sanctions. When dealing with the normative, we are necessarily dealing with intentional agency, and so actors that must be potentially responsible agents who we respond to in order to mold their future behavior.

Does intentional action always demonstrate agency? There are some accounts of intentionality that suggest that we should distinguish between bare intentionality and agency of the kind that is more closely related to moral and legal responsibility. 'Bare intentionality' may be argued to be exhibited by an entity (or perhaps system) whenever we are able to reliably describe its behavior according to a model of intentionality.[61] In this respect we could hold that a grasshopper is an intentional entity because imputing intentionality to the grasshopper will

[61] Daniel Dennett's view is of this kind. See *The Intentional Stance* (Cambridge: MIT Press, 1987).

enable us to explain its past behavior and actually predict its future behavior. To go to an even further extreme, we might even say that a school of fish may be an intentional group or system, since it is possible to explain and predict its behavior through an intentionality approach. Yet, in spite of their potential intentionality, a grasshopper and a school of fish are of course not capable of bearing moral or legal responsibility, and this is not due to the practical limitations of such possibilities. Though it may be proper to understand grasshoppers and schools of fish as intentional things, they are not 'agents' in the normatively meaningful sense of that term. Given this consideration we should focus here on a fuller notion of intentionality that may be sufficient for agency of the kind that is thought necessary for being responsible (in the sense of 'responsible agent'), and so broadly liable. The characteristics commonly associated with moral agency are the capacity for deliberation, which itself requires beliefs and the ability to make logical inference (reason or rationality), and also interests, desires, and perhaps volition or will.[62] We are trying to identify the sorts of things that can participate in a normative system, which is to say, the sorts of things that can understand rules, act intentionally so as to follow rules, and that have interests or a conception of the good that enables them to be persuaded to alter their behavior on the basis of new reasons that can affect their deliberation.[63]

The point of the above discussion is that the set 'moral agents' is, in part, defined as it is because normative judgment has certain functions. We don't wish to simply state descriptive facts when we make normative judgments. In the moral sphere we wish to point out and analyze rightful and wrongful behavior and justifiably form reactive responses for the sake of influencing

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[62] I say "perhaps" because accounts of intentional action have been developed that do not rely on 'willing', as such, and there is the potential that such an account could identify intentional action that is normatively relevant. For example, Donald Davidson's account of the *cause* of an action identifies it as a suitable pairing of belief and desire. Those elements account for the *reason* the action was intentionally performed. See Davidson, "Actions, Reasons, and Causes," reprinted in *Essays on Actions and Events* (New York: Oxford, 1980).

[63] Michael McKenna has a germane discussion of this in "Collective Responsibility and an Agent Meaning Theory." Part of *Shared Intentions and Collective Responsibility*, ed. French and Wettstein (Boston: Blackwell, 2006).

the future behavior of both the wrongful actor and others in the moral community.[64] In the legal sphere there may be a connection with reactive moral responses, but in addition we distribute punishment and other corrective measures for the purpose of further deterrence, reform, and restitution or reparation for victims. If groups, institutions, or systems (such as corporations) are to be included in the set of 'moral agents', then they must be able to participate in the normative system in the way human persons do, at least to some minimal extent. They must at least be able to change their ways in light of wrongs committed, and be motivated through suffering the consequences when they do not comply. If blame and punishment were to have no effect on them, then these practices would lose their meaning and function and so really be inapplicable altogether. An important related point can be added here from Michael McKenna. Building from the Strawsonian 'reactive attitudes' account, along the same lines as Gary Watson,[65] he says:

> Our moral responsibility practices show that the relationship between a morally responsible agent and the members of the moral community holding the agent responsible is one on which the moral demands expressed by way of the reactive attitudes are *forms of communication*. A morally responsible agent is appropriately competent just in so far as she is a capable interlocutor in the "conversational exchanges" between her and the moral community.[66]

McKenna does not mean that we are simply exchanging information or conversing when we engage in communicative moral practices. The point is that moral practice, once it is clear what has happened in the case, begins with questions about *reasons* why an action was performed (or omitted). The 'moral community' demands a dialogue, and they press for an explanation that might justify or excuse what was done. The agent is *answerable* and so must be able to

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[64] We hope that our reactive attitudes may engender shame in the wrongful actor and so motivate her to correct her behavior in the future. Just as well, other members of the moral community can use their knowledge of the wrongful action to evaluate the actor, determine the appropriate attitudes to hold with respect to her, and determine what relationship they want to have with her in the future. Lastly, the other members of the community may also be deterred from wrongful action through the communication of the rules in the case, as well as witnessing others being held responsible and empathizing with their guilt or shame.

[65] See: Gary Watson, "Responsibility and the Limits of Evil: Variations on a Strawsonian Theme," in *Responsibility, Character, and the Emotions*. Ed. Ferdinand Schoeman (New York: Cambridge, 1987), 256-286.

[66] Michael McKenna, "Collective Responsibility and an Agent Meaning Theory," 27 [my emphasis].

communicate an answer when pressed for reasons. If justificatory or excusing reasons cannot be provided, then the agent is liable to moral sanction such as reactive attitudes toward the agent and other changes in the agent's personal relationships. The 'moral community' is displaying their judgments of the agent and they intend that expressions of those judgments will impact that agent's feelings about what was done and what sort of character one ought to cultivate. In the case of humans, at least, the agent may feel guilt or shame and this in turn may encourage her to alter her future behavior so as to avoid further failings in the eyes of others in her moral community. It is not clear from what has been discussed what the conditions should be for achieving a relationship with a moral community that is sufficient for full membership; but we can agree that the more a group, institution, or system is capable of this communicative recognition and capacity for change, the more it is like a moral agent.

We can add a legal perspective to McKenna's point of view here as well. Legal judgment is also a form of communication. Rather than a demand for reasons and the communication of attitudes that we hope will correct the wrongful party, legal responses such as punishment and various forms of liability are in part communicative of the standards of the 'legal community'. These measures are also intended to affect the guilty party's feelings and values, and so future actions, as well as they may convey a judgment of what is owed back to the community now that wrong has been done. That is, there is an element of communication in the desire for 'balancing' that is expressed in the retributivist grounding that much law depends on. The deterrent aspect of punishment is rather obvious. The individual wrongdoer is deterred from that behavior through punishment (at least somewhat) and all members of the community are also deterred somewhat from engaging in certain behaviors because of the great opportunity cost of those behaviors, if one is caught. Even mere liability (regardless of fault) has a communicative effect that can alter

behavior, because the penalties imposed through it can incentivize taking all possible precautions to avoid it. Penalties for negligence, for instance, are not punishment, but they can have a communicative, deterrent effect nevertheless. There are other justifications for legal statutes that have nothing to do with communication, but deterrence and reform, at least, have a parallel quality to the communicative aspect of moral practices, and insofar as we wish to bring in further agents to our moral and legal systems, deterrence and reform must apply to them.

The above considerations suggest that moral agents must be able to engage in a fairly robust way with the moral or legal community, and be capable of persuasion through moral praise or condemnation, or legal sanction. Thus, the most important necessary conditions for entry into the set 'moral agents' seem to be: the ability to form beliefs, desires, and values (interests or conception of the 'good'), the capacity to take in information to use in deliberation, the capacity to rationally deliberate, and the possibility that such deliberation can lead to changed beliefs, desires, values and so behaviors. We will have an opportunity in Part III, Ch. 3 to discuss whether corporate agents in general, and the state in particular, can sufficiently approximate 'moral agent' status according to the above standards.

§5 – THE INDIVIDUALISTIC LOGIC OF LIABILITY

In order to later investigate under what principles it may be correct to extend liability for state action to the populace, we will have to ask whether some notion of causal or moral responsibility or some version of vicarious liability can be established for the citizenry. Without such an account, it is not clear that there is a basis for establishing the liability of most individuals in the state. Since we have established that the individuals in the state will be the ones ultimately held liable when we make normative judgments about state action, a failure to show a proper connection between state action and individual liability will imply that our current

theoretical programs in normative IR, as well as the practical responses which they engender, are flawed and in need of revision.

To see the tension in more precise terms we should compare the logic of the individual-actor and state-actor models. According to the individual-actor model, when person A acts freely and intentionally in performing a morally significant action, *X*, *A* is liable (morally and perhaps legally) for *X*, other things being equal. Similar judgments are made of the state when we treat it as a single agent. State *S* may perform a morally significant action, *X*, and according to the state-actor model we may determine that *S* is liable for *X*, other things being equal. However, when we translate this claim of liability into individualistic terms, the truth of our original judgment may be lost. First, 'state *S*' in this judgment is really a placeholder or name that refers to a very large set of persons {*a*, *b*, *c*, *d*, *e*, *f*, *g*…} that we may rename, Φ, so as to be explanatorily neutral. We should keep in mind that Φ will often consist of *millions* of members, and the size of this number is significant. Second, action *X* is (almost) certain to have been performed by a proper subset of Φ.[67] When the members of that subset are numerous enough, or associated with a state institution like government or military, we may judge that *S* itself committed *X* and we may think it follows that *S* is liable for *X*. The worry is that we may be led into error if we infer from this that it is legitimate to hold *all members* of Φ liable for *X*.

According to our basic normative theories and their explanatory model, for any particular member of Φ, *c*, to be liable for *X* it is necessary that *X* be attributable to *c*, or that *c* stand in a relationship of vicarious or strict liability for *X*. More specifically, at least one of two conditions must obtain. (1) Citizen *c* was directly or indirectly involved in the commission of *X* through a free (non-coerced), intentional action or omission, or (2) the members of the subset of Φ that

[67] It is logically possible that every member of a state could be directly involved at some level in performing some collective action, but the probability of this happening is exceedingly low.

performed *X* did so in *c*'s name because the relationship between *c* and themselves transfers liability for their actions to *c*. This latter condition will necessitate that (2a) *c* have authorized the members of Φ to act on her behalf, or that (2b) mere membership in Φ is sufficient for *c* to be liable for actions attributable to *S*. If we cannot provide adequate grounds to establish one of the above two conditions of *c*'s liability, then a tension remains and according to the individual-actor model it is illegitimate to put the burden of moral or legal consequences of *X* onto *c*, or any other member of Φ in *c*'s position.

Throughout the remaining chapters of this work we will look at various examples of theoretical justifications for collective and corporate agency and responsibility that may serve as a proper foundation for the continued use of the state-actor model in normative IR theory. We will begin first with the bottom-up approaches to collective liability in Part II, and then discuss the top-down approaches to corporate liability in part III.

Part II: Collective Responsibility
Chapter 1: Collective Responsibility as Attributability

§1 – INTRODUCTION

When we employ the state-actor model as part of the interpretive foundation of our method in normative IR, we are often instituting a sort of collective responsibility or liability onto the populations of states. If the state itself is to be deemed responsible for some action, omission, or state of affairs and subject to whatever moral and legal measures that responsibility might entail, then *persons* within the state will ultimately feel the consequences of that judgment and the effects of measures taken in response (such as sanctions, for example). If our state-based judgments are to remain consistent with the methodologically individualistic foundation of our basic, interpersonal normative views, some relevant connection must be established between the action, omission, or state of affairs and the persons within the state who will bear the burdens of those judgments. If establishing such a connection is not possible it implies that our common state-based normative practices are misguided, and that the attending affects of these practices have fallen on persons who are not deserving. That is, if the connection is found lacking, then when states have been blamed or punished innocent persons have been blamed or punished, and when states have been held liable that liability has been assigned in part to persons who do not actually stand in an appropriate relationship to the object of liability. In short, many common judgments and practices in normative IR may be in deep tension with the generally accepted tenets of interpersonal normative theory, if we are unable to show that the individuals within states are appropriately connected to the actions we ascribe to states.

We should recall from the previous chapter that according to our liberal individualist normative theories and their explanatory model, for any particular member, *c*, of the set of

persons, Φ, in a state, *S*, to be accountable for *S*'s action *A*, it is necessary that *A* be attributable to *c* (that *c* be morally responsible for *A* or part of *A*), or that *c* stand in a relationship of vicarious or strict liability for *A*. At least one of two conditions must obtain: (1) Citizen *c* was directly or indirectly involved in the commission of *A* through a free (non-coerced), intentional action or omission, or (2) the members of the subset of Φ that performed *A* did so in *c*'s name because the relationship between *c* and themselves transfers liability for their actions to *c*. This latter condition will necessitate either that (2a) *c* have authorized the relevant members of Φ to act on her behalf, or that (2b) membership (and its attending specifics) in Φ is sufficient for *c* to be liable for actions attributable to *S*. If we cannot provide adequate grounds to establish one of the above two conditions of *c*'s liability, then a tension remains and according to the individual-actor model it is illegitimate to put the burden of moral or legal consequences of *A* onto *c*, or any other member of Φ in *c*'s position. So, it seems, if we cannot establish that at least one of the above conditions holds for all members of Φ affected by our judgment of *S*'s moral or legal responsibility or liability, it is morally inappropriate to employ the state-actor model with respect to *S*. If it can be established that *S* can stand for any arbitrary state, then the state-actor model will be shown to be inappropriate for use in normative IR.

The suitability of the state-actor model in normative IR could be shown in various ways, and with arguments of various strengths. Here we will examine the most prominent and most intuitive of these ways to determine whether an appropriate accountability relation can be established between citizens and actions attributable to their state. We can begin here with those accounts that trade on a view of the state as a sort of unified collective, specifically, one in which the individuals bear an attributability relationship to the state's actions. This will provide the strongest basis for a determination of liability because of the personal moral component in state

action. If we can show that the citizenry of the state is morally *responsible* for the action, then it will follow naturally that they are properly held liable for it. In the same way that an individual freely and intentionally engaged in an isolated action bears moral responsibility for that action, and stands accountable for it on that basis, the individual will be accountable for those collective actions and activities that are attributable, in part, to her.

There seem to be two primary ways that a relationship of moral responsibility can be shown between a given citizen and a state action. First, this can be done by showing that the action is attributable to the citizen (that she is intentionally engaged directly or indirectly in the commission of that action), which would satisfy condition (1) above. Second, even if the causal connection cannot be made, or if it is simply too weak to ground direct attributability, she may bear moral responsibility simply as a citizen of the state, which would be to satisfy condition (2b) above. This would be a slightly weaker sort of moral responsibility, detached from causal responsibility, as well as related notions of guilt, but it may still serve as a basis for liability, which, as discussed previously, is a broader notion.

§2 – THE STATE AND THE POSSIBILITY OF COLLECTIVE JOINT ACTION

The strongest possible type of case that would entail the collective responsibility of all full members of a state would be one where the action of the state was the joint action of all those members (perhaps a complex joint activity with many actions contributing to a common end). A view of this sort would trade on a variant of the *state as collective* perspective explained in the first chapter. Were such a collective to engage in a joint action (or activity), the members would be both causally *and* morally responsible for the action, and, thus, they would be accountable. This would be true, for example, if every member of the state were to take up arms and invade a neighboring state in a collective act of war. There could be no denying that all

participants bear a responsibility relationship to that activity, and directing judgments of accountability toward the state itself would be entirely appropriate in such a case.

In order for this type of view to work we would have to show that the individuals involved in the action were doing so with the intention of contributing to some more or less specific goal of the collective. We would have to show that there was a common project between them and that each was engaged in their fraction of the work necessary to carry it out. The state would have to be treated as a sort of complex collective organism where all social atoms are coordinated around a central mission. Were a state to operate in such a way, there would be little doubt that all members of the state would be accountable for what they collectively bring about.

In the past one may have attempted to argue that a *nation* was the sort of social entity that behaved in this way. This would follow from our understanding of 'nation' (or 'people') as denoting a sort of collective with morally relevant characteristics such as a common religion, value system, heritage, and so forth (we might use the term 'culture'). National leaders have certainly used such a conception of their group for the purpose of motivating reverence and obedience to the proclaimed ends of the nation, so this view is not completely without supporters. But, there are serious problems with the adoption of such a view of a nation, and whatever merit we might think it has is outweighed by its failure to fit the facts of the world. Not only are nations not to be found, presently or in the past, that exhibit such agreement amongst the actions of all the inhabitants (as if all were freely and intentionally working toward a common goal), the case for states is even worse. Many modern states are composed of multiple social entities recognized as nations, and even the most homogenous states have been affected by globalization and its diversifying effects, which include the intermixing of ideas, beliefs, values, and other ways of living.

There will always be a lack of universal agreement on ends and actions in such groups, and it is only through the most extreme abstraction that we could entertain the thought of the social whole operating in a unified way. Neither nations nor states are like ant hills with individual action coordinated around a common plan, or where all individuals are working toward furthering the shared interests of the group, rather than for personal gain. Treating either nations or states as a collective engaged in joint actions or activities is unfounded, and the small probability that a society like that would ever emerge makes this conceptual option analytically and explanatorily empty.

§3 – THE STATE AS JOINT ENTERPRISE

A more promising approach treats the state as a sort of joint *enterprise*. Here we still conceive of the state as a single collective, long-term union, but not as a group that acts in concert toward universally shared goals. When the state acts, this is to be understood as the product of a long chain of interconnected actions taken on the part of all members of the state, but a chain whose links are not formed through the shared ends of the separate actors. We may conceive of the state as the product of a web of interactions between all the persons of the state without these connections being for the purpose of furthering some universally shared, state-specific goal. Almost certainly, a given state action will directly causally involve some members of the state and indirectly causally involve others. Not all will be intentionally acting so as to further the immediate ends of the state, but all will be causally relevant to the state action in some way, according to this way of thinking, because they too are part of the complex causal structure that is the state.

From a theoretical perspective in political science, the view of the state as a long-term joint venture has plausibility and value. An explanatory and predictive theory of international

relations that treats the state as a joint enterprise and analyzes the state's actions through the lens of certain elements of the state's social and political conditions provides a quite intelligible, plausible, and potentially useful view. As we've discussed, the picture of a world full of states, each internally organized by its respective population, is already likely to be a permanent fixture in our minds. For this reason it is easy for us to make sense of international relations along these lines. Beyond this, there is also a certain predictive power to such views. If we have knowledge of certain social and political facts in a given state, we may be able to predict its future behavior, and we should hope our scientific understanding would afford us this ability.[68] Here again we see that the state-actor model may have uses for the social scientist that may wish to offer one level of explanation and prediction. It just remains to be seen whether a view of this sort will fare as well for our normative purposes.

There is no question that strong arguments can be made in support of conceptualizing the state as a joint enterprise. And from such a conception of the state, where all citizens contribute to the 'life' of the state and all are relevant to the state's actions, the attributability of all participants seems to follow naturally. If we take this perspective for granted, then it seems there is a strong case for collective state accountability. But are we justified in conceiving of the state in this way? We certainly wouldn't want to simply assume into our account a particular manner of conceptualizing the issue that begged important questions. We must ask: can we legitimately attribute a state action to all citizens of the state?

We've already discussed the unlikely scenario of a full-scale, statewide joint *action*, and seen that it does little work for us. We have to be careful here not to draw a similar conclusion if we treat the state as a joint enterprise of a certain type. We don't want to assume that all citizens

[68] I do not mean to suggest that developments in scientific IR have enabled us to make reliable specific predictions. I only mean to point out that we should want our scientific theories to enable us to do that.

intend to act to further the state or the state's interests, or any collective interest at all. If we weaken the level of unification implied by our analysis we develop a far more plausible picture. We can allow that the persons of the state perform many actions that are not for the purpose of furthering state or group interests, and that some persons never engage in actions in direct support of actions we attribute to the state. We need not show direct participation to demonstrate moral responsibility. We can simply insist that all individuals contribute to the state's actions through being a part of the state's embodiment and a node in the complex of causes that produces its actions.

Typically, we ascribe to the state those actions that are directly carried out by the government as a whole, members of the government, or members of organizations that are subordinate to the government, such as the military. If we are going to treat the state as a collective engaged in a joint enterprise, it's not that we typically think of it as a single, complex organism. Rather, we recognize that state action is usually the direct result of the actions of members of the state who hold certain positions of power and authority, or who are considered representative of the collective itself. It is the presidents and prime ministers of the world who make many of the major decisions for the state, it is the body of legislators (or 'the government') who direct the state to act through some voting procedure, it is the diplomats who meet to design treaties and trade agreements, and it is the military of the state that engages in the *state's* wars. The whole doesn't act in concert, special parts act "in the name of" the whole.

Why in the name of the whole? How does the citizen relate to the action of these state officials? It is here that the joint enterprise conception of the state has relevance. It is not as if the government of the state, or the state's diplomats, act in isolation. It is not as if the citizens have nothing whatsoever to do with the final actions of these state officials. Quite to the contrary,

under most political systems existent today, those positions within the state are either directly tied to a voting procedure carried out by the populace, or they are appointments by persons who are elected in such ways. The connection between citizens and government actions in states with democratic or republican forms of government is not difficult to see, and even states without such popular involvement may be argued to have features that demonstrate important, potentially morally relevant connections between the society that underlies the state and the actions of its government or related agencies.

This last point is important. It can be argued that the state's actions are attributable to all, whether or not all persons share the same state-specific ends, or work together as part of a concerted joint project. Admittedly, we must face the relatively difficult task of arguing that those persons who are not directly involved in the action are nonetheless responsible for it, but institutional and cultural connections provide a basis for such a position. And if we can offer a convincing account of collective attributability in the state – one that encompasses persons who are far removed from the state's action – then we can maintain the legitimacy of collective liability under the state-actor model.

In addressing the issue of indirect connection to a collective action, we can distinguish, broadly, between four categories a citizen may fall into with respect to their causal connection to a given state action: *perpetrator*, *enabler*, *bystander*, and *opponent*.[69] These categories are fairly self-explanatory, and although ambiguity and vagueness are regrettable, precise definitions will be unnecessary for my purposes. We should simply keep in the mind that there is a spectrum of

[69] I take three of these names from Amy Sepinwall, "Citizen Responsibility and the Reactive Attitudes," in *Accountability for Collective Wrongdoing* (New York: Cambridge, 2011), 238. She does not include the category of 'enabler', but she does not intend to give a thorough account of such possible roles, and she may in fact just consider enablers to be perpetrators. I would like to make a slightly more fine-grained distinction between those who act directly in a joint fashion, and those who further the cause in a decidedly indirect and maybe even unintentional fashion. My list is crude and incomplete, but it allows us to make certain useful, if rudimentary, distinctions.

varying strengths of responsibility upon which one's causal connection to a collective action may place them. On that spectrum we have: intentionally acting for the direct purpose of achieving a joint action (perpetrator), acting as an integral, indirect causal factor in a complex causal process, possibly without full information (enabler), allowing others to commit such a joint action by failing to prevent them (bystander), and trying but failing to prevent the action (opponent). The viability of the state-actor model for apportioning accountability based on attributability depends on showing that members of the state in all of these categories are at least partially (attributable) responsible. Unsurprisingly, the most challenging case to be made will involve persons in the 'bystander' and 'opponent' categories.

§4 – STATE INSTITUTIONS AND PRACTICES

Rather than argue for a direct connection between the individual actions of the person in the state and some particular state action, we can instead argue that the individual actions in the state are what indirectly create and maintain certain aspects of the state that are themselves sufficient for the state to act as it does. In effect, we move the acquiescing and dissenting citizens, and those without representative government, one more step away from the final product of the state's action. We argue that these people are responsible for what the state did because they are responsible for creating and maintaining essential state belief systems, practices, institutions and organizations that together create the state itself and influence its actions. Furthermore, these people are also likely to identify as a member of the state and feel emotions such as pride and guilt for actions attributable to the state, and these considerations further support the contention that these individuals are responsible for what the state does.

'Culture' is the word we might use to refer to the complex belief and value systems, institutions, practices, and such that are constitutive of the 'character' of the state, as transmitted

through its society. We may look at examples of states that behave in different ways because, presumably, their underlying societies have very different compositions and cultures. In one society you may have an aggressive people who glorify warfare and conquest and the state itself may engage in an expansive foreign policy. Contrast this with another society that places an emphasis on the value of education and science, where violence and warfare are considered evils. Here we may have a state that does not intrude in the affairs of its neighbors – one that engages in a non-interventionist foreign policy. Cases such as these would give us reason to maintain that these different 'personalities' between the two states and the distinct way they act is the product of the fact that the individual persons living within them create and maintain different belief and value systems, institutions, and practices. In this way, the various individuals are jointly responsible for their respective states' actions because they are jointly responsible for the 'character' of the society they live in, which those actions reflect.

An analysis of this sort trades on aspects of the various reference schemes for state action mentioned in the last chapter. From the Weberians we get a recognition of the fact that governments are at least somewhat responsive to the wishes of their constituencies and that the reasons offered for a direct action of government that may be attributed to the state itself will generally reference the interests of the population, which gives the action a corporate feature and seems to imply that the state is an actor itself. We can see influence from the pluralist and Marxist perspectives if we look deeper into the relation between the society of the state and the actions of its government and related agencies. We can attribute these actions to the culture, but a more detailed picture will emerge if we focus on the 'power groups' that do the most to drive the culture in politically relevant ways. Certain members of government will be influenced by their constituencies to support certain policies and, therefore, the state will be likely to take certain

actions. Similarly, if the institutions are set up in such a way that certain individuals have control over economic resources and political functions, we can include mention of these facts in our explanation of why the state acted as it did.

The point is that all of this can be linked up with the society that underlies the state, and all can be connected in some way to that action. For example, if a group of pundits and intellectuals were to argue that a neighboring state was a threat to national security, this might have a significant effect on public opinion (i.e. shape the belief and value systems of the populace) and the government may respond to a shift in public opinion by enacting certain policies or engaging in certain behaviors such as preemptive war. We could argue that the whole collective is responsible for such a war, insofar as it seems that the public desired it and the government responded accordingly.

The sort of analysis that takes place above will apply to even those states that do not have representative government. Admittedly, such cases will not show as strong of a connection between state action and popular responsibility, but the case can be made nonetheless. There are still important ways in which a state's cultural conditions and the beliefs of its people direct government and, therefore, state action, and it is important that we give due consideration to the very real emotional connections that exist between individuals and the actions of the groups they belong to. These relevant aspects of the individual's relationship to state action apply whether one is actively involved in furthering the interests of the state or not. Even without a tidy link between vote of the population and policy decision from the government, the cultural and institutional connection between populace and state action persists. The individual people continue to make their individual choices, engage in their individual actions, and conceive of themselves as participating members of the group, and these choices, actions, and beliefs in turn

continue to perpetuate the cultural conditions that are relevant to state action, and the state continues to behave in (predictable) ways that express these facts.

This mentality seems to be at the heart of the idea of rights to national self-determination. Supporters of this view would appeal to the right of a nation to organize *itself*, and this logically entails that all the people in that nation participate in some way in making this so. An example of this type of view has already been seen in the first section of chapter 1 where a quote from the *Yearbook of International Law Commission*, 1949, mentioned the state's choice of *its* own form of government, as if all the person involved were to collectively make such a decision.

Can we specify the sufficient conditions for moral responsibility that is dependent on matters related to culture and identity? Howard McGary gives us one possible account that does so.[70] McGary bases his view of collective responsibility on the individual's role in perpetuating certain *practices*, rather than attempting to rely on a specific contribution to some collective action. His aim is to show that moral liability can exist in the collective context, even in cases where an individual did not directly participate in some collective action, or action by a subset of the group. By 'practice' McGary means, "a commonly accepted course of action that may be over time habitual in nature; a course of action that specifies certain forms of behavior as permissible and others and impermissible with rewards and penalties assigned accordingly."[71] This is reminiscent of one's contribution to the continuation of certain cultural norms, which will apply to even those cases where one is a bystander, opponent, or member of a state with non-representative government. The case can be made that all of these sorts of people are nevertheless implicated in the actions of their states because of their involvement with the state's institutions, belief and value systems, and other norms, as well as their identification with the

[70] Howard McGary, "Morality and Collective Liability," in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics* (Savage MD: Rowman & Littlefield, 1991), 77-87.
[71] Ibid., 79.

group and feelings of solidarity. Even if there is resistance to some particular action of the state, we can still appeal to many previous instances where that individual was a participant in the state's practices and that involvement demonstrates a connection between the state and the individual that may imply the existence of an attributability relation.

The solidarity condition mentioned above, or identification with the group that leads to feelings of pride and shame when the group or members of the group commit certain acts, can be relatively strong or weak. McGary develops a view of identification that is relatively weak when compared to others that are characterized as focused around 'solidarity'.[72] Rather than requiring a fairly strong sense of unification in the state and the character of a shared project (which might render inapplicable a view reliant on solidarity), McGary argues for a notion of identification that trades on certain elements of one's consciousness, or the ways in which persons perceive of the connection between their self and the group. This consciousness (or perspective) need not engender strong feelings of attachment and "oneness," which might be characteristic of groups with strong solidarity, but it does show the connection between individual and group to be more than a mere abstract conceptual connection. That is, we have an account here that does not apply to mere aggregates or random collectives. For McGary, the group in question must have some semblance of unification or shared perspective, just not to such a level that we necessarily want to apply the label 'solidarity'. As he says, "With racial and national identification there is perhaps not the level of political and social consciousness that would allow us to conclude that group solidarity exists, but there is enough group identification to warrant the judgment that the members of the group have chosen to identify with the group for the security and benefits that

[72] McGary explicitly intends his account to be weaker in this regard than Joel Feinberg's in, "Collective Responsibility (A Defense)," in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics* (1991), 63-65.

group membership provides."[73] From this starting point, McGary offers two conditions that are jointly sufficient for a moral basis of liability for a practice *P*.

> (1) X knows or should have known about P.
> (2) [i] X identifies or has solidarity with those who engage in P or [ii] X does not sufficiently disassociate himself from P or [iii] X's failure to disassociate from P was not a part of a reasonable strategy to prevent further or greater harm.[74]

Although McGary does not have the space to develop these conditions in great detail, he does provide some explication. In regard to condition (1), he notes that it can be satisfied if *X* is simply aware of a particular practice, and *X*'s avoidance of faulty acts associated with the practice is not relevant. He also discusses "reasonable efforts" to become knowledgeable about certain practices. McGary is not especially precise, but he does discuss some limiting cases that show some requirements must be placed on the effort one gives to the project of understanding the practices that take place around them. As he says, "where reasonable efforts have been made to bec ome knowledgeable, ignorance can warrant the conclusion that the agent is not liable."[75]

In regard to condition (2), McGary argues that precise sufficient conditions for disassociation cannot be given in advance because of the variability of cases, but he does offer some clarificatory remarks. Condition (2) consists of three-part disjunction of conditions that partially ground moral responsibility for a practice *P*. The *solidarity or identification* condition (2i) may be fairly weak, and as McGary says, need not entail feelings of pride or shame when members of one's group act wrongly. The more important aspect of (2i) is that *X* has some interest in common with the group and its practice, which tends to imply that she benefits in some way through her membership. This benefit need not be economic profit (although, it could be), but might instead consist in a mere psychological or emotional benefit of group membership,

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[73] McGary, "Morality and Collective Liability," 81-82.
[74] Ibid., 83.
[75] Ibid., 84.

such as a sense of self-worth *X* may feel as a result of her membership. This psychic benefit alone will satisfy (2i). So, it seems that simply conceiving of one's self as a group member and benefiting in some way from membership in the group may be enough for attributional moral responsibility on this view.

The *insufficient disassociation condition* (2ii) is said not to require any significant physical movement or large monetary expenditure. It is not intended to be excessively inclusive. The point of (2ii) is that *X* must use viable means at her disposal in an attempt to separate herself from the faulty practice. This may require more than merely publicly renouncing the practice, if better means are available, but this will depend on *X*'s position in the group, power, influence, liability to risk, necessary expense of time, *et cetera*.[76] There will usually be persons in the group that can sufficiently disassociate themselves from the group or its practice, simply by renouncing their membership, or publicly rejecting the appropriateness of the practice. On the other hand, high-ranking members of the group, or those who engage with the practice directly and consciously perpetuate it, may have to do much more than verbally reject group membership or participation in practice P. There will be a sliding scale for satisfaction of (2ii).

The *prevention condition* (2iii) requires special attention. It is offered as a third disjunct for the satisfaction of some connection with the group and the practice (which, in addition to knowledge about the practice, is sufficient for liability), but it actually behaves as a modifier to (2ii), creating a further condition on which liability for failure to disassociate will rest. In effect, remaining associated with the group or the practice is not itself sufficient to satisfy (2). It could be that one remains associated with the group in order to stop the practice, and this ought not imply liability. Instead, in addition to association, one must also fail to take some reasonable means to the end of preventing practice *P*, reforming the group, or perhaps abolishing the group

[76] Ibid., 84-85.

altogether (assuming no other wrongs are required to do so). McGary is leaving room for the potential saboteur, not providing an additional (non-redundant) sufficiency condition, so the presentation of (2) as a triple disjunction is somewhat misleading. Thus, in contrast to how it is presented by McGary, we should treat condition (2) as a two-part disjunction where either *X* identifies or has solidarity with those who engage in *P*, or *X* has not disassociated from *P and* was not part of a reasonable strategy to prevent further or greater harm. If either of these conditions is met, and *X* is also aware, or should be aware, of *P*, then on this account *X* is morally responsible for *P*.

A benefit of this account is that is includes two jointly sufficient conditions for moral responsibility that we would hope to find in such a view. As discussed briefly in the previous chapter, our moral theory should not assign responsibility to agents who were (justifiably) not fully aware of the circumstances or the wrong, and where the agent lacks sufficient control over the situation. These are the *knowledge* and *control* components that, generally, must be a part of any satisfactory account of strong forms of moral responsibility.

With regard to moral responsibility for group practices, it is also important to consider the issue of solidarity and McGary's account is plausible precisely because he addresses identification and emotional connection with the group, and that he includes exceptions for individuals who are not sufficiently entrenched in the group or where they are actively trying to reform it. The above conditions may make the case that one's participation in the institutions of the state and benefits received from membership and participation connect one to the moral responsibility of what the state does. We have a plausible candidate approach; we just need to see whether all citizens are likely to meet the two conditions specified.

§5 – CITIZEN KNOWLEDGE AND SOLIDARITY

It should be mentioned at the outset of this critique of McGary's position that he did not intend to directly address the central issue of my concern here. His remarks were intended to be more general. Nevertheless, he does mention citizens and the state, and it does seem that he intends his view to apply to state membership and state practices. Furthermore, McGary's view is a version of a common line of thinking about moral responsibility based on group membership. There are at least a few reasons why this account may work to connect the seemingly innocent persons of the state (the bystanders, opponents, and politically powerless) with the actions the state commits. We do tend to think that membership in a group carries with it certain important moral and legal relationships, and that failure to distance one's self from the group typically opens one up to criticism and judgments of moral responsibility for what the group does. In effect, there exists a wide range of cases where one need not participate directly in some action to be responsible for it through group membership and we typically establish the connection between individual and group according to one's identification with the group, participation in group activities or practices, benefits received as a member, and failure to prevent the group from acting as it did. Thus, McGary's account falls nicely in line with many of our particular judgments in such cases. The question is whether a view of this sort will hold up to scrutiny and, in particular, whether the state is the sort of group that fits with this type of theory.

§5.1 – Knowledge of State Practice

With regard to condition (1), the knowledge component is fairly straightforward. If *S* knows about *P*, then that element of a complete set of sufficient conditions for moral responsibility is settled. A more complicated issue arises when we attempt to determine whether *X should have known* about *P*. In the case of group actions that *X* was not directly a part of, a

determination of failure in this regard will necessarily depend on how the group in question is structured and the manner in which information is transmitted through it. A small and intimate group may share information quite readily and group practices may be quite obvious to all members. In contrast, a large and disconnected group may be compartmentalized and information may be dispersed and unattainable for some members.[77] The relative ease or difficulty of obtaining relevant information must be the basis for a determination of whether *X*'s failure to know about *P* satisfies the condition. Exact criteria may not be possible, given the diversity of potential cases, but we can set out some clear examples of success and failure in this regard, to get a sense of the boundaries of the concept.

Wherever those boundaries end up, we have to ask whether we can show that all citizens satisfy the condition. This is where we find the first impediment to McGary's view with respect to the state, and it applies as well to any other view that grounds responsibility on a link between group membership and group practices. The morally relevant practices we attribute to the state will tend to be actions carried out by state officials, or a related agency, such as the military. Even if it is correct to attribute these practices to the state, it is not clear that all individual citizens will satisfy condition (1) by knowing about the practice or even failing in an obligation to know. Even if we make the satisficing criteria quite weak there will almost certainly be many counterexamples in the most important types of cases. Let us imagine that we set the satisficing criteria for (1) on the extreme weak end of the possible spectrum. We might say that *X should know* about *P* merely if *P* is the case (i.e. anyone who does not know about *P*, even if they attempted to know, might satisfy the condition). Even this account, presumably, would necessitate that the information was actually attainable, in practice. It would be inappropriate to

[77] This is particularly true in groups with hierarchical structures where officials of the group may act as representatives of the group (act for the group, or in the name of the group), although the specifics of their activities are not shared with the majority of group members.

insist that *X should have known* about *P*, if it is not in fact possible for *X* to have acquired that knowledge. With this consideration in mind, the problem for condition (1) is that many states are instituted in just such a way that information about many morally weighty practices is simply not available to citizens. Due to reasons of 'national security', 'executive privilege', and the like, the common folk are simply not permitted to know the intimate details of certain state practices, and this is true in all (or very nearly all) states in existence.[78] The constitutions of many states may simply neglect to grant a right of access to such information to the populace, and some governments may simply refuse requests essentially by force, but even in a state like the US, with its Freedom of Information Act that is supposed to preserve democratic accountability, the government (consistently and over changes in composition) refuses to disclose information about a lot of the practices of agencies within it.[79] It is the power or authority structure of the state that enables this segregating of information between members of certain groups, and so the state's composition makes it a poor collective on which to apply a view like the above. This does not yet show that the view will never apply to states and their practices, but it does suggest, in the least, that we must be worried about the limited applicability of the view toward state practices, since much goes on in the state that citizens are not privy to. This point is especially salient given that we began by assuming a very generous interpretation of condition (1).

§5.2 – Solidarity and Identification with the State

The problems continue with respect to condition (2). Even if we grant that every person in the state knows about *P* or should have known about *P*, there is still the issue of whether they

[78] These practices of the state are often maintained over significant changes in the set of persons holding position in the government, so the government as a body or a particular administration is not the proper referent of a judgment about which entity perpetuates the trend of withholding such information. This trend is better ascribed to the state itself, given its general invariance across changing in administration and government.

[79] I have in mind here examples such as the active programs of various "intelligence" agencies and the details of foreign policy and policy goals. Responsibility for the effects of these purported state actions are often attributed to the state itself, so they are worrisome cases to the extent that the citizenry does not have access to sufficient information about them.

all satisfy (2), either through identification or solidarity, or failure to disassociate and be a part of a reasonable prevention strategy. We first have the issue of identification or solidarity. This is explicated by McGary to be satisfied when some common interest is shared within the group, or when some profit (financial or otherwise) is obtained through membership or even just from self-identification as a member. When the group engages in morally problematic practices and *X* benefits from this in some way, such as through feelings of superiority or security that go along with *X*'s membership in the group, *X* is morally liable. This seems to fit with our judgments in most cases. If I join a religious organization that engages in the practice of disparaging other religions and uses public persuasion to disadvantage other religious organizations, then I need not actively participate in this practice to be liable for it. I know or should know about this practice, I get some psychic benefit from my identification as a member of an aggressive and critical organization, and I benefit in some general sense from being in the powerful group. Add to this the fact that I elected to join the group and that I may freely leave it, and we may conclude that I am a fit target for moral responsibility for those practices.

The extension of this idea to the state is less straightforward. In fact, any analogy we would like to draw between the typical case of voluntary group membership and the case of the citizens of a state will break down at some level. In contrast to any case of group membership where the individual began as a non-member and then made the active choice to join, membership in the state is typically conferred at birth and may be retained only through lack of other options. This fact has implications for both disjuncts of condition (2). First, *X* may feel solidarity with her state and the other members, but this is of a different kind than the solidarity one might feel from membership in a group that they chose to be a part of and identify with. In the state the citizen is born into membership and educated from a young age to identify as a state

member, in explicit distinction to members of other states. Typically, emphasis on the separateness of groups of persons according to state membership and belief in the exceptional character of one's own state becomes a part of the society's widely shared belief system (or 'ethos'). Individual persons do not select this perspective from among alternatives, but instead are conditioned to it from birth. If a person developing in this environment forms a strong identification with the state, proclaims her solidarity with it, and demonstrates strong emotional feelings of attachment and pride or guilt for what the state does, it is far less clear that this is a relevant condition for moral responsibility than in any case where membership was a deliberative choice. I do not mean to equate the condition of state solidarity with brainwashing, but a related point can be made about a person who has been brainwashed. We would not consider a brainwashed person's identification and solidarity with her captors and their morally abhorrent group, for example, to be a morally relevant consideration.[80] We would not pass personal judgment on her for those beliefs and we would not hold her morally responsible for group practices on the basis of her identification with the group. We may still hold her responsible for her own wrong actions – insofar as she still has deliberative capacity, exhibits moral agency, and can still be expected to know basic ideas of right and wrong – but part of her psyche is now off limits in our moral evaluations of her. In similar fashion we should not use *X*'s identification and solidarity with the state as a relevant condition of moral responsibility with respect to the state's practice or actions. *X*'s feelings of solidarity with other members of the state, or *X*'s identification with the state itself, is (for most *X*'s) the product of a life-long education to that effect. In this respect, such feelings and such beliefs cannot function as a relevant consideration

[80] Patty Hearst's legal defense against charges of bank robbery in 1976 is a good example of this. Hearst was kidnapped in 1974 by the Symbionese Liberation Army and was later filmed aiding in a bank robbery carried out by the group. Court-appointed doctors and her legal counsel insisted that Hearst had been brainwashed, or that she was under mind-control, and for this reason she should not be convicted of the crime.

in a moral evaluation of *X*. The solidarity component of condition (2) is appropriate with respect to many groups one may join or identify with. Under certain conditions, when one makes a conscious decision to join or remain a member of a groups, and conceives of the world in certain ways based on that membership, there are grounds for using that fact as part of a moral judgment. The state is simply not a group where these considerations generally apply.

We see from the above that the moral properties of the state diverge in important respects from that of other groups. More generally, we see that *the moral implications of membership in a group necessarily depend on the specifics of that membership*. Groups differ, as do membership conditions, and these variances must be fully considered when apportioning moral responsibility. This point can be extended and broadened by looking next at the related issues of the benefits of group membership, failure to disassociate from the group, and failure to correct group behavior or practices. As we will see, these are other considerations that are often appealed to in making the case for membership-based moral responsibility, but as with the case above, state membership is distinct in certain crucial respects.

§5.3 – Benefits of State Membership

It is quite natural to consider a person responsible for some action or practice of a group she belongs to if she knows about it and benefits from it but does nothing to stop it. We may often judge that this person might as well have participated in the action or practice if she was going to knowingly reap rewards from it. Her moral judgment is largely unchanged either way. For example, a member of a political party who materially benefits from membership need not actively participate in a party practice of voter suppression to be held morally responsible for it, if she was aware of it or should have been. We can still attribute this practice to her in respect to her group membership, benefit, knowledge, and acquiescence. And, again, this generally seems

like a correct conclusion to draw in similar cases of group action or practice that involve voluntary group membership. With respect to the state one may benefit psychically through confidence and self-respect that goes along with membership in the state, or one may gain through the greater security that a state with a powerful military enjoys, or one may even have more financial resources than she would if not for her membership in her particular state. There are a myriad of ways that state membership may be beneficial, but is this morally relevant?

What we must not overlook is the fact that the individual must have exhibited some form of control over the situation (or some level of agency) for judgments of responsibility to be appropriate. In most cases one's decision to join or remain in a group, at least, are tied together with the benefits that one has received as a member to (morally) connect that person to the actions the group undertakes or the practices the group engages in. It must be possible for the benefits to be avoided, either individually or through renouncing membership. However, state membership is not like membership in other groups. As was the case for solidarity or identification, the involuntary nature of state membership will affect the moral import of membership benefits.

Analogous cases might help express the force of this worry. We could imagine a family where the son and daughter identify and have solidarity with the family and benefit greatly from their family membership because of their prestige in the community and their parent's wealth. It is clear that holding the son and the daughter morally responsible for the actions of their parents would be a mistake. The fact that the two may have benefitted greatly from their membership in this family rather than some other is not relevant in and of itself. They did not choose to be a part of that family and their benefit as members was not really something that could be entirely avoided. The son and daughter are stuck with their lots in life, even if that lot in this case benefits

them greatly. Such a case alludes to certain conditions that must obtain before one's benefits of membership in a group become morally salient. These include that the membership was voluntary and that the benefits themselves could have been avoided, at least.

So, with respect to the state, even if we accept that in a given case citizen *X* has benefitted in some way from membership we have to ask whether membership or the benefit was really avoidable. Of course, it really was not, in any typical case of citizen benefits. Again, the benefit in and of itself, is not sufficient to establish moral responsibility, if it is not the product of the individual's agency or controllable through her agency. To insist on citizen benefits as the basis of moral responsibility is, essentially, to accept moral responsibility based in birth on a piece of land that happens to be constitutive of some state – or from parents who happen to be.[81]

§5.4 – Failure to Disassociate from the State or its Practices

The natural response may be to shift toward the fact that membership can be renounced. And surely it is the case that membership in many groups can be given up quite easily and that disassociation can be expected of those who wish to avoid moral responsibility for group practices. We might concede that the solidarity, identification, and benefits were established from birth, or a very early age, and are not morally relevant, but still argue that membership could and should have been renounced. Disassociation is a possibility, and this need not require physically removing one's self from the group, as this would be unfeasible for many people in the state. We wouldn't want to make the mistake of arguing from the fact that one didn't leave the state to the conclusion that she is morally responsible for what the state does. There are a plethora of reasons why that would be an illegitimate argument, and I consider the position weak enough to set aside altogether. Fortunately, McGary's view accommodates this worry by allowing that disassociation can be done without physically leaving the group. And he discusses

[81] This issue will be discussed in greater detail in Part II, Chapter 3.

a particular example of chattel slavery that gives us insight into how he would conceive of the disassociation possibilities in the state. He concedes that legal avenues (in the state) were not available to people who desired to end the practice of slavery, but there were political avenues, such as abolitionist movements, that could be utilized for disassociation.[82] Presumably, he considers this movement to have been "a reasonable strategy to prevent further or greater harm" and the fact that people participated in this counter-strategy absolved them of responsibility for slavery that their knowledge of the practice and membership in the state that institutionalized it would otherwise bring them. Other state practices could be treated similarly, and all members of the state may be held responsible for state practices that they do not disassociate from, when they are also not part of a reasonable strategy to prevent further or greater harm.

Does this salvage the applicability of the view toward state membership? Is it possible to establish the collective moral responsibility of the population of a state by appeal to a failure of all to disassociate and engage in reasonable attempts to reform the practices? There are at least two problems for the view along these lines. The first is that there will often be members of the state who do attempt to change the practices we are concerned with. When this is true, we will not have a case where the state-actor model is shown appropriate because assigning collective responsibility will capture those who attempted reform along with those who did not. Given that most state practices are considered contentious by at least some members of the society, and the fact that typically at least some members are 'opponents' and work against the continuation of such practices, establishing collective responsibility on a failure to disassociate will not fare well with respect to the state.[83]

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[82] McGary, "Morality and Collective Liability," 85.

[83] If we wish to admit of exceptions and conclude that some members of the state are responsible and some are not (because the latter group was part of a reasonable strategy for reform), we would have to base this on an individualistic analytical model and we would have already given up the state-actor model.

A second worry is that there will be cases where there is no such reasonable strategy, or where all practicable strategies will very probably fail. There may very well be cases we could discuss that involve a state practice, *P*, universal citizen awareness of *P*, and universal failure to disassociate from *P*, that nevertheless fail to show collective responsibility because there is no available, viable strategy for reform. That is, many morally relevant state practices that we might like to consider collective failings by the state are those that the citizens actually lack the power to change. This is a complex problem that requires more attention below.

§6 – CITIZEN CONTROL OF STATE PRACTICES

We sometimes think that a group of persons is morally responsible, as a group, for not acting in some way that would have prevented some harm or wrongdoing. This is often a natural conclusion to reach in cases involving organized groups that fail in some potential collective action, but it has also been argued that random, unorganized collectives can be subject to such judgment.[84] According to theorists of this persuasion, where things could have turned out differently had enough members taken the initiative to act in some obvious way, each individual member shares in the moral responsibility for this failure to act, or related failure to organize. In this way the responsibility is distributive (all members are responsible) in contrast to certain cases of organized, hierarchical groups where authority structures absolve certain individuals.

With the ability to address non-organized groups, this type of reasoning may apply to state actions or practices, and may apply to the body of citizens who do not initiate a reasonable strategy to prevent further or greater harm. When all of the aforementioned exceptions to McGary's conditions obtain, the case for citizen responsibility can still fall back on a failure of

[84] See, for example, Virginia Held "Can a Random Collection of Individuals Be Morally Responsible?" *Collective Responsibility*, eds. May, Hoffman (1991), 89-100.

the society to take part in a reasonable reform strategy, and possibly for the failure to organize into a group capable of deciding on such a strategy and implementing it.

We might consider a hypothetical to make this point more concrete. It could be true, for instance, that state, *S*, would not engage in the practice of war, *P*, if enough members of *S* were to organize themselves into an anti-war movement capable of changing government policy. Any given citizen of the state, *X*, that does not attempt to form or join such a movement may be considered morally responsible for practice *P*, and for the set of actions that comprise this particular token of *P*, because they satisfy conditions (1) and (2) above. *X* is aware of *P*, *X* benefits in some ways from *P*, and *X* did not disassociate from *S*, avoid whatever benefits arise from *P*, or form a viable strategy for preventing continuing harm from *P*. If no reasonable attempt to stop the war is carried out, then every citizen of *S* would share in the responsibility for this failure, and we could say that *S* itself was morally responsible. The accountability of *S*, and all members of *S*, would logically follow.[85]

How promising is the above account? Firstly, it should again be noted that such cases will be few and far between – perhaps nonexistent. As argued above, the majority of such cases of state practice will involve some individuals in the state who are absolved of responsibility either through insufficient access to information, non-culpable solidarity or identification, inability to disassociate, or inability to take meaningful actions toward reform. This means that the state-actor model, if defended on this basis, would very rarely or almost never apply because innocent people would be subsumed under its judgment. Aside from this practical limitation, there still remain a number of theoretical difficulties with assigning responsibility on grounds of a state's

[85] I will restrict my discussion here to just those states that have some form of representative government and democratic or republican political process. As it will turn out, whatever conclusions can be drawn in these more restricted cases about a lack of sufficient connection between government action in the name of the state and citizen responsibility will apply just as well, if not more forcefully, in a case lacking representative government.

failure to take effective measures to organize itself in such a way that it prevents harm. I will turn to these worries below, beginning with an account of the appeal of this sort of view, before proceeding to discuss its weaknesses. In the end, although it may be argued that the state could and would have acted differently had enough members of the state organized themselves in the right sorts of ways, using this counterfactual as a basis for the moral responsibility of a society is quite problematic.

Why might we argue on the basis of this counterfactual analysis? An obvious reason seems to be that this sort of analysis functions well for many types of collective action, or failure to act. When we wish to apportion responsibility in certain organized and even unorganized groups, such as a workforce at a business or swimmers on a beach, an appeal to the failure of all to take the necessary steps to reform the group or prevent harm is quite persuasive. For instance, if everyone in the accounting department (an organized group) is aware of morally relevant recurring discrepancies in an executive's financial statements and no one does anything to address this issue, then all members of the accounting department are responsible for this failure, other things being equal. To organize and act on this information is well within the power of the members of the group and had they acted the wrong could have been corrected. Similarly, we might argue that a random collection of people on a beach are all morally responsible for the drowning death of a child, if we imagine that all members of this random group of swimmers were aware of the child's distress, the water was relatively shallow and calm, and none of them did anything to help.[86] The extension of this line of reasoning to the state may seem natural.

As we are here treating the state as a sort of joint enterprise where all individuals contribute their small part to the large whole, we might argue that a state practice like war,

[86] We may even conclude as much if the rescue effort were to require at least two swimmers to work together. It may be argued that they should have organized themselves to make this possible. Held provides some of the details of this sort of analysis in, "Can a Random Collection of Individuals be Morally Responsible?"

although a direct product of the military, as commanded by the government, is ultimately an extension of the will of the people. After all, it is the people (society) that establish the government and it is the government's expressed purpose to carry out the will of the people. It is supposed to be by the authority of the people that the government and military are authorized to do what they do at all. Furthermore, the people actually have the power to change the behavior of the government, and so the military, if they organize in the right sorts of ways. We may suppose that if the citizens had voted for a different set of people to have in power, if enough letters had been written to Congress urging a vote against a declaration of war (assuming they bothered with it), or if a large demonstration was organized, the war could have been avoided.

We can tell a story about each person's role in the final result. Either you supported particular candidates and their policy of war, in which case your causal relationship is fairly easy to establish (as well as your accountability), or you didn't support the candidates and the policy, but the outcome could have been changed and you and the rest of those who acquiesced and opposed didn't organize yourselves in such a way that you stopped it, so you are implicated regardless. Whatever the details of the story, all of the individuals involved can be implicated insofar as collective action could have changed things, so the whole can be implicated in the result (war). All would be responsible, and so liable, on this basis.

Can this case involving the state really be treated in the same way as the examples mentioned above involving smaller groups such as a department in a business office or swimmers on a beach? We must respond in the negative, for a number of reasons that again have to do with the nature of membership in the group, the group's organizational and institutional structure, and related considerations.

First, unlike the two examples above, there is a worry about access to information within the state. Aside from the previously discussed worry about awareness of the existence of practices, in the case of state reform there is a related concern about the availability of information that pertains to the potential ways that state practices could be successfully altered. That is, a person may be aware of a state practice but not take a reasonable course of action to stop it due to an insufficient understanding of the problem and its possible solutions. State behavior tends to be quite complex and navigating the state's institutional structure to achieve a political result can be enormously difficult. Questions would arise about how political institutions are structured relative to the practice, what the law permits, what other people value and believe, what other people are willing to do to help a collective effort, what reform methods are likely to succeed, what the risks are, *et cetera*. The vast majority of people would not even know how to begin to make this collective effort possible.

Second, even if this informational worry is assumed away there is still the issue of the practical application of whatever reasonable strategy (viable strategy) is to be undertaken. In our simple cases above we either imagined groups with clear authority structures and procedures that could be utilized for change, or we imagined groups that could be spontaneously organized because of their small size and intimate character. The state lacks both of these aspects. Although we can certainly point to the legal and political system as an established organizational structure that enables citizen engagement in the governing (state action or practice molding) process, successfully guiding this process from outside the law-making institutions is very difficult. We tend to conceive of the state as an organized collective that encompasses all citizens, and on that basis we may want to analyze a failure to amend state practice in the same way that we analyze other coordinated groups; but this would be a mistake. We are definitely not in a position here

that is all that similar to clear cases of organized collective failure, such as within a corporation, business department, team, or other hierarchical organization with a decision-making institutional structure. The government of the state will have such a structure, but the whole state itself is actually the aggregate of many individuals, organizations, and institutions, and most citizens are not directly connected to the real levers of control. Altering the behavior of a government, through its congress or its executive branch, may require altering the behavior of a large number of state officials, and this may itself require the concerted effort of many individual citizens who, for the most part, lack direct access to state officials and are not themselves organized. Even in a representative system the government officials' actions qua government official are free from the control of the electorate. Once state offices are staffed the citizen loses whatever direct control she had on the governing process. Intentionally directing the state's behavior through the sociopolitical processes available, and coordinating a sufficiently large joint effort to this effect, is, within most states, an enormous task indeed.

With these considerations in mind, we should shift our full attention to the specifics of an account of collective action in random groups, as this is the situation for the citizens of a state who might wish to alter state practices. Although governing institutions and organizations exist, and individual citizens are connected to state action in some ways through them, our analysis must appreciate that the set of persons that embody the state is, when considered as a whole, unorganized in terms of its membership, decision-making, and action. Essentially, the populace of the state constitutes a 'random collection' (in Virginia Held's terms) of persons for the purposes of causal analysis because of the nature of membership and the sociopolitical structure of the collective.

How are we to determine whether a random group of people is responsible for a failure to act? Virginia Held provides an account that is suitable as a starting point for this discussion. She argues that situations do arise where an unorganized collective of people would be responsible for a failure to act, or failure to organize into a body capable of deciding and acting. Importantly, these cases depend on whether the action(s) sufficient for change is *obvious* to the *reasonable* person, and whether the expected outcome is *clearly favorable*.[87] It also seems taken for granted (or should be so taken) that the action must be possible, in practice. Now, it is not entirely clear what criteria would be used to determine the obviousness of an available action, the reasonableness of a person, or what is clearly favorable in a given case, but Held lacks the space to devote much attention to these matters. Instead she offers examples that support the logical and practical possibility of such collective responsibility for group inaction. The thesis is then extended in reference to political conditions in particular, and Held implies that there are cases where the correct course of action is not obvious, but that we might nevertheless hold individuals responsible for their failure to organize. She says,

> If a reasonable person judges that the overthrow of an existing political system is an action that is obviously called for, he may perhaps consider himself morally responsible for the failure of the random collection of which he is a member to perform this action. If he thinks some action to change an existing political system is obviously called for, but is not clear about which action, he may consider himself morally responsible for the failure of the random collection of which he is a member to perform the quite different action of transforming itself into a group capable of arriving at decisions on such questions.[88]

Thus, we have here at least one possible basis from which to argue that all members of the society underlying the state may be morally responsible for their failure to prevent the state from behaving in some way, or from continuing in some practice. This could be the case when some obvious action is available and it is not taken, just as well as if the populace simply fails to

[87] Held, "Can a Random Collection of Individuals Be Morally Responsible?" 94.
[88] Ibid., 98.

organize itself into a body capable of deciding which actions are clearly favorable and then carrying out those actions.

If such a view were going to be adopted we would need an account of the precise meaning of the essential terms given above. An inquiry into the matter is beyond the scope of this project, but let it suffice for me to mention that providing such a specification would be quite challenging and the result quite theoretically complicated. Rather than attempt to specify what may in fact be impossible to fully adequately specify, let it just be emphasized that Held's account, like any that might be appropriate in this context, involves a *value* component, an *informational* component, and a *practicability* component (at least implicitly). Held argues that these aspects of our view of collective moral responsibility must be present in order to morally connect the individual to the action or inaction. Although we cannot here delineate the important concepts used in Held's analysis, we can look at some typical cases and discuss whether the general criteria offered, however they are fully developed, will be adequate to demonstrate collective responsibility for a failure to prevent some state action or reform some state practice.

Ignoring the value component for the sake of this argument, we can focus on the informational and practicability components to make the case that citizens will be absolved of responsibility for their collective omission.[89] To keep our bearings during this discussion, let us revisit the war case given above. We may imagine that the state, *S*, has a government ,*G*, that orders the military, *M*, to engage in the practice of a war, *P*. We may further imagine that any individual citizen, *X*, is aware of this practice and that no anti-war movement (or reasonable prevention strategy) is created to stop it. In order to show that *S* itself is responsible for *P* we

[89] Aside from the considerable difficulties that arise from an attempt to specify was is obvious and practicable, there is the even more intractable problem of deciding what action is "clearly favorable." Reliance on such a notion would be a serious weakness for any view we consider, but I will ignore this shortcoming and focus on the other, more plausible, conditions.

must show that all *X* satisfies the information and practicability components of responsibility. That is, we must show that *X* has access to the information necessary to organize an anti-war movement and that a successful version of such a movement is practicable.

The recurring problem for this line of reasoning is that citizens tend to be incapable of organizing enough people in the right ways to be successful. The argument here is not that it is impossible to do so, because we can easily point to a few choice examples of successful social change (e.g. the Civil Rights Movement in the US), but these cases are few and extraordinary. For the vast majority of state practices, especially in regard to foreign policy, a mass effort to redirect state action has a high probability of failure. We first have the problem of coordinating a sufficient number of people to effectively change *G*'s policies. In contrast to the simple case of asking the person next to you to help you complete a rescue attempt that requires two people, coordinating a sufficient number of people in the state to stop a practice like war would require thousands or possibly millions of people acting with that shared intention. It is not at all clear to a majority of us how this kind of coordination can be accomplished, and even if it is possible it would likely demand a sacrifice of more time, energy, and resources than can possibly be morally required of a person. In effect, most of us would have to treat a reform project as a full-time job, and that is simply not feasible for most people. In short, the typical citizen lacks the necessary understanding of the problem and the solution, as well as the means to organize enough people to be successful. Thus, to hold the citizens responsible for such a failure is to hold them responsible for not performing a monumental task that may in fact be practically impossible to perform.

We can add to this worry by considering whether it is even worthwhile for *X* to try. We might grant that *X* knows what needs to be done and that *X* has the means to coordinate a large

number of people into a joint reform effort. We may still worry about the probability for success. Even if an anti-war movement is formed it is still an open question whether *G*'s behavior will be altered by it. That is, even if this large collective effort occurs, it isn't clear that it will be a viable strategy for reform. Once an election has taken place, members of government are largely autonomous in their capacity as government officials. A concern for defeat in a reelection campaign is probably the most compelling reason a hawkish legislator or executive would have for heeding the wishes of even a highly organized anti-war movement. The electorate has far less power over government officials than we typically care to admit. And if this is known it may absolve a citizen from responsibility for failure to even try to stop the practice. If *X* knows that the probability of successfully stopping the war through her anti-war movement is exceedingly low, then we cannot hold *X* responsible for failure to try, let alone if *X* simply fails. From *X*'s perspective there is little point to beginning the process of organizing or even joining an existing anti-war movement. Ultimately, *G* will do what *G* decides to do, regardless of *X*, and this is typically quite apparent to *X*, given that history provides so much confirmation.

Lastly, we should also consider that collective efforts at altering state behavior can also be risky for those involved. History provides many examples of public protest against state policy that has resulted in government violence against protesters, injury, and even death. It is commonly understood amongst protesters that plan to attend the most contentious protests that a person should bring eye protection and a respirator if possible. Police violence is a predictable result of a mass demonstration against the standing of the government. This fact and its common knowledge also contribute to discharging whatever duty we may have thought an individual citizen has to protest their state's actions.

It is an error to hold *X* responsible for not doing something that *X* has every reason to believe will be ineffectual or risky, just as it is an error to hold *X* responsible for not doing something that *X* very likely cannot do. We may think that *X* should try – that we must at least attempt to discharge our moral responsibilities – but a risky and costly attempt that is highly likely to fail is not an attempt that one is obligated to make. Even if we accept positive duties to prevent harm, we should recognize a distinction between one's presumed responsibility to save a child drowning in a shallow pond and a child drowning 100 meters offshore in a choppy ocean current. It is not always clear where the line must be drawn, but a line must be drawn.

With respect to state action, the physical and institutional distance between the citizens and the leaders of their state, their general lack of knowledge about the workings of state institutions, their general lack of effective coordinating ability, the danger of certain mass demonstrations against the government, and the justified belief on the part of the citizens that attempts to reform state policy are likely to be ineffectual, all militate against citizen responsibility for failure to prevent state action. The act of *trying* to prevent state action may be important in our personal assessment of *X*'s character, but it must not relate to our evaluation of whether *X* has discharged her moral duties. Beyond a certain point, we cannot require *X* to waste her time, energy, and resources on a doomed moral project.

§7 CONCLUSION

Establishing collective responsibility (as attributability) for state action is a difficult task, and one that must rely on some story about how the individual citizens are morally relevant to the state action. The most straightforward way to make this case would be to argue that all citizens are causally connected in some relevant ways to the action or practice in question.

However, given the existent organization of states, this really cannot be done. The incidental nature of most citizens' involvement with state action renders a 'joint action' approach useless.

Instead, it is natural to look to the general practices of the state and argue that all citizens are, or should be, aware of morally relevant practices, accrue benefits from them, identify with the collective, and so stand responsible for the collective's practices. This strategy is often viable when we need to show that an individual is partly responsible for a group practice that she herself was not directly a part of. However, certain conditions must be satisfied for an argument of this sort to succeed and those conditions do not obtain for all (or even most) citizens of the state. Importantly, in any such case of moral responsibility we must show that the given individual had, or should have had, sufficient knowledge of the practice and that she identified with the group in a sufficiently strong way, benefitted from her membership, and did not do enough to reform the group or stop the practice. States are not structured in such a way that these criteria hold for most people.

Essentially, a view of collective responsibility for group action must rely at some point on the agency of each individual member, as demonstrated in an action that is at least somewhat relevant to the group action in question. There is a scale upon which *X*'s actions will place them, from perpetrator to opponent, and to be responsible for *P* one must have at least exercised their own agency at some point in a way sufficiently connected to *P*. This can be done with an act as minor as voluntarily joining the group, or not leaving when it is easy to do so, but short of some such satisficing event, it will be inappropriate to assign responsibility to *X*, even if *X* identifies with the group, benefits as a member, and did nothing to stop *P*. In short, *X* must have done or failed to do *something* that can be appealed to as proof of moral responsibility. The nature of state membership usually fails to show that *something* sufficient was done by the individual, and

so absolves many individuals of responsibility (as attributability) for what other persons within their state do 'in their name'.

To get around the above worries, we might instead attempt to argue on a counterfactual basis that all citizens are responsible for state action due to the fact that they could have but did not stop it. Again, this is a plausible strategy to ground responsibility for collective inaction in many social groups. And again, the state is not one of them. We may accept that it was possible for a large-scale collection action on the part of the citizenry to have stopped the state from acting as the government commanded it, but still deny that moral responsibility can be placed on the populace for this omission. This charge would have no more force than the charge that all the world's people are morally responsible for the collective failure to alleviate global poverty because the causal mechanisms necessary to make it happen technically exist, even though they are not at all apparent or accessible. There are many such actions that could be done, *if* circumstances were different and *if* enough people organized in certain ways, but these conditionals do little for us. Even our counterfactual analyses must identify some relevant awareness and ability on the part of the individuals involved in a collective omission, in order to establish responsibility on this basis. With the state we cannot adequately do this.

To put the matter concisely, states are not similar enough in their generation, maintenance, and organization to be normatively dealt with as a *collective* in the way we might treat other social groups that are collectively responsible. The dynamics of a group are morally relevant and our normative analytical methods must take this into account. On a theoretical level, the moral relationship between state action and individual persons is not easily translated in either direction between the collective and the member. The moral responsibility of the state does not necessarily translate into the moral responsibility of any given citizen, and the moral

responsibility of individual citizens and even state officials does not necessarily translate into the responsibility of the state itself.

Use of the state-actor model will have to depend on something other than attributing state actions or practices to all citizens, so we will turn next to the possibility of moral responsibility for state action based on membership alone. Whereas we focused here on whether all are involved at least indirectly in the commission of some state action or practice, or whether all involved failed to stop it, we may weaken conditions of moral responsibility a bit and move from notions of attributability, to a more general notion of responsibility. We can ask whether mere membership in the collective and active participation creating and embodying it might entail a sort of moral responsibility, even lacking some stronger causal connection.

Part II: Collective Responsibility
Chapter 2: Non-Attributable Responsibility and Political Guilt

§1 – INTRODUCTION

In the last chapter we saw the problematic aspects of any sustained attempt to establish the collective (attributable) responsibility of all citizens in the state. While such a demonstration of collective responsibility would have provided the most solid ground from which to argue that the state was properly held liable for actions ascribed to it, the complexities of the modern state and the variability of its individual inhabitants makes such a project ultimately unworkable. However, this does not yet rule out the possibility of establishing some other form of moral responsibility (or related notion) that might still provide reasons in favor of collective liability in the state because it adequately demonstrates the connection between the behavior of the group and those individuals who merely acquiesce (bystanders) or even actively resist (opponents). A few such possibilities are the ideas of *moral responsibility without guilt, political guilt*, *metaphysical guilt* and *strict liability*. The first of these approaches divorces attribution and causal responsibility from moral responsibility, the second two connect responsibility with identity and group membership, particularly *national* membership and political participation (or possible participation), and the fourth altogether separates liability from moral responsibility. If any of these notions suffices to show the legitimate liability of all citizens in the state, then the state-actor model may yet be an appropriate model of interpretation for normative reasoning.

Continuing with a critique of accounts that would provide the strongest connection between a state action and a given citizen's moral or legal accountability, I will begin first with a view of citizen responsibility that entails blameworthiness although not moral guilt. In, "Citizen Responsibility and the Reactive Attitudes: Blaming Americans for War Crimes in Iraq," Amy

Sepinwall argues for a rather novel approach to what amounts to collective responsibility in the state (for her, 'nation-state') that is based strictly on citizenship. In this way, her account readily addresses the worry about bystanders and opponents, so if it is successful, the state-actor model will have an account of moral responsibility to support it. If Sepinwall's treatment of the issue will not suffice, then another weakening of the conditions of moral responsibility will bring us to the notions of political and metaphysical guilt, attributed first to Karl Jaspers in his book, *The Question of German Guilt*. His work is further developed by Larry May in, "Metaphysical Guilt and Moral Taint," written in 1991. The final type of view to be considered is a view of (pure) strict liability, where citizenship itself confers liability, regardless of involvement and fault. In what follows I will consider whether Sepinwall's account of guiltless moral responsibility, Jasper's account of political guilt, May's extension of the idea of metaphysical guilt, or (pure) strict liability can serve as a foundation for conclusions of state liability, and so the collective liability of all members of the state.

§2 – CITIZENSHIP AND (NON-ATTRIBUTABLE) MORAL RESPONSIBILITY

As with most war, we may confidently suppose, the most recent American war with Iraq involved what are today considered war crimes, and these included many atrocities committed against the civilian population of Iraq. Amy Sepinwall argues that all Americans of majority age are morally responsible for these atrocities, and to such an extent that they are *blameworthy* and appropriate subjects of reactive attitudes such as indignation.[90] Quite importantly, this account does not rely on any notion of attributability to argue that an individual is morally responsible, so Sepinwall's view would apply to the notoriously difficult cases for a view of collective

[90] Amy Sepinwall, "Citizen Responsibility and the Reactive Attitudes." In *Accountability for Collective Wrongdoing*. Eds. Tracy Isaacs and Richard Vernon (New York: Cambridge, 2011), 231-260. Although Sepinwall discusses nation-states, it will turn out that the conditions she supplies for responsibility for a nation-state's action will apply to most existent states. Rather than change my terminology to be consistent with Sepinwall, I am going to continue to refer to 'states' and only use 'nation-state' when quoting her.

responsibility – the bystanders to and opponents of the group action. Sepinwall's treatment of the US with respect to the war with Iraq, and her conclusions about US collective responsibility, may prove useful in our analysis of the general merits of the state-actor model. While her account is just one attempt to establish the (non-attributable) responsibility of a state's whole population, the approach she takes appeals to reasons that are common in the literature, so discussion of her argument in particular should be useful.

Sepinwall's main argument begins with a discussion of the normative implications of group membership, particularly in the state, and proceeds from this idea to the moral responsibility of all (full) members. She sums her position up well in the following passage.

> The account of citizen responsibility that I advance differs from the individualist account insofar as it severs moral and causal responsibility: Again, I argue that citizens may bear moral responsibility even though they did not participate in, facilitate, or even tolerate the [crimes of their nation-state]. The account also severs the notions of guilt and blameworthiness: I argue that citizens may be appropriate objects of blame (and hence appropriately subject to resentment and indignation) even though they need not conceive of themselves as guilty.[91]

Although each individual citizen may be responsible to a different degree, depending on her particular circumstances, actions, and so forth, all (full) citizens are certain to be somewhat responsible, regardless of what else they did, because of the implications of their citizenship. The crucial starting point that leads her to this conclusion is the idea that "the citizen's *commitment* to the nation-state contains a normative dimension that requires citizens to accept responsibility for their nation-state's transgressions."[92] According to Sepinwall, this is due to the relationship of citizens to each other, the government, and state, and its similarity to other relationships, such as relations created through marriage or a business partnership. Each of these examples involves a joint project or enterprise where special obligations arise on the part of the individual parties to

[91] Ibid., 236.
[92] Ibid., 238 [her emphasis].

the agreement. As Sepinwall says, "Some amount of fidelity follows from membership in the partnership just as it does in the marital union. *Mutatis mutandis*, I now argue, some amount of fidelity follows from membership in the joint project that is the United States."[93]

Quite importantly, her argument focuses specifically on the United States, and while her account will generalize to other states of similar form, she is not maintaining the conclusion that legal citizenship, in and of itself, grounds responsibility for state action. It is not that any citizens anywhere are connected to the actions of their state just as Americans are to the actions of the US. Sepinwall claims that the matter is contingent, not conceptual. Citizenship must be "robust" enough to qualify, and there are multiple ways this condition can be satisfied but there must be some sense that the citizens are joined in a shared project.[94] For the US, Sepinwall focuses on the "quasi-spiritual understanding of the nation's mission and the connection of martyrdom that this understanding yields."[95] To buttress this point she quotes many political speeches of the past that imply the unity of Americans and the concept of the US as engaged in righteous behavior, and she discusses military service as sacrifice. Willingness to die for your country, and the presumed *duty* to do so if need be, are central to the conception of the state as a joint project and Sepinwall argues that "the prerogative of the sovereign to demand its citizens' deaths likely only makes sense within a nation-state that claims a commitment to its citizens of the kind at issue here."[96] As for dissidents or 'opponents', Sepinwall claims that they too harbor the commitment to the state, and we can see this by the fact that they did not leave it. "Having stayed, however, they must accept that its acts redound to them. Just as the nonproducing business partner may not

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[93] Ibid., 240.
[94] In this respect, Sepinwall's position shares central features in common with Margaret Gilbert's treatment of related issues in, *A Theory of Political Obligation* (New York: Oxford, 2006). I will discuss Gilbert's view in more detail in Part III, Ch. 1.
[95] Ibid., 242.
[96] Ibid., 244.

disown the products of her partnership, so the dissident may not disown the acts of the United States."[97]

So, for Sepinwall, citizenship carries moral weight when it is in a state that has nationalistic qualities and a populace comprised of individuals who tend to conceive of themselves as part of a larger project that is the state. Citizenship under these conditions is a sort of *commitment* that one makes to the rest of the members of the state, which produces a unity of all members, which leaves one morally responsible for what the state does.

> [The citizens'] commitment entails that they may not step outside the nation-state to point a finger in righteous indignation at the state's transgressions; instead, the citizen must face judgments with fellow citizens, in recognition that the nation-state is his as well as theirs. To do otherwise is to denigrate the shared venture; it is to demonstrate an atomism incompatible with citizenship.[98]

Sharing citizenship is supposed to be similar to other joint projects that an individual might engage in and the moral responsibilities that would follow from such an arrangement. Such commitment entails moral and perhaps legal liability, so, if successful, Sepinwall will have vindicated the state-actor model.

Sepinwall's view makes for a nice candidate view of non-attributable moral responsibility in the state, since her argument appeals to a fairly common point of view about the relational property 'citizen' and the agreement (perhaps implicit, tacit, or hypothetical) that is presumed to exist between persons who share it. Moreover, it is certainly the case that many citizens feel a strong affinity for their state and that they feel a sort of solidarity with their fellow citizens. Citizens commonly identify as members of their respective states and form strong bonds with the symbols and historical narratives ascribed to them. Even so, we should look more closely at the citizen relation to see if it is plausible as a basis for moral responsibility.

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[97] Ibid., 246.
[98] Ibid., 241.

To a significant extent Sepinwall's argument rests on the strength of the claim that citizenship is similar to the other relations she mentions, such as the marriage or business-partner relations. There is some plausibility to this idea, but the strength of the analogy is questionable. As we saw in the last chapter, we have to be careful how we treat the citizen relationship because it is special in certain significant ways. The fact that citizenship is treated as analogous (or at least very closely related) to marriage or a business partnership is actually quite problematic due to the quite different means with which one enters into those relations. As we discussed previously, the majority of individuals maintain the 'citizen' relation with respect to the state and their fellow citizens due merely to an accident of birth and a lack of real alternatives. Far from a voluntary union that carries certain obvious moral ramifications, such as a marriage or joint business venture, citizenship is actually just imposed upon most people.

There is typically no act of agency that can act as a solid grounding from which to infer that the citizen has made a commitment to the group 'The State'. Due to its involuntary and arbitrary nature, the 'citizen' relation, on its own, is really no more morally significant than the 'lives on the same continent' or 'shops at the same grocery store' relations. We should not think that this is terribly strange. The moral arbitrariness of citizenship alone is similar to that of the 'brother' or 'sister' relations taken in isolation. *A* and *B* may be brothers, but this does not by itself imply anything about a special moral relationship that exists between *A* and *B*. Consider, for example, if *A* and *B* have never met and will never meet to form any sort a brotherly relationship, or alternatively that they in fact detest each other, each wishes the other dead, and they never speak. In such cases *A* and *B* share no relevant connection that would imply a special moral relationship. Their moral relationship to each other is no different than the moral relationship each shares with the rest of humanity. It is not the abstract relation itself that is

important. The relation alone is nothing more than the expression of a conceptual category or representational device – in this case, the category of biological sibling. What grounds the moral element in morally relevant social relations is the agential component in the act of forming the relation or freely sustaining the relation. This is especially true when we are concerned to show that one individual stands in a relationship of vicarious moral responsibility (or any other sort of responsibility) with respect to another. This is what Sepinwall is ultimately trying to show, and in order to do so we need more than a mental construction.

For this very reason, perhaps, Sepinwall uses a *robust* idea of citizenship to make her case. She intends to show that citizenship in states with representative government is morally more significant than simple citizenship, or citizenship without representation. The thought here seems to be that there is an agreement (even if implicit) between all members of the state that they will cooperate, elect a government, and abide by that government's decrees. In this way we can say that the members of the state are engaged in a sort of joint project. This sort of approach to understanding citizenship as a joint commitment shares obvious parallels with the views of the state as a self-governing sovereign collective,[99] in which case moral responsibility might be thought to follow naturally.

However, the case is much the same for citizens of most states, regardless of form. That is, sharing the ability to vote does little more to demonstrate that a commitment is made between persons than simply sharing the relation 'citizen'. Again, insofar as we are concerned with whether a commitment has been made, the property or relation itself is not as important as how it came to be and why it remains in place. With typical commitment-based social relationships where moral responsibility is thought to depend on the contours of that relationship, there is some common interaction, collective purpose, or act of joining on to the joint venture. With the

[99] Part I, Ch. 1, §2.

state there is none of that. A given natural citizen in the US has probably met far less than even 1% of the total population of the country and certainly never agreed to the terms of the supposed collective agreement. The population of the state hardly even approximates a group unified around some common project that would result in special obligations.[100] On the contrary, the vast majority of persons that comprise the US just happen to find themselves institutionally and conceptually linked with each other through what is essentially, for most, an accident of birth *here* rather than *there*. The set of persons referred to as 'US citizens' is largely defined according to the property of geographical location delineated by morally arbitrary divisions on a map. The individuals who have the 'citizen' relation also have the 'voter' relation, but whether or not that is the case is predominantly determined by their parent's residence. Furthermore, in some areas of the world the difference between being born in state *A* or state *B* is a matter of something as arbitrary as being born to parents who live on the west rather than the east side of a river, road, wall, fence, or even just an imaginary line between two coordinates on the Earth. If vicarious moral responsibility is going to attach to a person as a consequence of a difference in location of birth or residence of maybe a few hundred feet, then we should question our standards of moral responsibility. Certainly *blame* at least should not attach to something as out of one's control and meaningless as what land she was born on, or what state her parents were affiliated with. Adding the right to vote to this picture does not seem to do much here. This right is also largely the product of morally arbitrary factors in one's life and the ability to exercise it does not show that one has committed to do so. Thus, sharing citizenship, even 'democratic' citizenship, is no more morally relevant on its own than sharing other conceptual relations.

[100] The point here may seem strong but is actually rather narrow. One might think there is something important about shared citizenship, for the same or different reasons as Sepinwall, but this does not allow the inference that a *commitment* has been made. The fact of whether a commitment is made is decided on entirely different grounds. The case for shared moral responsibility based in part on citizenship has to avoid a commitment approach because there simply is no such commitment. This is not yet to say that no other approach could work.

Given that the ‘citizen in a representative state’ relation is insufficient to establish joint commitment, we might look to add to it by appealing to common sentiments among citizens, which involve identification with the state and emotional connection to the state. Many people feel a strong connection to their country and a sense of duty toward ‘it’ and their fellow citizens and we could cite the many political speeches that have used the idea of the glorious nation. However, these considerations ultimately do little for us. The issue of moral responsibility cannot be determined simply by observing talk of ‘we’, ‘us’, or ‘the nation’, in political speech patterns, nor through a survey of what many of the common folk believe. We would first have the problem that not all full members of the state will endorse the conception of their citizenship that this idea is based on. In order to encompass the whole set of citizens, as we must in order to clearly establish collective responsibility, the perspective of national unity and purpose would have to be universal. It is certainly not, and this fact on its own is rather decisive. But even if we push the issue a bit further, we again run up against the problem that the causal explanation of many such speech norms and sentiments must include reference to the life-long conceptual conditioning that has taken place for many natural-born citizens. Rather than reflecting the individual’s deliberative conviction or at least choice, which would be relevant to a judgment of moral responsibility, these features of the citizen merely reflect her induction into a common interpretational scheme involving the idea of national (or state) unity that is an extremely common feature of the general ethos in such communities, as well as usually being a formal element of the educational curriculum. Much like the fact that US citizens think in terms of ounces and feet as opposed to liters and meters, because that is how they were raised and those concepts are deeply entrenched in their consciousness, those same people may refer to US citizens as ‘us’ and ‘we’ for the same reasons. It is a habit of thought and one that will be quite

difficult to break insofar as it is a basic feature of the individual's conceptual scheme from the earliest stages of development. Moreover, in the same way that we would not infer anything morally relevant between persons who identify as ethnically Jewish, but who are otherwise unrelated, even if this identification is accompanied by feelings of pride or guilt for the actions of representatives of the groups. If one simply goes along with these ways of thinking because she was conditioned to them since birth and lacked alternative conceptual schemes then this fact is not relevant in a judgment of vicarious responsibility. Without the ability to also appeal to some action of hers that demonstrates something of greater moral relevance, such as her act of joining the group, we would be linking her with the actions of others on an unacceptably thin basis.

One might object that something like racism can be instilled in a person from a young age without us thinking that it is morally excusable or ignorable in the way I am suggesting, but the two cases diverge. First, with something like racism there are obvious alternative points of view. A moment's reflection can generate the other possibilities. A person can easily realize that there is no justifiable reason to pass judgment on all people of a particular skin color or ethnicity. Not only will there be obvious counterexamples to such flawed beliefs, as well as other non-racist people who suggest the alternate attitude, the alternative non-racist attitude is also an obvious logical possibility. Contrast this with a worldview that involves identifying as a member of a country that is distinct from other countries. This is a far more basic element of one's understanding of her relationship to others, especially those who do not look, speak, and live the same sort of lifestyle. This general viewpoint is essentially ubiquitous, although a given individual will have a special form of it with respect to her particular state. Furthermore, the alternatives to this perspective are few and non-obvious. A conceptual scheme built around the ideas of such membership is, admittedly, quite commonsensical, seemingly straightforward, and

seemingly obvious. The vast majority of people share this view, just as they share the view that north is up and south is down, or that North America is *above* South America, *et cetera*. Second, a racist is already open to criticism for her own views. If we think the racist deserves some kind of blame it is not because she thinks the way other people do, it is because she thinks the particular thoughts she thinks, and the origin of those thoughts might be irrelevant. Again, this is not like an attachment to state membership or national community, especially insofar as those views are not morally worrisome on their own.

The system of laws all co-citizens are subject to, the common language, the shared institutions, and other factors certainly seem as if they show that a sort of unification has taken place around a joint enterprise that can be differentiated from other similar joint enterprises (other states). However, again, this view is far from universal, and its conditioned character and the lack of accessible alternatives work against its moral relevance. Rather than reflect the citizen's commitment these beliefs are simply evidence of the social circumstances the citizen happens to be born into. As such, they are insufficient to imply moral responsibility for the actions of others.

Of course, Sepinwall clearly states that she is going to divorce causal and moral responsibility and there is some plausibility in that in some cases, but we can only take the division so far. In short, while it is true that one need not be *causally* related to some outcome to be morally responsible for it, one must at least have been *agentially* related in some way. For example, we may look at a relation of guardianship such as 'parent' and find cases where the parent does not have to be directly causally related to a particular morally wrong action of her child to bear moral responsibility for it. Or as Sepinwall discusses, a joint commitment like marriage carries with it certain responsibilities, and causal connection *in a given case* may be

irrelevant to a determination of moral responsibility. We can agree that Spouse *A* may have to share accountability for what Spouse *B* does, in certain cases. Yet, there is a point at which the causal distance between the agent and the outcome in question will be great enough to preclude a moral connection. For example, we clearly make a distinction between the sort of vicarious responsibility that can transmit between spouses and between friends. Whereas a spouse *A* might be morally responsible for something spouse *B* does that is totally outside of her control, friend *C* will almost certainly not stand morally responsible for something friend *D* does that is entirely outside of her control.

It is true that in interpersonal normative evaluation we often ignore causal contributions in cases of vicarious responsibility, but we do not completely ignore the minimal agency thought to be requisite for such responsibility. Although it may be overlooked, we at least tacitly rely on some past expression of the agent's will in order to ground her current vicarious responsibility. In the case of the parent or the spouse we can, at the absolute least, point to the initial decision and action of entering into the relationship. We may suppose that the parent made a choice to have sex and keep the child and that the spouse made the choice to marry. We have initial decisions and actions that exhibit planning and control, and so some morally relevant expression of agency. We at least have that as grounding for some special relationship to exist between the relevant persons. On the contrary, in most cases the citizen made no such choice. For most citizens there is no such act of joining or entering into a joint project that implies the existence of a special relationship. Without that, what we have is better described as a group of individuals, some members of which interact from time to time, but where the vast majority are unknown to each other and not in any very meaningful sense engaged in a joint project together. Aside from stipulating that we must conceptualize a group of citizens in the state as bound by morally

relevant relationships, there is little to appeal to for identifying where a *commitment* is made between citizens. Rather than liken the citizen relation to a marriage, it is better compared to a *forced* marriage, even if an amicable one for many people.

In her discussion of the dissenters (opponents), Sepinwall claims that their dissent makes sense because they are responding to the betrayal of the nation's values, and, as quoted above, she appeals to the fact that even the dissenters have stayed in residence in the state, which is intended to show that they too have made a commitment to it.[101] To evaluate these considerations, let us consider a case where the state is at war and the dissenters are a group of war protestors. Sepinwall would claim that even these protestors are committed to the state because their protest is based on their feelings that the conduct of the war "grossly betray[s] values they take to be fundamental and sacred to their beloved country."[102] The problem with this reasoning, though, is that her interpretation of their motivation is simply posited. Rather than saving the good name and righteous values of their beloved country, these dissenters could have many different understandings of what they are engaged in. For instance, they could believe that it is morally wrong for members of their government to be ordering the deaths of persons on the other side of the world and that it is wrong for the members of the military to carry out those orders. This purely individualistic interpretation need not refer to any idea of the nation or state doing or becoming anything. It may focus entirely on judgments of what the individuals involved are allowed or not allowed to do. Furthermore, as was mentioned briefly in passing before, the fact that people have not left their state will do little moral work for us, and perhaps none. There are myriad reasons why individuals will continue to reside in the place of their birth, or wherever they happen to find themselves, which have nothing to do with a personal commitment to the

[101] Ibid., 246. Sepinwall does include a condition about a right of exit, p. 241 fn. 33.
[102] Ibid.

whole community in which they live. For example, it isn't as if the poor have somehow tacitly committed to live in the state because they have not left it.[103] We should notice as well that Sepinwall's view will imply that the poor, practically politically disenfranchised voter in the state will be responsible right along with the wealthy and politically powerful. Perhaps this is no surprise given that the dissenters are responsible as well even though they did all they could to change state policy.

We should remember that the majority of people in the world simply lack the practical capacity to leave their state of birth, which makes their continued residence therein of no real moral relevance. However, even if a person does have the means to leave, a following point must be stressed. There is only a choice of *this state* or *that state*, there is no option to abstain from such a state-relationship altogether. This is a particularly troublesome problem for any view that endeavors to base moral responsibility on state membership, resident alien status, and related ideas having to do with jointly committing with the rest of the state members or receiving benefits from the state. Without a no-state option, we give the individual no choice but to be vicariously liable for other persons – and in this case persons that are typically far removed from the interaction and influence of the vicariously responsible citizen. Those who want to connect moral responsibility to such forced relationships must confront very difficult questions from the individual, who asks, "How am I to avoid this responsibility you want to assign to me that does not emerge in any direct sense from my will? Where could I go that I would be free of

[103] We can trace the idea that continued residence in an area implies tacit consent back to Plato's Crito, and perhaps further. It has been given in one form or another and addressed many times. We see a version of it in Locke's *Two Treatises of Government*, Book II, Chapter VIII, §119; and also in Rousseau's *The Social Contract*, Book IV, Chapter 2. David Hume is one author who argues against such tacit consent in "Of the Original Contract," originally published in 1777. Hume says, "Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners, and lives from day to day, by the small wages which he acquires? We may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her?" David Hume, *Essays Moral Political and Literary* (Indianapolis: Liberty Fund, 1987), 475.

responsibility for the actions of others whom I know little or nothing about and cannot in fact control?" "What must I do to be absolved of your judgment?" As these questions are directed at how we are to convincingly demonstrate that the individual citizen is morally related to some state action – to a greater extent than mere conceptual grouping – it puts the defender of citizen responsibility in an awkward position. If we want to uphold the view that voting membership in the state is sufficient for moral responsibility we are forced to reject our firmly entrenched moral principle that people are only morally responsible for what they do freely of their own agency, or for actions they could have controlled or avoided. This principle is compatible with cases of responsibility without direct engagement in the act, but only when some act of agency sufficient to make a moral connection was committed at some prior time, or when real alternatives to blameworthy membership exist. The state provides no such alternatives for many of its members. Even those that could leave would be forced to sacrifice too much to be held morally responsible if they do not and they are only a percentage of the state anyway.

In trying to establish the collective responsibility of all full citizens, Sepinwall seems to be taking quite a bit for granted, including, perhaps, the very conclusion she would like to show. She essentially just posits the fact that certain relations of citizenship, such as the relation shared by US citizens, constitute a "normative project." Recall that after saying there are myriad ways that this project can be explicated, she says, "For our purposes, it will suffice to focus on the quasi-spiritual understanding of the nation's mission and the connection to martyrdom that this understanding yields." On the next page she follows with a reference to Paul Kahn, who she says argues that "the prospect of self-sacrifice is foundational in American political culture, both in the sense that the United States was born in revolution and that the United States is sustained by the government's continued authority to demand that Americans kill or be killed on its

behalf."[104] She follows this point with the following observation. "The notion that Americans should be willing to kill and die for their country is, then, a strong piece of evidence in support of the claim that American citizenship has a normative cast."[105] We should be worried that this comes close to saying something like, "The fact that American citizenship is inherently normative is a strong piece of evidence in support of the claim that American citizenship has a normative cast." If we take it for granted that the citizen is actually *obligated* to kill and die for her state, then it would follow that state membership is normative. Aside from being merely true by definition that a situation involving obligations is normative, there is a big *if* involved here, and it is not at all clear that the individual has such an obligation simply because she is a citizen of some state or other. Some people may believe this, of course, but that is no basis upon which to ground a moral obligation. Certainly, it is possible to have false beliefs about such things.

Sepinwall's reference to Kahn's discussion of the 'American political culture' is also not helpful here. Both of these writers are appealing to a vague historical sense of US history, but it seems to escape their attention that judgments about state conditions like a 'quasi-spiritual understanding' of membership or the 'political culture' cannot meaningfully apply to the whole when this must mean all members. When describing the circumstances of social action for the purposes of normative judgments of obligations and retrospective liability it is important to not obscure detail through the use of metaphorical language. The US, and all other states, are rather diverse in population in certain crucial ways, and the uniqueness of individuals and their characteristics, beliefs, intentions, and actions are completely lost when we presume that the whole shares a self-identity and sense of collective purpose, when this is not in fact true.

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[104] Sepinwall, "Citizen Responsibility," 243.
[105] Ibid., 244.

Far too much is assumed when we take the wide view of a group as large as the state, and this is the central concern of views like Sepinwall's. She is certainly correct that many members of a given state may share common state-based sentiments (we can include here sentiments of nationalism, patriotism, exceptionalism, *et cetera*). However, she takes this grain of truth and uses it in a hasty generalization to extend it over the whole collective. This amounts to a simple postulation. A view that treats democratic citizenship as a commitment must simply presume this state of affairs. There is certainly no observation one could make or inference one could draw from some other knowledge that would imply that the members of a state are engaged in a joint venture. It is common to talk this way but the details at the individual level simply fail to comport with such a loose manner of speaking.

Of course, Sepinwall's argument is just one possible argument that could be put forward to establish collective moral responsibility (sans causal responsibility) in the state. On the basis of the above we could hardly say that this approach can never work. However, we can conclude that any such account would have to rely on some number of base assumptions that would import some moral component into state membership itself (or membership plus democratic rights) in order to argue for the universal commitment. Any view that attempts to demonstrate moral responsibility in a group setting without showing the necessary agential component will be in conflict with our basic, individualist principles. To ignore the agential component is to tie moral responsibility to what would otherwise be morally arbitrary group membership. In any given individual's case, the assignment of moral responsibility on the sole basis of democratic state membership (even in a state that has many patriots) is akin to blaming her for the happenstance of her birth – something totally out of her control. In short, views of this sort run the serious risk of reducing down to a principle of guilt by association.

§3 – POLITICAL GUILT AND COLLECTIVE LIABILITY

Establishing universal citizen moral responsibility, including blameworthiness but not necessarily attributability, may be an impossible task, lest we simply posit that citizenship is a special, morally relevant relationship. It seems we are forced to look further down the moral spectrum for a connection between acts of state and liability of citizens. Without any form of attending moral responsibility, the next level must be some sort of normative liability as citizens. Though we may hold the state responsible, the moral component in such a judgment can drop away entirely when practically applied to the citizens. It need not be the case that all citizens are blameworthy, it is enough that they can properly be held collectively liable for their state. In this way, such liability for state actions could be *strict*.

In his 1947 book, *Die Schuldfragei,*[106] Karl Jaspers develops his response to the question of German Guilt for the atrocities of World War II and his conclusions will serve as a useful discussion point here. Jaspers essentially concludes that all Germans are responsible for what happened and he clearly supports the conclusion that Germany itself, which is to say all of its citizens, are liable for damages caused by people acting in the name of Germany, including reparations debt and the like. His ideas are nuanced, so we will have to discuss them in a bit more detail before we can evaluate them.

Jaspers offers a distinction between four different concepts of 'guilt' to orient his position. These are, *criminal guilt*, *political guilt*, *moral guilt*, and *metaphysical guilt*. Criminal guilt is the guilt of one who has committed a crime, where there is the possibility of "objective proof" that a law was violated. Political guilt stems from the deeds of statesmen and extends to the citizenry. It entails that all members of the political community "have to bear the consequences of the deeds of the state whose power governs [them] and under whose order

[106] Jaspers, Karl. *The Question of German Guilt*. (New York: Fordham University Press, 2000).

[they] live," because, "everybody is co-responsible for the way he is governed."[107] Moral guilt has to do with our evaluation of the person and it attaches to those acts that the person performs intentionally. Jaspers illuminates the concept a bit further by explaining that, for example, orders are never just orders, and the individual can be morally guilty for what she does, even if she was following superiors. Jaspers' concept here seems to fit nicely with what we label moral responsibility as 'attributability', when we add the presumption that there was wrongdoing, even if the action was done under orders. Finally, we have metaphysical guilt. This is the least clear of the four concepts, and at times it is one that seems as if it is intended to apply to the whole of humanity.[108] Metaphysical guilt seems to potentially spread across the whole of humanity because of a certain solidarity among humans as humans, which makes us all co-responsible for the injustices committed by others, especially when one knew about the injustice and failed to stop it. Political guilt and moral guilt will be the principal focus here.

Political guilt is essentially a form of vicarious liability (which is itself a form of strict liability) for the actions of one's government, in the name of the state. Accordingly, it does not suffer from the complications involved with trying to associate moral responsibility, or blameworthiness. As Jaspers explains it, "political guilt…does mean the liability of all citizens for the consequences of deeds done by their state, but not the criminal and the moral guilt of every single citizen for the crimes committed in the name of the state."[109] Criminal and moral guilt will depend instead on what the individual specifically did.

Jaspers seems to pull the lens back away from the individual, so to speak. He will not argue that everyone is personally morally responsible for what the state does, but he will insist

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[107] Ibid., 25.
[108] For comparison, see, Hannah Arendt's, "Organized Guilt and Universal Responsibility." In, Collective Responsibility: *Five Decades of Debate in Theoretical and Applied Ethics* (1991).
[109] Jaspers, *German Guilt*, 26-27.

that each individual is still a relevant causal part – not closely related enough to the final result for ascriptions of attributability or even (non-attributable) blameworthiness, but close enough to be politically guilty and therefore liable. It seems that one is either a part of the political life of the state and so an element in that collective process that led to the collective result, or at least a potential part of that process. And Jaspers is willing to say that even the individual who is totally unengaged in politics still lives in the state and shares liability for it.

Jasper's argument for this begins with his four-part distinction of 'guilt', but soon after he notes that it is a mistake to think of the four as completely separate. There is actually a close connection between them, and as he says, "every concept of guilt demonstrates (or manifests) realties, the consequences of which appear in the spheres of the other concepts of guilt."[110] More specifically and importantly for our purposes, political guilt is closely connected with the social ethos and culture of the state, which implicates the people.

The following excerpts from Jaspers will give a clearer picture of his view.

(1) Moral failings cause the conditions out of which both crime and political guilt arise. The commission of countless little acts of negligence, of convenient adaptation, of cheap vindication, and the imperceptible promotion of wrongs; the participation in the creation of a public atmosphere that spreads confusion and thus makes evil possible – all that has consequences that partly condition the political guilt involved.[111]

(2) Out of the moral everyday life of most individuals, of the broad masses of people, develops the characteristic political behavior of each age, and with it the political situation. But the individual's life in turn presupposes a political situation already arisen out of history, made real by the ethos and politics of his ancestors, and made possible by the world situation.[112]

(3) The destruction of any decent, truthful German polity must have its roots also in modes of conduct of the majority of the German population. […] Are we Germans to be held liable for outrages which Germans inflicted on us, or from which we were saved as by a miracle? Yes – inasmuch as we let such a regime rise among us. No – insofar as many of

[110] Ibid., 27.
[111] Ibid., 28.
[112] Ibid., 28-29.

> us in our deepest hearts opposed all this evil and have no morally guilty acts or inner motivations to admit. To hold liable does not mean to hold morally guilty.[113]

(4) Politically everyone acts in the modern state, at least by voting, or failing to vote, in elections. The sense of political liability lets no man dodge. […] One might think of cases of wholly non-political persons who live aloof of all politics, like monks, hermits, scholars, artists – if really quite non-political, those might possibly be excused from all guilt. Yet they, too, are included among the politically liable, because they, too, live by the order of the state.[114]

There is something of a causal judgment in Jasper's argument. Although individuals are not morally responsible for the social circumstances and political situation they are born into, they also contribute to those conditions through their affects on the culture, ethos, and 'characteristic political behavior' of their age, and so their 'political situation'. Passages (1) an (2) strongly suggest that Jaspers envisions the state as being formed and sustained around the common life of the people as a whole, which shares much in common with the view of the state as the product of the complex interrelations of all individuals (I-1, §2). We can see elements familiar from the Pluralist analysis of the state as well (I-2, §1.1). Jaspers envisions the state itself and the actions of its government as the product of the conduct of a majority of its people. Passage (3) compliments (1) and (2) through the analysis of a concrete case. Many Germans may be absolved of moral responsibility on Jaspers's account, but all are liable insofar as they let their state act as it did. From (4) we can add that even the politically unengaged or practically powerless must share in the state's collective liability as well, because they all live together under the state's rule. No citizen is necessarily morally responsible for what results from the state's way of living, but all are liable due to the causal, cultural, and institutional connections between citizens and state action.[115]

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[113] Ibid., 55-56.
[114] Ibid., 56.
[115] Compare Hannah Arendt's view in, "Personal Responsibility Under Dictatorship," from *Responsibility and Judgment*, (New York: Random House, 2003), 27-29.

What is troubling about this view is that Jaspers explicitly wants to avoid ascribing legal, moral, or metaphysical guilt (and attending liability) to individuals on the basis of a tangential connection with the large macro-level social condition that we call the state's 'culture', but he is willing to apply a sort of strict liability onto individuals due to their citizenship alone. He actually devotes a significant portion of his treatment of German guilt to the argument that it is a serious mistake to judge an entire people in certain ways. He makes it very clear that there is a common worrisome confusion between "generic" and "typological" conceptions of groups and yet he maintains that political guilt (liability) is not problematic in the same way.

Jaspers's comments are reproduced in full again below in order to convey his position as fully and clearly as possible. The full content of his comments here serves to emphasize the fact that there is a certain tension within his position. In (5) below we will see a sustained criticism of certain forms of moral and legal collectivization or generalization of a group of people, and yet his conclusion remains that everyone in the state may be politically guilty and so liable for what the state does.

(5) This confusion, of the generic with the typological conception, marks the thinking in collective groups – *the* Germans, *the* British, *the* Norwegians, *the* Jews, and so forth *ad lib*.: the Frisians, the Bavarians, men, women, the young, the old. That something fits in with the typological conception must not mislead us to believe that we have covered every individual through such general characterization. For centuries this mentality has fostered hatred among nations and communities. Unfortunately natural to a majority of people, it has been most viciously applied and drilled into the heads with propaganda by the National-Socialists. It was as though there no longer were human beings, just those collective groups.

There is no such thing as a people as a whole. All lines that we may draw to define it are crossed by facts. Language, nationality, culture, common fate – all this does not coincide but is overlapping. People and state do not coincide, nor do language, common fate and culture.

One cannot make an individual out of a people. A people cannot perish heroically, cannot be a criminal, cannot act morally or immorally; only its individuals can do so. A people

> as a whole can be neither guilty nor innocent, neither in the criminal nor in the political (in which only the citizenry of a state is liable) nor in the moral sense.
>
> The categorical judgment of a people is always unjust. It presupposes a false substantialization and results in the debasement of the human being as an individual.
>
> That such an opinion will become a matter of course and overpower even thinking people is so amazing because the error is so simple and evident. One seems to face a blank wall. It is as though no reason, no fact were any longer heard – or, if heard, as though it were instantly and ineffectively forgotten.
>
> Thus there can be no collective guilt of a people or a group within a people – except for political liability. To pronounce a group criminally, morally or metaphysically guilty is an error akin to the laziness and arrogance of average, uncritical thinking.[116]

Given the lengths at which Jaspers goes to make his point against treating the group as a single subject worthy of moral or legal scrutiny, or as a collection of individuals who all share in the moral or legal responsibility for what the government does in the name of the state, he repeatedly mentions in passing that political liability is the exception to this rule. It is not clear how we are to reconcile these positions, as political liability looks at least similar to laying judgment on the whole people in the same way Jaspers denounces. I think his position merits a more thorough critique, predominantly because it allows us to look into a few important issues having to do with the causal and institutional connections within the state.

In selection (1) Jaspers claims, more or less, that evil committed by the state (i.e. government and military, predominantly) is, in a way, the product of many small moral failings on the part of many people within the state. The idea is a common one, and at its heart it seems to be the position that the public culture and ethos are major contributors to government behavior, and that government tends to reflect a majority opinion. A consequence of accepting this position seems to be that all citizens have a causal connection to state action, even if it is slight and far removed from the specific acts in question. This perspective was discussed at

[116] Ibid., 34-36.

length in the previous chapter. It is quite possible to conceive of the state as an enterprise and the state's actions as in some way a consequence of a vast and complex web of interactions between the state's inhabitants. Once we view the state in this way, collective liability naturally follows as an obvious response to atrocities committed by states. It should at once be stressed, though, that this perspective cannot simply be taken for granted, and upon scrutiny it looks untenable. There is some grain of truth in it, of course, but claims of this sort can never extend beyond vague gesturing because closer inspection reveals them to be flawed.

The sort of cases we are talking about here are those where members of the government, military, or other state agencies act abroad in the name of the state, on the basis of some policy. Examples include war, sanctions, or espionage. As is quite obvious, these state-actions are not the sort that stem from the will of the populace as in a democratic procedure. Or, in other words, the causal chain does not move from the population to the government. In fact, the truth is often precisely the reverse![117] [118] State policy is often devised by party leaders or members of the executive branch first and then marketed to the people second, if public support is needed to encourage the congress or parliament to approve the policy. Take the case of war, for instance. It

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[117] A study by Martin Gilens of Princeton and Benjamin I. Page of Northwestern called "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," (forthcoming in *Perspectives on Politics*, Fall 2014) analyzed 1,779 policy issues to determine which groups exerted the most influence on US policy. From the abstract: "Multivariate analysis indicates that economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while average citizens and mass-based interest groups have little or no independent influence. The results provide substantial support for theories of Economic Elite Domination and for theories of Biased Pluralism, but not for theories of Majoritarian Electoral Democracy or Majoritarian Pluralism." Accessed June 4, 2014, http://www.princeton.edu/~mgilens/Gilens%20homepage%20materials/Gilens%20and%20Page/Gilens%20and%20Page%202014-Testing%20Theories%203-7-14.pdf.

[118] In an interview for Princeton Weekly Bulletin, Princeton Associate Professor of Politics Brandice Canes-Wrone explains the conclusions she reaches in her book, *Who Leads Whom? Presidents, Policy and the Public* (University of Chicago Press, 2005). Although she does not claim that public opinion has no influence, and that it has varying levels and certainly more around election time, she also says, "Presidents actually have incentives under a number of conditions not to follow mass opinion, though they also have an incentive not to publicize too heavily that they're doing so." And after explaining the ways in which public opinion can be relevant, she says, "However it is worth underscoring that one of the major arguments of the book is that presidents have fewer incentives to pander to public opinion than the conventional wisdom suggests." Accessed June 4, 2014, http://www.princeton.edu/main/news/archive/S14/41/58K61/index.xml.

is certainly never the case that the public clamors for war and then the leaders appease the masses. The leaders decide to engage in war, and a great many in the populace are simply forced along for the ride (though, of course, many may stand in support of the policy). US foreign policy provides many clear cases of unpopular wars being fought, the Vietnam War standing out as a particularly good example.

Interestingly, Jaspers's comments are in regard to World War II and the second-highest ranking official in the Nazi regime, Hermann Goering, attested that the causal ancestry of a state policy like war is almost precisely the opposite of Jaspers's claims about the political culture. After the interviewing psychologist for the Nuremberg trials, G. M. Gilbert, suggested, "I do not think that the common people are very thankful for leaders who bring them war and destruction" Hermann Goering responded:

> Why, of course, the people don't want war. Why would some poor slob on a farm want to risk his life in a war when the best that he can get out of it is to come back to his farm in one piece. [sic] Naturally, the common people don't want war; neither in Russia nor in England nor in America, nor for that matter in Germany. That is understood. But, after all, it is the leaders of the country who determine the policy and it is always a simple matter to drag the people along, whether it is a democracy or a fascist dictatorship or a Parliament or a Communist dictatorship.

Gilbert replies, "There is one difference. In a democracy the people have some say in the matter through their elected representatives, and in the United States only Congress can declare war." To this Goering retorts, "Oh, that is all well and good, but, voice or no voice, the people can always be brought to the bidding of the leaders. That is easy. All you have to do is tell them they are being attacked and denounce the pacifists for lack of patriotism and exposing the country to danger. It works the same way in any country."[119]

Now, clearly, the comments of this one official from one state and those of Jaspers do not settle the empirical question of exactly what the causal chain looks like in a given state action, or

[119] G. M. Gilbert, *Nuremberg Diary* (New York: Farrar, Straus & Co., 1947), 278-279.

whether there is a uniformity in these causal chains. In fact, making a true universal claim about all state action being one way or the other is not possible.[120] Nevertheless, a quick study of history will show quite clearly that the major international events that we attribute to the action of states are the product of policies that originate with government officials and persons in other state offices, and not with the will of the populace or even a majority. Just consider our common understanding of how military actions are conducted, treaties and trade agreements are created, and sanctions are enforced, for instance. These are just some of the many examples of state policy that are adopted first and explained to the public second, *if at all*.[121] And even when we see some level of popular support for a state policy, we should not treat it as clear evidence of a sort of collective state activity. We must not forget that consent can be (and is) manufactured. Persons with power often determine policy and then use popular media to create public support. In the least, we can say that the order of support for state policy often begins with government and ends with the populace rather than the other way around. Foreign policy decisions, in particular, tend to be driven by the ends of state officials, perhaps due predominantly to the general ignorance of the public about international affairs. It should be stressed that even domestic policy hardly ever really reflects the will of a significant majority in any diverse state, but even when it does, there will be a minority that we must consider, and this minority shows that a blanket judgment must be incorrect.

Our stance on how we conceive of the citizen-government-state relational structure forms an essential foundation for our determinations in moral and legal matters of state, and it cannot

[120] We need not make the universal claim against the possibility of a state operating like an enterprise, or a corporate agent driven by the will of the populace. It is enough to show that these conditions, although logically possible, are practically impossible and do not in fact obtain in the case of any existent state.

[121] A trade agreement called the Trans Pacific Partnership between the US, Canada, and ten other countries is being negotiated as of early 2014. The public is not allowed access to the details of this agreement until after it is finalized. This provides a good example of the policy first, public awareness second ordering alluded to above.

be stressed enough how misleading it is to treat state action as the product of the many little actions of the inhabitants of the state, together creating the larger reality. Relatedly, it is very misleading to claim that government policy is the product of the 'political culture', 'state ethos', 'general will', 'national spirit', or any of the other inherently vague notions that might be invoked here to assign a liability judgment to a whole people. We use these terms often, but we may not appreciate how ill-defined they are. When used indiscriminately, concepts like 'culture' and 'general will' serve more to obscure than to illuminate. The effect is simplification of a kind that masks detail that is of direct relevance to the judgments we wish to make.

In selection (2) Jaspers continues the point from (1), but with the addition of a comment about how the political circumstances are also presented to the individual citizen from birth, which suggests that although the citizen is part of the current system (culture, ethos, etc.) and so bound up with what the government does, there are mitigating factors. If it were the case that the present actions of the government relied only on *current* political circumstances and cultural conditions, then perhaps all citizens would be morally guilty for what their government does in their name. Yet, Jaspers seems to think that if we acknowledge that many facets of the political condition are placed before citizens, and fall outside the scope of their control, they can be liable even if not morally responsibility. This seems to be Jaspers way of striking the middle ground, but it again relies on a rather vague picture of how society generates state action. As with (1), it is only by ignoring the real intricacies and complexities of social life in the state that we can draw such a clear connection between the "moral everyday life" of the people and the "characteristic political behavior of the age," and so the "political situation." We can, of course, object that there will certainly be individuals whose actions do not really connect up with what the government does in any strong way, but we need not. We can just as well push back the ideas

expressed in (1) and (2) by noting that the general features of societies that might influence state action do not dictate it. That is, although we must accept the truth that public opinion (another inherently vague notion) is not irrelevant to state policy, we must also accept that government agents are largely autonomous in their functioning as government agents once they have been elected, appointed, or the like. We should also remember that even in a democratically organized state the citizens only exert direct causal influence over state officials during periodic elections, and that during those elections voters must decide between a limited number of candidates that they typically know relatively little about. There is some truth to Jaspers's insinuation that the people of the state, or at least some of them, do enable the government to do what it does, by voting for them and continuing to follow their orders, for instance; however, this cannot serve as a strong enough basis for judgments of vicarious liability due to the citizen's unique position. The citizen if faced with the consequences of her government's policies whether or not she chooses to partake in the democratic process, and the persons she is voting for tend to be those that excel at sales – the sale of a product: a person and a package of ideals. The citizen finds herself in a position where she has to choose some option from the few she is presented with, if she wants to engage even her tiny amount of political power, but where her choice is severely constrained not only due to a lack of options, but also of reliable information about the candidates and expertise by which to make the judgment.

The central point here being, the successful politicians are the one's exhibiting the most intentionality and control over the political process. The citizens when taken as a whole do not exert much *specifically directed* control over state policy; rather, they tend to perform only the function of the selection device for legislators and executives. Once that function has been carried out, the citizen's role in the political process diminishes substantially. We should add to

this that in many states there is also a rather low amount of participation in elections. But, even if a state had widespread political participation this would still not necessarily show a strong causal connection between (a) the actions of the populace, (b) the political culture, and (c) state behavior (especially inter-state behavior). It is important to distinguish as well between *political involvement* on the part of the citizenry and *actual influence and control* over the policies that government officials adopt. It is quite possible (and perhaps common) for many people to be politically engaged in their state and yet not actually exert any real influence over what is eventually done. Again, once officials are elected they act essentially independently of public control. Fear of a failure to be reelected only has so much motivational force, and even if it does, the populace only has that power once every few years. State institutional structures vary, of course, but it does not seem that that any state in existence is structured so that the populace directs state policy in such a way that we can hold them (attributable) responsible for the political culture and the political situation, and so liable for the results.

The point here is certainly not that the citizenry has *no* influence on the behavior of politicians and other state officials, nor that no citizens can share in moral responsibility and liability for state actions through their political participation. The considerations Jaspers and others point to are not completely irrelevant. The point is that these considerations cannot do the work for them in their arguments that they wish them to, and, ultimately, they cannot support use of the state-actor model in these normative cases. As always, we have the problem of universalization, which is to say that you will never find a case where all the citizens all together created the conditions that generated the political situation and so the state's behavior. Beyond that we have to accept that although we can give the counterfactuals (the state wouldn't have done *X* if the citizens had done *Y*) this is ultimately immaterial for a determination of liability.

The primary actors, government, military, and other state officials, did what they did, and in their capacity as state officials they acted without direct oversight from the citizenry, and so the chain of liability cannot extend beyond those state officials on the basis of some supposed causal connection between the two groups, even when a description of that connection appeals to the culture or the ethos or whatever vague notion we wish to rely on.[122]

Lastly, what Jaspers has to say in (5) seems potentially contradictory with his view of political guilt, or liability. In (3) and (4) especially, Jaspers is quite clear that he thinks it is appropriate that a whole people within a state bear political liability, while in (5) he argues forcefully that treating the people as a whole in many other kinds of judgments, including moral judgments, is completely unfounded. This is a bit odd, at least, given that judgments of liability are not entirely unrelated to judgments of moral responsibility. Although it might be thought otherwise, even strict liability rests on some minimal level of control on the part of the liable party. It does not seem that any such control is a real element of one's mere citizenship. Furthermore, no grounding is really given for the difference in these judgments. Though, Jaspers did have the following to say about group liability:

> The question is in which sense can a *group* be judged, and in which sense only can an *individual*. It clearly makes sense to hold all citizens of a country liable for the results of the actions taken by their state. Here a group is affected, but the liability is definite and limited, involving neither moral nor metaphysical charges against the individuals. It affects also those who opposed the regime and its actions. Analogously there are liabilities for members in organizations, parties, groups.[123]

The reasoning here seems to be that collective state liability is acceptable because it makes no moral or metaphysical judgment about the person, hence, it is *limited*. The remark about liability being *definite* is not very clear, but Jaspers seems to mean that the liability is specified explicitly,

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[122] The connection can't be maintained between the *groups*. I don't wish to deny that such a connection can ever obtain between certain individual citizens and the groups whose actions are attributed to the state.
[123] Jaspers, *German Guilt*, 33-34 [his emphasis].

such as when a reparations debt is established as a specific amount of money owed. His points here are not elaborated, so it is hard to say exactly why it should matter for collective liability that a judgment is definite and limited. It seems that Jaspers considers collective liability judgments as less normatively problematic because they do not extend any sort of condemnation over a whole people, nor do they allow for open-ended or limitless judgment. Though, even this makes a weak case for collective liability. When directed at persons who are innocent of wrongdoing, and also not voluntarily in a relation of vicarious responsibility to the actor, even a definite and limited liability is inappropriate.

It seems that an implicit assumption is being made here – namely, that some sort of justice (or reactions resembling justice) must be carried out after certain grave international conflicts. In other words, much damage and suffering was caused and we might think that something must be done about that to right the world. Given that we accept that something must be done, it seems plausible to just attach responsibility to the state itself, and so liability to its entire population. As a German citizen, Jaspers may have felt that he was not in a position to argue that Germany should not be the target for reparation demands. Such an argument may have looked unthinkable to many academics and intellectuals of the time. At the very least, one writing from Jaspers's position might assume that much of the rest of the world would look quite unfavorably on a view that seemed to be a self-serving excuse to avoid making things right. This could explain why he is at pains to argue that certain normative judgments cannot possibly be assigned to a whole people but still makes an exception for political liability. However, no sustained argument is given as to why political liability should function differently. It seems rather that it is taken for granted, perhaps on the basis of convention and historical precedent.[124].

[124] Again, see Arendt, "Personal Responsibility Under Dictatorship," 27.

Certainly, there are considerations of expediency and feasibility that might enter into a determination of how normative judgment and reparative policy should be formed after an international conflict, and these factors might be considered as support for the practice of holding the state liable; however, this does not address the issue in question here. The issue here is the question of whom, exactly, is (liable) responsible for the acts in question – it is not about how we can best go about achieving certain states of affairs in the world, regardless of who is responsible for their occurrence in the first place. If we say, "State S is liable," then this statement is either true or false, and reasons must be given to justify the claim. The truth-value of that statement has nothing whatsoever to do with issues of practicality or expediency. Without some other consideration in favor of the conclusion that liability can extend to those who are not involved with the event in question, the distinction between holding an entire state liable *politically*, as opposed to *morally*, looks untenable.

It seems that Jaspers, and others, are motivated by convention when they judge that collective, punitive liability for state actions is somehow an acceptable collective judgment, although other forms of responsibility are not. But what Jaspers has to say in (5) is quite forceful and if we apply such reasoning consistently it seems we must reject his view of political liability.[125] There is simply not a sufficient level of connection and coordination between the persons of the state that would imply universal liability based on an indirect connection between citizens and state action. Such a position can only be posited; it cannot be inferred from other plausible antecedent conditions at the individual level.

[125] I have not yet discussed whether a representational governing structure in the state might not grant authority for state officials to act for the whole state, so as to suggest collective state liability without an appeal to any direct causal contribution on behalf of the populace. That is, other sorts of vicarious or strict liability accounts are possible, particularly based on the authority of the government as granted by the society within the state.

§4 – METAPHYSICAL GUILT AND MORAL TAINT

The next step in loosening the connection between our judgments that the state did *X* and that all people in the state are liable for *X* would be to appeal to a notion such as *metaphysical guilt*. Larry May, building on the writing of Karl Jaspers and his idea of metaphysical guilt, develops what he calls a *social existentialist* account of moral responsibility that applies to groups, collectively. It is particularly important that members of the group who do not actively participate in some wrong can still be morally tainted by it, and metaphysically guilty for it. We will have to determine whether such a property of a group of people could legitimately ground a determination of liability, whether moral or legal.

May's view is based on the ideas of *authenticity*, *solidarity*. As opposed to the sort of strong moral responsibility that attaches to one's intentional actions, the existentialist account of metaphysical guilt is based on the view that a person is responsible for developing her own identity and character, and that people can be guilty of *who they are*, even if not for *what they have done*. Most relevant here is one's choice of attitude, disposition, and general character, but also facets of one's identity, including group memberships. As May says,

> There is an important collective dimension to metaphysical guilt. It is important, morally speaking, that certain evils or harms occur through *my group's* facilitation, even in cases in which there is nothing that my group's members could have done, on our own or even in combination with others, except in the very long run, to prevent these evils or harms.[126]

This is because groups, particularly national groups or states, have a culture that is developed over time and sensitive to the contributions of particular members. It isn't that the member stands outside the culture, but rather that each member forms and is formed by the culture. Thus, when the culture of the group leads the groups to some behavior, it can be the case that all members of the group are metaphysically guilty of that behavior, even if a given member did not actively

[126] Larry May, "Metaphysical Guilt and Moral Taint," in *Collective Responsibility* (1991), 244 [his emphasis].

participate in it. Such a member, call her *A*, presumably still shares some level of solidarity with the group, identifies in relation to the group, and even contributed in some way to the continuance of the group's character and so its actions. While it may not be appropriate to assign moral *guilt* to *A*, she may nevertheless be responsible for her own *authenticity*, which is to say, she may be accountable to be honest with herself about who she is. She may be accountable to assess herself and her group and realign her attitudes, dispositions, and general character if they are unfounded.[127] May goes on to say:

> The group solidarity which Jaspers identifies as one of the key ingredients in metaphysical guilt creates the moral taint for all of those members whose group is in any way implicated in evils or harms. To use Jaspers' own example, it is appropriate that all Germans feel tainted by what their fellow Germans did, and such a feeling should persist even in those cases where there was nothing that many of these people could have done differently, in terms of individual or collective behavior, that would have prevented Hitler's reign of terror.[128]

The implication here is that mere membership is relevant to metaphysical guilt and moral taint. Individual action is irrelevant in this determination because it pertains to *who one is* and we typically include state membership (and other group memberships) into an account of one's identity. Can such a view serve as the grounding for the use of the state-actor model in IR?

The first thing to be said about May's approach is that, insofar as it relies on the notions of *identity* and *solidarity*, it will be subject to the same criticisms developed in response to McGary and Sepinwall. We should be highly skeptical of a view that depends heavily on an extremely common conceptual scheme that persons are trained into from their earliest days as members of the community. To be clear, I don't mean to deny that there is a moral element to how we think of ourselves and our relations to others, particularly with respect to our group membership and relations to other groups; however, May and others would like to extend this

[127] *Cf.* Angela Smith, "Responsibility for Attitudes: Activity and Passivity in Mental Life," *Ethics* 115:2 (January 2005): 236-271.
[128] May, "Metaphysical Guilt," 246.

type of judgment to even those members of the community that do not directly engage in the activities ascribed to the community, as well as to those who are simply born into their situation. Insofar as May appeals to the culture and the individual's role in shaping the culture, his account will be subject to many of the same criticisms offered in this and the last chapter as well. That being said, May does not intend for his account to justify punitive responses toward whole states, and even ignoring the points made in this and the last chapter, metaphysical guilt is not the sort of moral connection necessary to warrant collective punitive responses of liability onto an entire citizenry for the actions of their state. That is, metaphysical guilt is not intended to do that job, nor could it. We can accept all of what May says and still deny that collective liability is appropriate. It could be true, for example, that all members of a given country need to reflect on their identity as individuals in that group and perhaps rethink their relationship to other groups, but this conclusion is quite far removed, logically, from the conclusion that the entire group is appropriately held liable for actions ascribed to it. May's view is considered here only in the interest of thoroughness as we move along the spectrum of moral responsibility, and only to set it aside. Since this kind of responsibility cannot ground collective liability, it cannot have bearing on the central issue of concern herein.

§5 – STRICT LIABILITY

The other end of the spectrum of responsibility that we have been moving along contains a family of views that can be gathered under the heading 'strict liability'. In the legal context this is a sort of responsibility as answerability, accountability, or liability that does not depend on any *fault* condition. Strict liability applies in both criminal and civil law. Jaspers' account can be classified under the 'strict liability' description, but he did include some mention of causal ties between the society and the actions of the state. That being so, Jaspers's view is better

categorized as a sort of vicarious (strict) liability, since he accepts that members of government and other state institutions such as the military are the relevant immediate causal factors in state action, but he also insists that the society (and all individuals) still plays some role in that final result – just not a role direct enough for ascriptions of attributability and related reactive attitudes. A final weakening of the causal connection between the common citizen and the actions of the state brings us to what could be termed a 'pure' sort of strict liability approach. That is, perhaps collective liability in the state could be grounded upon the strict liability (sans fault and causal connection) of all citizens. As an individual in the state, you will either bear a more direct and morally weighty form of responsibility, as a member of the set of persons who directly brought about the state action in question, or you will at the very least be one of those who are (purely) strictly liable as a citizen. All members of the state could be covered in this way, and this would show the state-actor model to be once again on solid footing.

The pure strictly liability approach seems to have some merit, especially because it looks like it may be able to do the job that Jaspers wants to do. Moreover, there are many plausible examples of this sort of liability without fault (or even direct action) that suggest the viability of this line of reasoning. That is, there are many instances where one is liable for something like damaged property, even though she did not act in any way to cause the damage. Such is the case with pets, for example. If my dog escapes from my fenced-in yard and destroys your vegetable garden, I am liable to compensate you for the damage done. No one will insist that I had any personal involvement in the damage, but they will insist that I stand in a position of strict liability for the damage that my dog causes.[129] No blame should be assigned to me, as the case has been developed, for I did fence in my yard and take reasonable precautions (I was not negligent and

[129] This example is taken from discussion with Professor Stephen Gardiner. Also forthcoming in, "Justice and the Simple Threshold View of Past Emissions," in an edited volume by Lukas Meyer (Cambridge Press).

was not at fault), but this is immaterial in a determination of my liability. Perhaps the citizen's liability for the actions of her state should be treated similarly. It is certainly the case that many judgments of collective state liability are not made with the intention of implying that the citizenry of the state is blameworthy, only that the citizenry must stand to answer and be accountable for what their state does.

The proponents of strict liability views of citizenship, in making their case for the non-acting citizen's personal liability, will often appeal to similarities between the strict liability of the citizen and the strict liability of the owner, parent, spouse, or guardian.[130] It might be argued, for example, that, just as we ignore fault and bad luck and hold the parents strictly liable (and perhaps even morally responsible) for the actions of their child, we do the same for the faultless but unlucky citizen for the actions of her government. There is an element of luck involved because she did not choose her state but instead simply found herself within it as opposed to some other state, but this luck may not matter in our judgment of her liability for a state action. Similarly, we hold the business owner strictly liable for the damage caused due to the faultless conduct of her business, or an employee of her business, even if bad luck was a factor. We might hold the citizen similarly liable for the damage done by her government. Like Jaspers's view, the strict liability view has the benefit of the fact that moral responsibility, or blameworthiness, is not included in resulting judgments or the principles they are based upon. The conditions that must be satisfied for strict liability are far weaker than those necessary for moral responsibility, especially responsibility as attributability.

We have next to see how well the strict liability view fares in the case of citizens and state. We must see whether the justifications for strict liability will apply to non-voluntary

[130] In doing so they are treating the 'citizen' relation as akin to the 'spouse', 'business-partner', 'employer' relations, much the same way that Amy Sepinwall argued for the moral import of sharing citizenship, discussed previously.

citizenship. A quick survey of some literature on strict liability will help us clarify the concept and how it is applied, so that we can evaluate citizen strict liability.

Peter Cane treats strict liability this way: "Strict legal liability is liability regardless of fault, that is, liability regardless of whether the defendant engaged in conduct that breached a legally specified standard of conduct, and regardless of whether the conduct was accompanied by any particular mental state."[131] Cane then distinguishes between four types of such liability: passive, right-based, activity-based, and outcome-based strict liability. Briefly, passive strict liability is liability for faultlessly acquired benefits such as being the payee of a mistaken or fraudulent payment.[132] Right-based strictly liability covers cases of property infringement, such as trespass, regardless of fault, or the purchase of stolen goods. Activity-based liability can be either relational and vicarious, or non-relational. That is, due to the relationship between *A* and *B*, *A* may be strictly vicariously liable for *B*'s activity, or *A* may be strictly liable for *A*'s own activity (for example, unknowingly violating a law). Lastly, outcome-based liability is grounded upon the adverse consequences of one's actions. One may be faultless but still cause harm or damage, and one may be outcome-liable for that damage, regardless of fault.

Tony Honoré handles the matter this way: "For present purposes liability is strict when it attaches to us by virtue of our conduct and its outcome alone, irrespective of fault. It falls typically on those who pursue permissible but dangerous activities: storing explosives, running nuclear power stations, keeping wild animals, marketing drugs or other dangerous products…"[133] Honoré goes on to discuss an employer's strict liability for the torts of her employees, and to give some justification for this practice that depends on the value of the activity and so the acceptability of the risks. He continues, "One point of imposing strict liability is to dispense with

[131] Peter Cane, *Responsibility in Law and Morality* (Portland: Oxford, 2002), 82.
[132] Ibid. This and all subsequent references to the four types of liability and examples are taken from Cane, 82-84.
[133] Tony Honoré, *Responsibility and Fault* (Portland: Oxford, 2002), 23.

the need to prove fault on the part of people who are in fact at fault…But in some cases strict liability penalises [sic] not fault but bad luck, which in this context includes, besides ordinary accidents, the bad luck of being saddled with shortcomings."[134] That is to say, strict liability will also apply to those who have fared poorly in the personal attributes "lottery." For instance, one may be accident-prone due to no fault of her own and, because of this, harm another person or her property, and we will hold the former liable even though the damage done is in some sense the product of her bad luck. The justification for this practice includes an appeal to the benefits of such a system of strict liability for society. As Honoré says, "In certain areas of life where there is a special risk that what we do will have a harmful outcome, society insists on pressing our responsibility for outcomes to its limits… The justification of strict liability therefore depends in part on the fairness of outcome responsibility."[135] This makes sense in both the criminal law, which tends to be offender-focused, and the civil law, which tends to be victim-focused.[136] From the side of the offender, some action was performed and some harm done. The offender is outcome responsible (even if faultless). On the other hand, from the victim's side, harm was done and restitution is required. The most obvious and defensible assignments of liability for restitution would be toward those who are outcome responsible for the harm, or those who are vicariously responsible for those who were outcome responsible for the harm. We are not here interested in showing that anyone has done *wrong*, whether a wrong was committed or not. We are interested in the fact that the victim has suffered a loss and that it must be addressed, and addressed by those who stand in certain relations to the event.

This may seem to allow for an overly inclusive standard, but we should not think that it applies anytime harm results from one's actions. There is a presumption of sufficient capacity

[134] Ibid., 23-24.
[135] Ibid., 27.
[136] See Cane, *Responsibility in Law and Morality*, 87; Honoré, *Responsibility and Fault*, 27-28.

that goes along with judgments of strict liability. If one is not of sound mind, or justifiably does not understand the legal system, or is coerced into acting, then she may not be liable for the outcome of her actions.[137] Relatedly, we may worry that strict liability standards do not give sufficient consideration to the lack of choice. When an accident-prone person causes damage, it is not due to their choice, which is to say, they did not choose to be accident-prone and they did not intentionally cause the damage. We might insist, because of the lack of choice and foresight to predict consequences, that the person cannot be liable for the outcome. However, some element of choice was involved, and some level of risk was accepted, and for this the agent is appropriately liable. One at least made the choice to act and to expose others to the risk of her action. As an example, the unsteady driver who hits another car did not do so intentionally and could not have predicted that this was a necessary consequence of her action. Presumably, she also lacked the choice to be unsteady as a driver, and was instead saddled with this trait by accident of biological processes. Nevertheless, she decided to drive, and although the result of that decision does not merit blameworthiness, perhaps, it does merit liability. Action in the social context entails risk, and the effect of strict liability is to insure that this inherent risk is borne by the actor or decision-maker, rather than the victim.[138]

How does all of this apply to citizens and states? In one sense state liability seems to rest on solid footing, insofar as liability law is often motivated by concerns for the harm done, or for the victims rather than the perpetrators. It is often thought appropriate in liability cases to go after those with the 'deepest pockets' so that the victim can achieve restitution or reparation. This has merit with respect to the state because the state's taxing power that can generate large sums of money that would not otherwise be able to be generated for compensating victims. However,

[137] Honoré, *Responsibility and Fault*, 28.
[138] Ibid., 23.

in spite of the state's 'deep pockets', strict liability does not directly apply at all to the state. You will have noticed that all references to strict liability above, and all justification for the appropriateness of such provisions in the law, are centered in some way on *action*. All of Cane's four categories of strict liability (passive, right-based, activity-based, and outcome-based) entail direct, or at least indirect but related, action. The major impediment for views of collective state liability is the fact that some state members will disagree with policy and not act in any way to contribute to that action or even align with it. Moreover, state members may even actively work against the state, and in this case it is even more difficult to make the case for liability. Clearly dissenters and opponents have not acted with respect to the state action in question, so we can already determine that an argument for their liability will have to stretch the concept in some way when trying to make it fit.

The common rejoinder is that strict liability extends beyond acts of negligence or risky behavior, and is sometimes based in certain interpersonal or social relations. The business owner may be liable for the actions of her employee, and the parent may be liable for the actions of her child. In the same way, a citizen may be liable for the actions of her government. The two types of liability that are most plausible here are passive and activity-based liability. One may argue that citizens become liable as the passive recipients of state benefits, regardless of personal fault or even involvement of any other kind. One may also argue that citizens are strictly vicariously liable for the actions of their government due to the relationship that exists between them. At least a few such relationships could be named, including: 'authority', 'representative', and 'sovereign', which all seem to imply strict liability within certain limits.

Perhaps the benefits of citizenship can be our point of connection between the dissenting or opposing citizen and her liability for state action. The problem is going to be that the legal

development of passive strict liability was supported by a system of property rights. That is, it is on the condition that discrete items or monetary payment can be identified that one is determined liable for their return. Justification would be found lacking for a system where one's general wellbeing was sufficient for her liability, even if part of that level of wellbeing was the product of someone else's wrongdoing. No principled standard could be given for how to determine what was owed, even disregarding the problem of determining why the person who benefitted owed it. We certainly could not non-arbitrarily assign some value to one's increased sense of self-worth, happiness, enhanced experience, or any other non-monetary or non-tangible good.

Even when it is clear that an increase in resources and opportunity have been bestowed on *A* by *B*, through *B*'s wrongful actions toward *C*, without specific title to appeal to, it is not permissible to take from *A* to make *C* whole. We may imagine that *B* stole a definite sum of money from *C* and that *B* later bought a gift for *A*. As strict liability doctrine has been developed, *A* could not be held liable to compensate *C* for the amount of the gift. The implications of such a system of liability would be untenable, which would explain why few if any people would defend such a system. It would mean, for instance, that anyone who unknowingly benefits in any way from another's unlawful activity can be held liable to compensate the victim. If some of the revenue for *B*'s business is generated through unlawful conduct toward *C*, and *A* does business with *B* and benefits from those transactions, then *A* could be liable in relation to *C*. All businesses would now be strictly liable for the *independent* actions of loosely associated persons in other businesses. All persons would now be strictly liable for the actions of anyone else from whom the former benefits through association.[139] One would never know if she might be ruined

[139] It is worth mentioning that a significant portion of contemporary drug laws in the US and elsewhere, do entail some forms of strict liability through association. For example, a property owner may rent out her home and the tenants may engage in the production or sales or drugs in that home. In such a case the laws in place may allow the government to seize the home, even if the owner had no knowledge of the illegal activity. Though these cases share

tomorrow because of the actions of some other party with whom she is barely related. Passive liability only applies to certain special cases, and given its inability to handle cases of significantly indirect benefit, it does not apply well at all to the case of citizenship.

Activity-based, vicarious strict liability due to the relationship between citizens and governments or related agents of the state seems to be the most plausible approach to defending citizen liability. However, we must again stretch the concept of liability too far in order to appeal to it here. Vicarious liability does allow us to ignore the issue of the liable party's direct action (and fault), but it only applies in cases where the liable party has previously acted in some way to put herself into the position to be vicariously liable. The employer starts the business or takes the job, the spouse marries, the parent conceives. In performing these actions the liable party is exercising control over her own circumstances. Those who are liable in this way are exhibiting their own agency at some point antecedent to the issue in question, which is a crucial necessary element establishing their liability. Strict liability in law accepts that one need not act in any *direct* way to bring about some state of affairs that entails liability assignments, but it does not permit liability assignments in the absence of any and all relevant action. Liability does not attach to persons merely on account of happenstance or simply arbitrarily, even if it does fall on those who are faultless. One must still do *something*. Joel Feinberg sums this point up well.

> In all examples of plausibly just strict liability, the liable party must have had some control over his own destiny – some choice whether to take the risk assigned him by the law and some power to diminish the risk by his own care. When liability may be imposed even without such control, however, then it can "fall from the sky," like a plague, and land senselessly on complete strangers. Strict liability, when rational, is never totally unconditional and random.[140]

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some similarities with the abstract cases mentioned, they at least involve the owner acting in some way and directly associating herself in some way with the primarily guilty party. This is not to condone these laws, which may be completely unjustifiable, but it is to point out that there is an important difference between renting your house to someone or taking someone as a passenger in your car, and merely doing business with someone or benefitting in some way from your acquaintance with them.

[140] Joel Feinberg, "Collective Responsibility," in *Doing and Deserving* (New Jersey: Princeton, 1970), 225.

With respect to natural citizens who do not act so as to further state-specific policy or action (especially those who actively attempt to prevent it) there is no antecedent action to be appealed to for a judgment of vicarious liability. The natural citizen simply gains self-awareness within the state she happens to find herself. No agency and no element of choice is involved in natural citizenship in the way it is involved in interpersonal relations. Even that thin grounding that strict vicarious liability depends on is not satisfied for the natural born acquiescing, dissenting, or opposing citizen. And we can take it as a given empirical fact that such persons will exist in any given state.[141] As such, the usual justifications for vicarious liability do not fare well for this case, given the typical justifications for liability doctrine.

A further interesting wrinkle on this issue concerns a common line of support offered for strict liability. Certain forms of strict liability may be defended on the grounds that the existence of fault-ignoring penalties for certain risky behaviors will tend to encourage abstention from those behaviors.[142] When risky behaviors may be anticipated to provide some desired benefit, it can still be hoped that the existence of strict liability laws and the actor's awareness of such laws will encourage the actor to conduct herself with great care, since fault will not have to be proven to establish liability. When the risks inherent to certain action are great, those performing the actions should be motivated to do their best to prevent harm. Strict liability helps accomplish this. What is interesting in the case of strict citizen liability is that this justification is almost entirely empty. The common citizen, or even the lot of them, cannot choose to have the state not engage in some action, nor can the citizen (or citizens) meaningfully work to insure that risky

[141] Again, the conclusions reached here cannot be so strong as to rule out the logical possibility of state action that would satisfy the demands of collective liability. The issue is rather that the great improbability of such a state existing is a very strong reason against adopting a state-actor model.

[142] Joel Feinberg mentions one of the most "celebrated" examples of such a law (based on this rationale), which was "the old English offense of taking an unmarried girl, under sixteen, from the possession of her father (for illicit purposes) without his consent." Feinberg, "Collective Responsibility (Another Defense)," in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics* (1991), 55.

state action is done is the most careful possible way.[143] That is, the arguments focusing on the desirable effects of curbing risky behavior or encouraging the minimization of risk through strict liability, in the criminal and civil law, do not apply to citizens because citizens do not stand in the necessary relation to the action in question. Citizens, by and large, lack sufficient knowledge and control over state action to prevent negligence or recklessness. Even if they could be motivated to abstain from risky behavior or to take all possible precautions to avoid risk when they do, they lack the causal control to translate this personal motivation into changes in state behavior. Thus, holding the citizens liable does not even have strong practical support as a method of curbing risk. Even the weak standards of strict liability cannot be properly applied to citizens, and this should give us pause.

Lastly, as mentioned in passing above, some justifications for certain forms of liability are based on the suffering of the victim and the desire to make them whole. From this angle it matters less whether the target of the liability judgment had much of anything to do with the case. If we are really just concerned about the victim, then this should not matter. Some of these strands in the literature seem to remain consistent with the liberal basis of this project, so they may be thought to apply to the state as well. Again, the state has 'deep pockets' because all citizens can be taxed to make transfer payments, so the many victims of very destructive acts like war could be helped this way, and this could be thought to justify collective liability in the state, and so vindicate the state-actor model. The argument here might go something like this: it is true that many persons in the state are not (attributable or morally) responsible for the war, but because those individuals stand to gain the most from state actions, and because it is their state,

[143] It is true that citizens in states with representational government exert some control over which persons control the state power, but this element of citizen control is still far removed from the daily workings of the state once officials have been appointed. Election cycles only occur so often, and even when they do they do not allot much direct control to the citizenry.

in some sense, that committed the wrongs, those citizens are rightly made to address the harm done and make the other people in the other states whole again. At the very least, the citizens of the responsible state are more closely connected to the wrong done than the citizens of any other state. On this basis, at least, strictly collective liability in the state seems appropriate.

Although there is something to be said for the concern for victim compensation, this sort of justification for strict liability does not apply well in the international context for at least two reasons. First, as discussed above, even he most extreme cases of interpersonal strict liability do not depend exclusively on luck. The liable agent must have acted or must have associated herself with others for whom she then may be liable for because of her expression of agency at some prior time. In the state the citizen does not act in the same ways to put herself in such a position with respect to state officials. It is essentially a matter of luck for most people that they have the citizenship status they do. Secondly, an argument for liability that begins from the side of the harm done and says that someone must alleviate the harm or make the situation right again is not an argument for retrospective liability. The notion of liability used herein is quite broad, but it does not extend to forward-looking or prospective responsibility to rectify a situation or remedy a wrong done that is not the (outcome) responsibility of the agent in at least some minimally sufficient way. For example, if *A* signs a guarantor form for *B*'s rent payments, *A* becomes responsible for some of *B*'s actions, and in a sense (outcome) responsible for *B*'s failure to pay rent if it should happen. We can distinguish this from a case where *B* is a friend of *A*'s that has fallen on hard times, where someone might want to say that *A* has an obligation (prospective responsibility) to help *B* get back on her feet. In the second case *A* does not stand *answerable* for *B*, even if we think there is some form of responsibility that applies. This is an important difference. If Jaspers's view is based on the idea that a great harm was done and someone needs

to make things right, he can either look to identify those who are (outcome) responsible, which will not be all citizens of the state, or he can appeal to humanity at large, since an obligation to give aid (or a remedial responsibility) has the broadest scope of all types of responsibility. It does not look as if a strict liability approach can completely accomplish the task of justifying a state's retrospective collective liability for reparations.

§6 – CONCLUSION

In this chapter we progressively weakened the moral component to collective liability in the state to see whether some (non-attributable) notion of responsibility or guilt might work to support the state-actor model. We looked at a *commitment* model of moral responsibility in groups that, in the case of the state, must make various contentious assumptions to be successful. Ultimately, those assumptions are not tenable in the case of states, so the moral responsibility condition was weakened further. Karl Jaspers long ago provided an account of 'political guilt' that he argued could be applied to whole states, and on this view there need not be (and in fact often will not be) any attending moral judgment. When Jaspers holds that Germany is politically guilty for the atrocities of World War II, this means that the population of Germany, or all full citizens, are liable to demands for restitution and reparation, but he does not claim that all are (attributable) responsible or blameworthy. At first glance Jaspers' approach seems like a viable way to support the state-actor model. However, it is very difficult to say precisely *why* state membership gives one these special liabilities and Jaspers really doesn't provide any argument to this conclusion. What resembles an argument in his piece really boils down to a simple assertion that political guilt (and so universal liability for states) is appropriate, despite the fact that many other common forms of collective judgment laid upon whole peoples is not.

Jaspers and other writers of similar persuasion do not defend the idea of collective liability for states on the basis of the facts fitting the theory, as the theory is grounded in individual human action. Rather, it seems that they presuppose that it must make sense to use the state-actor model and to make claims about a state's liability (and so the persons within it), and then they find a way to make that position fit with other normative convictions that we hold. That is, as opposed to looking at the facts of individual action and determining that they together imply collective liability, these writers assume collective liability must be appropriate and then search for a way to make that judgment seem warranted. To this point, none of the attempts considered look particularly successful, again, unless you simply posit that collective liability in the state is appropriate.

We next discussed Larry May's existentialist account, which is based on Jaspers' work. There are interesting things to be said for one's responsibility to introspect and reevaluate her commitments, given certain group actions, but as we saw from the discussion of his argument, it cannot apply to state liability. Once we arrive at a position like May's we have already traveled a significant distance along the spectrum of moral responsibility, and when the moral element is weakened to that extent, there is no longer a connection with liability (at least not in the sense that compensation or punitive measures are warranted). May might be correct that certain group-specific actions and events require inner reflection, value scale assessment, and identity management, but more is needed to make the case for the liability relation. May doesn't intend his view to do that work, nor could it.

Lastly, the moral and legal liability of citizens for state action may naturally be thought of as of a strict sort. Criminal and civil law have evolved to include these types of liability, and there are solid reasons for ignoring the fault component in certain types of cases. Nevertheless,

purported parallels between strict liability in common law and the strict liability for citizenship are illusory. The central point of disparity between them is, again, the existence of an agential element. That is, liability, even of the strict variety, always necessitates that the liable party have done *something* to bring the liability relation onto herself – either she *acted* faultlessly though harmfully or she is vicariously liable for the actions of another (through guardianship, contract, authorization, etc.). When sufficient conditions obtain the liable party has exercised her agency and voluntarily put herself in the liable position. Most citizens 'citizenship' relation to the state is not of this kind, insofar as it is non-voluntary. Those citizens who do not act so as to further the state policy or action in question, and who do not volunteer themselves to stand in a relationship of vicarious liability for those persons who act for the state, do not satisfy even the weak standards of strict liability. Thus, at this point in our discussion it seems that judgments of *collective* responsibility in the state are unfounded. An important and related position has yet to be discussed, though. David Miller provides an argument for national responsibility that also raises some important issues that are closely related to the discussion of state responsibility and so have bearing on the central question of this project. We will turn to Miller's view of national responsibility in the following chapter.

Part II: Collective Responsibility
Chapter 3: National Responsibility

§1 – INTRODUCTION

Although states have been the central focus of this project, it would be an oversight to leave out some mention of related views in normative IR that treat nations or peoples as the primary unit of analysis. There are at least two central reasons why these entities can and should be treated together. In the first place, national or people-based normative judgments have a similar logical character to state-based judgments, and as a result they imply similar practical consequences. We have already discussed why it is that we should be at least concerned about the consequences of such judgments, and these concerns can be extended to nations as well. Secondly, although the arguments in favor of national or people-based responsibility tend to be quite similar to those concerning states, the philosophically interesting aspects of nations and peoples are slightly different from that of states, and so a separate treatment seems warranted. The members of the family of views offered in support of all forms of methodological collectivism in normative IR, whether state, nation, or people-based, tend to be supported by a rather small number of nearly identical basic points, but a look at national responsibility in particular will allow us to directly consider issues of heritage, culture, and identity that a strictly state-based inquiry need not include. So, given the similarity in kind and in practical consequences between a state, nation, and people-based approach to normative IR, and given the slightly different character of the latter two sorts of view, we will discuss a view of national responsibility set forth by David Miller, in order to see whether it may offer a more acceptable account of collective responsibility at the international level.[144] Other nation-based views exist,

[144] I will not discuss a people-based view directly, primarily because the morally relevant properties of a people will be very similar to that of a nation. When people are the focus of a normative project it is typically because the author

of course, but Miller's account is both well-developed and well-received, and it will give us reason to explore a few issues that are likely to be related to any account of national responsibility. For these reasons, it serves as a nice baseline for the purposes of this critique.

§2 – NATIONAL RESPONSIBILITY

In *National Responsibility and Global Justice*[145] David Miller develops an account of national responsibility, as opposed to state responsibility, because nations have certain characteristics that make them appropriate candidates for collective responsibility.[146] Miller avoids talking about states because they do not necessarily exhibit these same characteristics. For Miller, 'state' seems to refer to governing, policing, and military institutions and the persons who occupy positions within them, rather than to the whole country, including its populace and perhaps multiple nations, as in the usage throughout Part II. This makes the state not an ideal target for Miller's argument for responsibility, since he intends to give an account of collective responsibility – one that connects the collective action to the whole of the population that embodies the collective. Miller intends to show that each member stands in an appropriate relation to the nation to be included in judgments about its actions and responsibility. On Miller's view, when we treat *states* as responsible this must be because we accept that the state is acting on behalf of a nation.

To see how Miller's account of responsibility connects up with our own we should first look at what concept he has in mind. Miller distinguishes between two types of responsibility that he labels 'outcome responsibility' and 'remedial responsibility'. In his words, "Outcome

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wants to recognize nation-like groups who are not recognized as a nation, and this is understandable given that one motivation to speak of nations as opposed to states is that there are national groups that do not have their own state. The worries raised below will apply just as well to nations and peoples, so a separate treatment of peoples will not be necessary.

[145] David Miller, *National Responsibility and Global Justice* (New York: Oxford, 2007).

[146] Whereas we might think that states are more fit for corporate responsibility.

responsibility starts with agents and asks how far they can reasonably be credited and debited with the results of their conduct. Remedial responsibility starts with patients – people who are deprived or suffering – and asks who should shoulder the burden of helping them."[147] However, Miller also states that, in general, outcome responsibility does not require intention. So, in the terms we have been using in this work, 'outcome responsibility' is very much like 'liability', where this includes cases of (attributable) responsibility, but need not; and 'remedial responsibility' is a sort of 'positive prospective responsibility' or 'positive obligation'. We have been discussing 'liability' as something of a species of backward-looking responsibility and so treating it as distinct from 'obligation' or forward-looking responsibility, which would include any sort of potential responsibility toward others in need. To be liable, is to stand in a relevant relation to a state of affairs that has already come to be (which is evaluated by looking backward in time), not simply to be one of those who should provide aid, which is a forward-looking obligation.[148] In Miller's terms, whether I am liable or not, I may still be remedially responsible, since that is a sort of forward-looking obligation and the set of people who have this obligation may be larger than the set of people who are (backward-looking) responsible or liable for the situation in question. Since he goes to some length to argue that nations can be outcome responsible, this disconnect in our terminology is not problematic.

Given that Miller's view of outcome responsibility does not include intention or direct action as necessary conditions, his view is somewhat stronger than those we considered in the previous chapter. His position is essentially that being a member of a *national* group (or a group of sufficiently similar character) can make an individual outcome responsible for actions of the group, even if the individual did not directly participate in the action. This is not because

[147] Miller, *National Responsibility*, 108.
[148] Although, it is true that liability implies prospective remedial responsibility (other things being equal), it isn't true that prospective remedial responsibility implies liability.

membership alone is sufficient for outcome responsibility. It is because *national* membership is special in certain ways that individual responsibility follows from actions of the group.[149] If Miller's argument for national outcome responsibility is successful, then a corollary to this result is that national liability, as the term is used here, is appropriate. Given that many nations have their own state, this account would then also work in favor of the state-actor model.

Miller provides two *ideal types* of group characteristics that, when approximated, ground collective outcome responsibility for group actions. He refers to these as the *like-minded group model* and the *cooperative practice model*.[150] Nations may approximate these models more or less, and doing so, that is, instantiating either or both models to a sufficient degree, is sufficient for collective outcome responsibility.

Like-mindedness is explained through the example of a mob rioting and causing damage to a neighborhood. Miller's position is that the mob bears (outcome) responsibility for the effects of the riot, and that they can together be held liable for the cost of repair, regardless of a disparity in particular individuals' intentions, actions, and contribution to the final result. The mob's like-mindedness (however the story goes) supports such a judgment, as well as the fact that the details in a case like this may be impossible to ascertain. 'Like-mindedness' "applies to groups who share aims and outlooks in common, and who *recognize* their like-mindedness, so that when individual members act they do so in light of the support they are receiving from other members of the group."[151] We can see here that Miller emphasizes the fact that being a member of the group has an effect on other members of the group and in certain circumstances may affect other members' behavior in morally relevant ways, such as encouraging wrongful behavior simply

[149] Miller doesn't restrict his discussion here to just nations. What he says about group structure and dynamics will apply to other collectives of certain form as well, and membership in these collectives may also carry outcome responsibility for group actions with it.
[150] Miller, *National Responsibility*, 114.
[151] Ibid., 117 [his emphasis].

because you suggest that you implicitly endorse such behavior by remaining a member of a group whose members engage in such behavior. It is the inter-relational group dynamic that supports the judgments that even non-acting members are partly (outcome) responsible for actions attributed to the group, and so liable on that basis. In this regard, one who prefers an individualist methodological approach can at least be pleased to see an attempt to ground the responsibility of all individuals, rather than the group itself.

Miller goes on to define the cooperative practice model around participation in group practice(s) and sharing in the benefits of group membership.[152] In this regard, the cooperative practice model is more inclusive than the like-minded model because it does not require a shared group identity or common interests or intentions. However, Miller also includes a fairness condition in his cooperative practice account, which is, roughly, the condition that each member has a fair chance to influence group behavior. Miller again helps explicate his concepts with an example, this time of an employee-owned firm where a majority decides to continue environmentally harmful practices through something like a popular deliberation and vote. Miller concludes that the whole collective, including the dissenting minority, is (outcome) responsible for the damage to the environment because all members had a fair chance to influence the policy and because all enjoy the benefits of working at the firm, including income and 'other benefits' (we may assume Miller is referring to something like psychological and social benefits). With the addition of a condition about 'substantive fairness' the cooperative practice model is in a way also a bit more restrictive than the like-mindedness model, since the latter does not require equal input into group decisions and actions.

To see how like-mindedness and cooperative practice are features of nations, we need to be a little more precise about Miller's use of the term 'nation'. The five essential features of

[152] Ibid., 119.

nations that he describes are: a common identity, a public culture, a common recognition of special obligations between conationals, a common recognition of the value of continued national existence, and a common aspiration to be politically self-determining. Now, if all of these conditions needed to be satisfied by every individual member of the nation, then the account would not apply to the actual world. Miller is aware of this, and he explicitly does not want to treat national membership like common citizenship, so he allows that his conditions may not apply to some members of the nation. It is enough that the beliefs and attitudes he described are "generally held (and believed by those who hold them to be correct)."[153] Miller believes that there are plenty of examples of such national groups in the world and that the level of collective responsibility we may want to assign them will occur along a spectrum that depends on the listed factors, and especially political organization. The nation must be a sort of collective agent if it is to be responsible, on this account, and it is the level of democratic organization, and so popular involvement in the collective decision and action process, that determines the level of collective agency. The more democratically organized and substantively democratic a nation's decision procedure is the more it behaves like a collective agent, and so a judgment of collective national responsibility is to that extent better supported. This applies not only to deliberate actions of the nation, but also to the consequences of general patterns of behavior within the nation. Miller's example that helps clarify is of a nation being collectively responsible for the effects of overcrowding due to a dominant religion and associated valuing of large families. We suppose that the government convened and a majority decided not to take action to incentivize the population to have smaller families. Since this majority decision in government is supposed to represent the beliefs, attitudes, and values of the majority of the people, "we can legitimately say

[153] Ibid., 125.

that the nation in question is collectively responsible for the consequences of population growth: its culture is such that it prefers large families to, let us say, less crowded roads and cities."[154]

One benefit of Miller's approach is that he identifies two broad lines along which many arguments for collective responsibility in groups can be based. There certainly appears to be a sort of complicity between like-minded members of collectives, even for those individuals who do not directly participate in some group-related action. One's mere membership can be an influencing factor on other group members, and on this basis we can establish a connection between what was done by some group members and the other members of the group. The actual causal impact a member makes need not be relevant to whether she shares liability along with the rest of the group. On the other hand, there are other less like-minded groups where collective responsibility also seems warranted, and not just to those members who act toward some group result. It does often seem to be the case that one's responsibility for a group-based outcome can hinge on one's participation in a group-based practice where she can exert some influence over the results of that practice and where she benefits in certain ways from her membership in the group that affords her some say in group functions. A given member may disavow a group decision and action, but insofar as she accepted her membership and its benefits, her status as an equal member can be enough to ground her complicity and so liability.

That being said, both the like-mindedness and cooperative practice models encounter difficulties when applied to nations, which Miller seems to overlook. In short, neither model actually provides a sufficient basis for judgments of liability, according to the liberal individualist framework we began with. As is often the case, these models of collective responsibility appear to work for a number of group-types, but the national group is not one of them, due to its unique nature as a social group.

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[154] Ibid., 128.

§3 – AGAINST THE LIKE-MINDENESS MODEL

When Miller speaks of 'like-mindedness' what he seems to be referencing is a sort of generally shared worldview, generally shared values, and a generally shared or overlapping identity amongst the members of the nation. To demonstrate such like-mindedness, one might appeal to speech patterns such as use of the words 'we' and 'us', but Miller also stresses that aims and outlooks should be held in common, so, of course, there is an appeal to the notion of shared 'culture' to further ground the analysis of like-mindedness. As we have seen previously in this work, a judgment of this sort (collective like-mindedness) is inherently problematic when applied to a group that one 'joins' through birth and is entirely educated within, through a constant inculcation of the very values and ways of life in question. At the very least, one's related mental properties do not function exactly as they would in a similar judgment of shared responsibility in other groups. Miller uses the mob example to help clarify his position here and the fact that this example is far from analogous to the case of national membership is telling. When one joins the rioting mob, thereby showing like-mindedness with the other participating persons, we have a rather clear case of individual decision and agency. She has chosen to align herself with the values and actions of others, she has encouraged others to riot through her membership (whether she realizes it or not), and even if she lacks the intention to create a certain mob-based outcome, she may be held responsible because of her involvement. A collective judgment toward the entire group is warranted because these people had clear alternatives, made clear choices to engage in that behavior, and were supported in their doing so by the fact that others did the same. Many similarly plausible examples could be given. If one joins the KKK, for example, then this like-mindedness relation is morally relevant in a judgment of collective responsibility, even in cases where the individual does not share the intentions of others in the

group. However, we must contrast such cases with national membership. Similarities exist, to be sure, but the essential characteristics of cases like the mob, the KKK, or other voluntary membership relations are missing from the national context.

The like-mindedness model works for some groups, but it has its limitations. What Miller is identifying in his examples is the plausible consideration that *electing* to join certain groups, by identifying and aligning oneself with others, is morally relevant in certain judgments of group-based responsibility. He also raises the important point that certain actions by individuals and groups of individuals are motivated and supported, in part, by the fact that other individuals in some way condone the actions. It is certainly true that one can be morally responsible as an enabler of others' immoral actions, and Miller is right to suggest that certain group-specific relations of like-mindedness may make one an enabler simply through sharing membership and mindset. However, he attempts to stretch the applicability of such considerations beyond their limits. The sort of national like-mindedness he is identifying is effectively unavoidable for most people. When one has been raised to think of herself as part of an 'in' group, in contrast to others in the 'out' groups, the fact that this mentality persists in her, and so may impact the behavior of others, is immaterial in our moral assessment of the case. We must instead focus on discrete individual action and specific mental states to make our judgments. The like-mindedness model is supposed to apply when no such actions exist, but this is typically plausibly only in cases where one has exhibited agency in others ways that signify solidarity with the group.

There is also a worry about the different ways in which like-mindedness may affect fellow group members. In the case of the mob or the KKK, one's destructive acts or racist beliefs may indeed be morally relevant because they encourage others to act and believe wrongly. There is a direct connection between how the individual thinks and acts and how others in the group

think and act. You join the rioting mob by rioting yourself, and the more individuals that have joined the easier it is for more to join and for everyone to continue to riot. You join the KKK because you are a racist and the larger the group's membership the more support group members have to act in accord with KKK values. The connection here is clear. In contrast, a like-minded member of the national community does not necessarily act in any such determinate way to support the nation's actions. In fact, many conationals will not have any direct connection to an action that might be ascribed to the nation itself. What we are likely to see in such a case is certain persons with national power acting, and an interpretation by the observer that their actions are done 'in the name of' the nation. It might be the case as well that those in the nation doing the acting also think that they do so as representatives of the nation, but this does not settle the issue. A national official may even sincerely do what she does because she knows that many of her conationals share her beliefs and think like she does, but if we judge that the entire nation is responsible on such grounds, we err. The elements of one's beliefs, values, and lifestyle that we wish to appeal to in order to connect her with the actions of the national officials cannot suffice for the purpose. Neither the state official nor the observer of such a case is able to conclude from larger national membership that there is a larger body of people supporting the actions through their like-mindedness. The causal interrelations between group members do not exhibit the same qualities in the national case as they do with the mob or the KKK.

A judgment of national responsibility based on like-mindedness, rather than being analogous to holding an entire mob responsible for collective damage, is quite like saying that all like-minded black Americans are responsible for some moral wrong that the leaders of the Black Panthers might have committed. We may even suppose it is true that these other black Americans share many beliefs and general 'mindedness' and 'culture' with the Black Panthers,

and we may suppose that the Black Panthers did what they did for the betterment of the entire black population in America; it will still not follow that all black Americans can legitimately be lumped in with our judgment of the Black Panthers. Of course, most black Americans did not join that organization, and even if their like-mindedness in some way encouraged action on the part of the Black Panthers, this action cannot be attributed to the rest of black America, who were not able to check their influence on that group.[155] We may conceptualize every black American as belonging to a single group, and we may believe that some members of that group act in the name of the rest. We may even be able to point to similarities in beliefs and behaviors that support our decision to divide people up into this group in particular. However, this will remain nothing more than a mental representation of some set of persons, and will still fail to demonstrate the properties necessary for a collectively responsible group. Similarities between the members of these groups lend legitimacy to employing the grouping in the first place, despite the imprecision with which such groupings are made, but they do not serve to tie the individual's liability to the actions ascribed to the group.

Perhaps the above worry is overstated, though. Miller does directly address a related example from Joel Feinberg that he takes to be a plausible case of collective responsibility, even though not all members of the group in question had control, or even exercised agency at any relevant point. Feinberg argues that all Southern whites in post-bellum America were collectively responsible for violence against blacks because these acts were carried out within a general culture of racial-inequality and discrimination, where many whites passively

[155] I don't mean to suggest that all black Americans shared some unique belief system and identity. My point is that the connection of ordinary black Americans to the Black Panthers and their leaders is in many ways similar to the connection that nationals have to their nation and its leaders. In both cases there is a lack of control over membership and simple like-mindedness does not do the work it must, if we are attempting to base the collective responsibility of the group on such considerations. Plausible cases involve individuals with intentions to join or participate in group-specific action. For many, such agency is never exercised with respect to national membership.

sympathized with such acts.[156] Fienberg argues, and Miller agrees, that even those Southern whites that did not approve of the violence were complicit because of their solidarity with those who committed the acts. Miller gives the argument in the following form:

> Where a community of people shares a set of cultural values, one of whose effects is to encourage behavior that results in outcome O, then everyone who belongs to the community shares in the responsibility for outcome O, even if they disapprove of it. By participating in the community they help to sustain the climate of opinion in which the actions in question take place, even if they voice their opposition to the actions themselves.[157]

This is a particularly germane example for Miller to consider, given the fact that 'post-bellum white Southerners' is a set of persons delineated by its geographic location and loose cultural affiliation. It very much parallels national conditions, which are also largely based on geographic location and linguistic and cultural similarities.

An initial worry to raise and set aside is that these sets we care to delineate do not have clear conditions for membership. Where does the set 'post-bellum white Southerners' begin and end? Relatedly, where does national membership begin and end, how do we account for persons who are part of more than one nation, and what other conditions must be met for an individual to be a conational? Since it is conceivable that some acceptable criteria could be offered to specify national membership, even if they would likely be fraught with philosophical complication, we can ignore these issues, but they should give us pause and remind us that the groups we often like to identify and refer to by name are actually quite difficult to accurately delineate. As a result, and to that extent, the judgments we make about such groups are inherently vague and will perhaps include innocents within them.

Aside from the above, there are more troubling worries having to do with the use of the concept 'community', questions about what a 'shared culture' is, and whether this approach

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[156] Joel Feinberg, "Collective Responsibility," in *Doing and Deserving*, 247-248.
[157] Miller, *National Responsibility*, 118.

results in nothing more than the principle of responsibility by association. The first issue to address is that the word 'community' is used in the argument given above, and this has the potential to create logical problems. When a speaker refers to 'Community *X*' or says, "Community *X* did *Y*," there are many different sets of persons this may refer to, depending on the speaker's intended meaning and the epistemic standards that are being (at least tacitly) accepted in the context. Moreover, there are contexts in which the epistemic standards are necessarily stricter, so that it is false to make generalizations unless the universal claim is actually true. For instance, certain claims that may be considered true (or true enough) for lay-conversation will have to be rejected if we are engaged in a social science experiment. If I want to perform mathematical calculations on data from a set of people, or even just draw a strict deductive inference, I can only treat a universal claim about that set to mean that every member of the set instantiates the property in question. Standards will vary, but certain contexts demand certain standards, and those standards must be consistently adhered to. A central argumentative thread here is that we are often moving between standards when we accept the truth of claims of the form, "Community *X* did *Y*" and from this infer, "Community *X* is responsible for *Y*." In short, Miller is failing to shift to the higher standard for the responsibility judgment.

From a context requiring weaker standards, we may think it is true to say, "the Southern white community engaged in or supported violence against blacks." And so it may seem plausible to infer that "the Southern white community is (outcome) responsible for that violence." There is a sense in which these are true claims, but only when we (at least tacitly) interpret them to mean something like, "*most* Southern whites…" It is not, strictly speaking, true that "the Southern white community engaged in or supported violence against blacks." if this is taken to mean, "*every* white Southerner engaged in or supported violence against blacks." We

may accept the generalization when the stakes are low enough and we only wish to express a sort of general statement rather than a more solid fact. However, we must admit our technical imprecision here when the stakes are higher, that is, when the context demands it. With regard to the moral judgment – the metaphysical fact of the matter – we must agree that it is not acceptable, strictly speaking, to make the universal claim, unless the universal claim is true.

In their judgments of moral responsibility, Feinberg and Miller intend to include even those individuals who stood against the 'community's' practices.[158] That is, they wish to defend universal responsibility amongst group members, even when not all members directly engaged in the relevant action. In the case of white Southerners, Feinberg and Miller justify the universal judgment on the thin basis that these people can be grouped together, conceptually, with other whites of that time and place because of something like a "shared set of cultural values," because, "participation in the community helps sustain the climate of opinion" that leads to the immoral behavior of some members. So, in the least, Feinberg and Miller are making an attempt to demonstrate the universal, and they have something to say about how each individual is tied to the moral judgment aimed at the entire group. The problem is that a careful analysis from the individual moral context does not jibe with their conclusion.

We often speak of vague and abstract notions such as 'white culture' exhibited by the 'white community', but, despite the common nature of such utterances, we must be careful not to draw certain inferences from them, as they are, in fact, very imprecise judgments. It isn't as though 'white culture' refers to some universally shared belief system or behavioral pattern. The only exception would be the trivial cases of universal properties shared amongst all whites, such as that white culture involves the belief that the Earth is round and the practice of eating and

[158] Interesting that we might wish to ascribe these practices to 'the community' and yet deny that the whole community engages in them.

consuming water. If we want to stray far from such general statements that actually apply across many group boundaries, we are, with respect to most groups (especially large ones), led into greater and greater imprecision and corresponding error. The claim, "the Southern white community engaged in or supported violence against blacks" is of this sort. It is not universally true of Southern whites, and so the manner in which we utilize this judgment in our related inferences must respect its imprecision. This applies in a general way to use of the term 'culture'. When we say that white Southerners shared a set of "cultural values" we do not refer to a determinate set of objects or to a determinate common property of the members of that set. Culture as a property one instantiates is not like 'mammal' or 'female', where one who shares it with others has the same specified characteristics. 'Culture' is a vague catchall term used in reference to commonalities in living, which covers a vast range of mental states and behaviors. The concept acts simply as a conceptualization and representation device for groupings of individuals, based on certain similar or overlapping beliefs, attitudes, and behavioral patterns. This must not be misconstrued as anything like a list of properties that apply to all members of the set. There is often a great deal of overlap in beliefs and behaviors between the subsets of persons within a community (of whatever sort), but there is also a great deal of individuality and variance in how properties overlap. Moreover, there is great variance in how individuals in the community interact so as to maintain certain aspects of the culture and contribute to the evolution of other aspects.

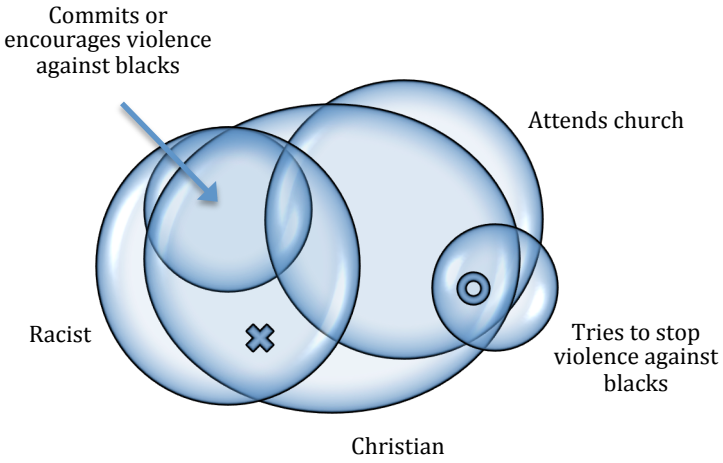
Miller would like to appeal to the fact that conationals have an impact on the beliefs and behavior of other conationals to show that the whole group is suitably interconnected to satisfy the conditions for collective responsibility. Yet, the actual state of affairs in all nations, at the individual level, will show that some individuals influence the beliefs and behaviors of those

who act directly, while some do not. Some individuals contribute to actions ascribable to the nation, and some do not. Some national members share merely innocuous cultural similarities with others who do bad things on behalf of the nation, and some national members have direct influence on national action. In short, the interrelations between the many conationals in a given nation are varied and extremely complex, and will not reflect the sort of uniform interconnectedness that would be required to tell a satisfactory story connecting each individual to the resulting national action. Many in the nation will be (are) simply too far removed from the national action to be tied to it through cultural relations.

A mental image may help the point here. Imagine a complex Venn diagram mapping the overlapping beliefs and behavioral traits (the culture) of a community called 'white Southerners'. For the actual case, such an image would have to include mention of an enormous number of different beliefs, values, and ways of living, but we can simplify somewhat for our purposes here. The idea is that you would see a great deal of overlap in some areas and a great deal of non-overlap in many other areas. It is quite misleading, then, to refer to the whole enormously complex nexus of interconnected and overlapping traits as a single property called 'Southern white culture' and to then ascribe this property to all members of the set 'white Southerners'. Yet, in effect, this is often precisely what is done. A more accurate representation of the facts will show that much of the overlap between persons in ways of believing and living have no strong connection and do not overlap with other parts of the overlapping ways of living of other persons in a particular community. That is, only part of the big conglomeration that we call 'Southern white culture' (or national culture or state culture) actually directly impacts the beliefs and actions that we are evaluating on behalf of all members of the group. Some members of the group may act in part due to the support they feel they have from other members who share

certain cultural traits, but this cannot be enough to show that those who in some ways share part of that culture are complicit and so liable. See the diagram below for further illustration.

Diagram 1: Southern White Culture



We may refer to the entirety of the above representation of the doxastic and behavioral overlaps of a highly simplified Southern white community as 'Southern white culture'. We are to imagine that there are members of the set 'white Southerners' in each subsection of the diagram. In particular, note that member *X* is listed in the portion of the diagram indicating that *X* shares both Christian and racist beliefs with some of the community, while member *O* shares common Christian beliefs with much of the community, as well as the behavioral properties of attending church and actively trying to stop violence against blacks. We might allow that both *X* and *O* are part of 'Southern white culture', but this fact alone cannot be enough to show that *X* and *O* stand in a closely comparable relation to any other feature incorporated into our understanding of this community's culture. In this case specifically, we cannot properly consider *X* an *O* to be comparably related to committing or encouraging violence against blacks. Whereas *X* shares the racist convictions of those who commit or encourage violence against blacks, perhaps thereby encouraging that behavior through her commonality or solidarity with community members who

engage in such behavior, *O* does no such thing. It may be true that *O* shares the religious convictions of many of those who commit or encourage violence against blacks, and it may be true that *O* actually attends church with many of them. In this respect *O* influences these people in some way, and vice versa, through their interactions and aspects of their shared culture. However, the connection between *O* and those who commit or encourage violence against blacks is innocuous (or perhaps even morally positive), whereas *X*'s connection to those same people reflects negatively on *X*. Through sharing racist beliefs and attitudes with those who commit or encourage violence against blacks, *X* aligns herself with their beliefs and actions and in a relatively direct sense supports what they do. This is not true for *O*, who does not directly support those beliefs and behaviors in any way, and in fact takes steps to try to stop them. Given these differences in how *X* and *O* relate culturally to the rest of the community, it is not appropriate to lump them both into a judgment concerning which group of individuals are (outcome) responsible for violence against blacks.

X and *O* share a culture to some extent, but it is not a shared property; rather, what they share is membership in a conceptual and representational grouping that aggregates many overlapping ways of living. We refer to this group as a 'community' of some type and we say that *it* has *a* 'culture', but the careful reality is that *X* and *O* are simply members of a set of persons in some geographical area that instantiates an extensive complex of characteristics. Even though we commonly ascribe the union of these characteristics to the set itself, this does not imply that each member of the set shares all of the properties that are elements of the union.

The finer details of the community situation must drastically alter our determination of which individuals are relevantly connected to what. Our responsibility judgments must then follow suit, lest we allow that to share some mental and behavioral features in common with

others is to put yourself in a position to be responsible for other mental and behavior features they choose to have, even against your protest; that is, lest we apply the principle of liability by association, and apply it quite loosely.

The important broader point is that using cultural connections in normative theory is generally quite problematic. Our minds have a tendency to take cultural judgments as universals, since they are ascribed to an entire community, and so infer that each member of the community shares this property called 'culture'. In actuality there is no real unity amongst the members of that set (or similarly large set), but instead an enormously complex social system, where individuals interact with and causally affect other individuals, spread information, ideas, and opinions, and engage in overlapping ways of living. Similarities between these individuals abound, but they are nonetheless unique persons who do many unique things, have their own beliefs and perform their own actions, and all for their own reasons and through their own processes of deliberation. When sufficiently large groups are our focus, talk of culture cannot be other than a loose manner of speaking. It cannot be a shorthand description for every individual in the set.[159] There were, of course, some members of the set of 'Southern whites' who engaged in or supported violence against blacks, but there were others who did not. If we wish to make this behavior a part of a culture that we ascribe to the group 'post-bellum Southern whites', it can only be as an imprecise comment, or something that is only 'mostly true'. It is a way of expressing an imprecise point, or perhaps a way of speaking that covers for the fact that the speaker is unable to identify who exactly is personally responsible. If we cannot list the names, we may imply assign the property to the whole group. There are justifications for this, but not

[159] We should recognize as well that these cultural characteristics will often apply outside the set we wish to identify. It is often rather arbitrary that we draw the cultural line at the boundaries of the nation or state, and not around the specific set of persons who actually have some specific cultural property. This is worrisome, since the set of persons with some particular property will tend not to be the same set that any nation or state delineates. This issue is discussed further in Part IV, Ch. 1.

when the metaphysical question of responsibility is at issue, which implies that the epistemic standards are necessarily higher. We are not justified in helping ourselves to an interpretation of the 'community's' supposed traits in order to make a universal judgment.

Of course, Miller will says that the Southern whites who did not engage in or support violence against blacks still "participated in the community" and so "helped sustain the climate of opinion that encouraged the violence." And this will apply just as well to dissenters and those who tried to reform 'The South'. These same points will apply to the nation, and we should switch back to that community as our focus. Miller says:

> Speaking up is better than doing nothing, of course, but…even someone who voices opposition to certain of her community's actions may still, by virtue of her membership, contribute to the climate of opinion in which those actions take place, because she subscribes to the community's values in general, reinforces them in her daily activities, and perhaps supports the community in material terms.[160]

We can at least be glad that there is an attempt to ground the individual's share of the (outcome) responsibility in the fact that the individual contributes in some way to what we perceive as the community's climate of opinion. However, as above, there is a certain vagueness to these reasons of the sort that is impermissible in a judgment of responsibility. It is this vagueness that lets us slide from what seems like a plausible description of how a community's 'culture' and 'climate of opinion' are sustained, to a judgment about who is responsible for sustaining it. We should discuss Miller's mentioning of values, daily activities, and material support in order to identify the ways in which collective judgment of specified community cannot properly be based on these features of the individuals' lives.

First, as to values, the mere sharing of values is not enough to influence how others behave based on their similar values. If community member *A* and *B* have no interaction, and do not know of one another's existence, then there is no support for their opinions moving in either

[160] Miller, *National Responsibility*, 121.

direction. Community member *A* must act in some way that signifies that she values what member *B* values, and only then might *B* be in some way influenced by *A* and perhaps encouraged to act on those values. We should also take into account that the substance of shared values matters quite a bit to whether it might connect non-actors in the community to the actors. Community members *A* and *B* might share the value of watching baseball games, but this is not relevant to whether *A* is partly responsible for *B*'s immoral actions based on some other values that *A* does not hold. It is strange that Miller talks about dissenters, who we would suppose do not share whatever value is driving the others in the community to act as they do. Why then would shared values be a factor connecting them? Miller seems to be suggesting that general commonality in the value scales of members of the community is somehow the normative glue that unifies their responsibility. However, the mere sharing of values does not support a climate of opinion. Miller's like-mindedness model is based on the ways in which one can influence the behavior of others simply through being a part of their groups and lending support to their actions through showing a similar sort of thinking. Thus, it is the expression of one's values through action that might support a climate of opinion and thereby influence the behavior of others. Merely holding those values creates no causal link, and so no normative link. Consider whether it is correct to say that a racist is partly responsible for the racist climate of opinion in her nation even though she has never left her house and never interacted with anyone in the nation where she may have shared her opinions. We might judge her for her beliefs, but we should not implicate her in the outcome responsibility for the racism in the nation and the behavior in public toward some racial group that results from such racism. The woman who has never left her house has no connection with what those other members of her nation do, even if she does share their values.

Miller's second point on his list is the expression of the individual's values through daily activities. Here we can at least be glad to see an appeal to action. This approach to a form of complicity for community members who do not act directly in some community action looks more promising, but it too has its problems. There is first the issue of what is required for an individual's activity to be one that supports the community's climate of opinion. We must be worried if an appeal is made to anything like basic market transactions, innocuous cultural similarities, or simply communication with other community members. Yet, it would seem that an appeal would have to be made to such activities if Miller wants to include the dissenters in his judgment. He might say that these individuals do encourage others through their simple participation in such community practices. This is problematic, though, insofar as such activities will tend to be rather benign, and not directly relatable to other actions of community members. To simply interact with others is not to support or sustain their values.

Let us take an example of a racist nation and a member of that nation who dissents against the racist practices and expresses her disavowal of that belief system. We can accept that this member of the nation interacts with other racist members in certain ways, exchanges with some of them in the market, and that she even shares familial connections with racists. The question still remains: why should we view this member as somehow *sustaining* the climate of opinion in the nation? Her personal and professional life and her family ties are not really related to the so-called 'climate of opinion' in the nation any more than the fact that she breathes the same air as other national members. It is hard to say why we should believe that a dissenter is somehow *sustaining* the opinions being dissented against. But this is only the first worry. We should be concerned as well that the national member likely has no choice but to interact with conationals. The majority of people in a given nation will not have chosen to be a part of that

nation and they will not have the means to exit it. If their connection to other aspects of the behavior of conationals is to hinge on interaction in that community, then to we are essentially anchoring the individual's responsibility to birth on a piece of land and induction into a system of overlapping ways of living from which the individual may be practically incapable of escaping. Of course, the individual does then develop within the institutions and traditions associated with the people in that area, but this is an unavoidable element of a person's life, regardless of where she happens to be born and raised. Participation in the community is something the individual must do to live a human life and yet we are making that a sufficient condition for responsibility here. That is, if the member of a nation cannot leave her nation – and most cannot – then Miller's view seems to require that the she live a hermitic lifestyle if she wishes to avoid a share of outcome responsibility for what is done by other national members. For her to even go into public to express her disavowal of racism seems to qualify as "reinforcing the community's values" and simply engaging in work and market transactions appears to constitute "supporting the community in material terms." On this account *living* where one is born, sharing the essentially unavoidable overlaps in lifestyle and trying to better yourself through exchange makes one share in the responsibility of others. It looks like there is really no escaping from such a judgment. Perhaps that is the point, seeing as it is dissenters that Miller is trying to bring within the judgment here.

This is also another example of shifting between epistemic standards. Miller begins from weak standards in his analysis of the collective action, event, or issue and then fails to give full appreciation to the necessarily stricter standards for a related moral judgment. A simpler example involving a smaller group will help make this important point more concrete. Take a case where the boys' behavior in an elementary school classroom can be described as a sort of 'boy-culture'

because of shared beliefs, values, and behaviors amongst the boys. Of course, there is no strong solidarity between them *all*. Instead, as with the case of white Southerners or conationals, there is just a general commonality that can be identified within certain categories, such as language use, interests, and the like, as well as there are subsets formed within the group that better exhibit solidarity (such as particular friendships). As with the Venn diagram above, 'boy-culture' is a complex grouping of overlapping characteristics. Some characteristics are universally shared across the set of boys, but many are not. As with a nation, the boys really have no choice but to interact, at least indirectly, given that they have to attend school and share the same classroom. We may imagine that one day six of the ten boys in the class act unruly, disrupt the teacher's lessons, and prevent the other students from learning, while another three of the boys encourage the six by laughing along and egging them on. The nine individual boys did what they did, in part, because they felt supported by the other boys' related behavior. With regard to such a case, we might accept the appropriateness of a speaker saying, "The boys are responsible for disrupting the class." It is common to speak this way, it is 'mostly true', and for general practical purposes, such a claim is accurate enough for the context. However, we cannot accept the inference that, "the boys are responsible," if this means that *all* of them are responsible. The one boy who did not disrupt class and did not encourage the disrupters cannot be (outcome) responsible for the event, and certainly not if he protested during the event and tried to calm his classmates. And it does not matter whether the sort of responsibility we are assigning involves a judgment of guilt, in which case we think the boys should feel bad about what they have done, or whether we just mean to identify what led to the disruption. To lump the tenth boy in with the rest of the troublemakers is to make a mistake. It is to misidentify the agency involved, and, accordingly, to misidentify the responsibility. An appeal to the similarity between all the boys

will not justify the judgment; it will do no more than apply a sort of 'liability by conceptual association', which is what Feinberg and Miller are actually defending in the case of the whites in the post-bellum South and, by extension, to conationals who fall under a similar judgment. The consequences of our normative judgments must be justified at the individual level, and this strict epistemic standard is not upheld in the vague judgments we make about like-mindedness.

None of this, of course, is to say that there is not an important social element in certain communities that causes, say, unjust acts against minorities. The point of the above discussion is not to deny that many white Southerners bear a sort of complicity for the violence perpetrated by other members of that defined community. Certainly the racist members of that community who openly expressed their racism, and who tolerated others' open expression of racism, in some ways supported and encouraged others to take violent action. We can accept that many Southern whites of the time bear some responsibility for their part of the larger whole we describe generally as a 'climate of racism' in the South. Yet, we can deny that *all* white Southerners can be held responsible as a consequence of these circumstances. In fact, we must deny this if we are to make only true claims about that issue, and the same applies to nations.

§4 – AGAINST THE COOPERATIVE PRACTICE MODEL

Miller has two separate models in order to cover a range of ways that an individual can share in the responsibility of a group. So even if some members of a nation are not captured within the like-mindedness model, they may still satisfy the conditions of the cooperative practice model. This model has the benefit of utilizing a stricter and more concrete standard, which avoids some of the problematic vagueness and necessarily imperfect generalization inherent in an appeal to 'culture' and a 'climate of opinion'. Yet, despite covering some groups

and some members of nations, this model also appears incapable of satisfactorily grounding one's responsibility for the conduct of conationals.

Recall that the cooperative practice model is built around there being a *common practice*, where there is *fair treatment* and *shared benefits*. Miller's clarifying example is of an employee-owned firm where popular vote dictates policy. It is clear that this model is intended to parallel democratic or republican forms of government, or at least a national context where there is some representation. A "fair chance" to influence the outcome of the collective deliberation is not well-defined, but Miller stresses that even those who vote in the minority in the firm nevertheless have a fair chance to influence policy and share in the benefits of the cooperative practice. Presumably, this will apply even when one is regularly ineffectual in their role as voting member. Responsibility does not necessarily have to follow from one's causal contribution, according to the cooperative practice model. One's involvement (or potential involvement) as an equal (or at least recognized member with some voice) within an institution that provides her some benefits is sufficient for vicarious (outcome) responsibility.

Here, again, we have a model for the analysis of responsibility that looks plausible in Miller's example while still failing to satisfactorily extend to the national context. As is so often the case with view of this sort, it begins from plausible considerations about relatively small, voluntary social groups and then attempts to expand the scope of the view to large bodies like nations where the plausibility of the account wanes considerably. We should begin with some critical points concerning the notion of 'cooperative practice' and how cooperative practices are to be identified. We can then turn to the substance of a condition for "a fair chance to influence," and the nature of national (or state) benefits.

§4.1 – Cooperative Practice

In Miller's case of the employee-owned firm, a determinate practice can be identified that collectivizes the employees into a unit capable of bearing responsibility that is shared between all. There is a specific voting procedure that all can participate in and there is the practice of shared work to advance the firm. The employees are clearly engaged in a joint enterprise that is essentially democratic (it is at least formally democratic, and, as Miller describes it, seemingly substantively democratic as well). It is not at all clear what the corresponding shared practice would be in a nation, or, in other words, it is not clear how we can legitimately extend this case analogically to the national context. In Miller's example the vote of the employees dictates company policy; the equivalent for a nation would have to be a popular vote or direct democracy, but such a thing does not take place. Miller will allow that a nation may approximate his models to a greater or lesser degree, but it would seem that all existent nations land quite far from isomorphism along the spectrum of possibilities.

The closest we can find to true democracy in this world is republicanism in its various forms.[161] In these representational governments there is rarely anything close to universal participation in elections for representatives, so we cannot look to universally shared involvement in that practice. Instead, we would have to appeal to the mere *possibility* to participate in those elections. Let us note here that this is not to have the possibility to share in a vote about specific national behavior or policy. This is the *possibility* of *sharing* in a vote to select *someone else* to *share* in a vote to determine national behavior or policy. The typical conational, even if she participates in this process, is quite far removed from the final decision. Interestingly, if we accept Miller's model, it has the consequence of implying that conational *A*, who does not vote, and who is part of the nation in only the thinnest possible sense (geographic

[161] Switzerland's political system has many directly democratic elements, but even it is essentially republican.

location and general socioeconomic behavior), somehow still "participates" in a common, beneficial practice, even though *A* does not act in any special way to demonstrate this. In form, *A*'s behavior would be essentially identical whether she found herself living in nation *N*, nation *O*, or *any* nation at all. As we have imagined the case, and this would apply to many conationals, it is not *A*'s particular national affiliation that motivates her to work, exchange, and form social bonds. Rather, it is due to a combination of the necessities of human social life and the contingencies of where and when she finds herself living.

To avoid this worry, Miller may shift focus to the *fair chance* to influence group policy and behavior. He does, of course, wish to find those in the voting minority (outcome) responsible as well, and these people certainly don't directly influence the policy they vote against. But we must worry about the substance of this demand for a fair chance. First, a *chance* to exert influence is not at all equivalent to actual influence. Insofar as Miller seems to require only procedural fairness (and not something more robust, such as *substantive* fairness of outcome influence) he is bringing the practically politically powerless within his judgment of responsibility. A "fair chance" would mean something like, "a rule-based recognition that one is a member in full standing and is able to express her opinion about what she favors for the group." We should worry about one who is allowed to go through the political motions but who nevertheless has no real political power.[162] If it is true that member *A* has no real power to alter the final decision of the group, then *A*'s chance to participate in a vote loses much of its moral relevance. To insist on *A*'s responsibility is to say to *A*, "Because you are able to act *as if* you are a deciding member of the group, you are responsible for what the group does." Given that many

[162] In this way, Miller's account is very similar to John Rawls's requirement in *The Law of Peoples* that "decent peoples" have governments that allow their citizens some avenue by which to express their grievances. Nothing more is said about whether there has to be any non-negligible likelihood that policymakers will be influenced. This is an emphasis of form rather than function. See: Rawls, *The Law of Peoples*, 72.

members of all nations are in fact practically politically powerless in this way, using the formal opportunity for voting as grounding for responsibility is quite problematic.

We can imagine cases where a minority has essentially no chance to really impact the political process, but where this minority also does all that it can to steer national policy toward morally acceptable ends. The minority's supposed cooperation in the voting practice is really not very much like the case of the firm at all. For one, although there is a formally democratic process, it is not a voluntary process. It is not as if the minority agreed to abide by the outcome of the vote and then simply lost. They were a part of the nation whether they wanted to be or not, and the nation was going to adopt some policy whether they liked it or not. As we have imagined the case the people in the minority did all they could to prevent a wrongful policy from being adopted. Yet, as this model has been developed, they do not escape judgment. Their participation in this process is not even actually relevant. Had they all abstained they would still be included in Miller's collective assessment because they had the option of participating, even though they had no real possibility of affecting the outcome.

The matter is even worse when we consider that a given member, *A*, doesn't actually vote on specific policy, as in the case of the firm. The basis for the conational's responsibility here is having the mere formal opportunity to voice her opinion about whom she would like to have the opportunity to voice their opinion about what the nation will eventually do. This is not to share in a cooperative practice in any robust and morally meaningful sense at all. We can go at least one more step and say that the case for conational responsibility is even worse when *A* does everything that she can to work against the policy that is eventually adopted. In the face of very poor odds, despite her powerlessness, *A* did the morally laudable thing, and yet on Miller's account she is responsible, regardless.

Miller does not seem very concerned at all about the lack of universal participation in voting procedures or whether a defeated minority have actual meaningful influence on the process. He is comfortable holding an entire nation responsible for the policies of a majority of government officials. Recall his example of a nation being collectively responsible for the effects of overcrowding, due to a dominant religion and the associated valuing of large families. Again, we suppose that the nation's government convened and a majority decided, presumably based on the preferences of their respective constituencies, not to take action to incentivize the population to have smaller families. From this Miller concludes, "we can legitimately say that the nation in question is collectively responsible for the consequences of population growth: its culture is such that it prefers large families to, let us say, less crowded roads and cities."[163]

This case seems to combine both a like-mindedness (or value overlap) and a democratically structured decision procedure, or cooperative practice. It serves as a nice example to help reiterate points made above because Miller appeals to culture and he uses the intentions of a majority to establish the (outcome) responsibility of the whole. We have already seen how vagueness in a cultural judgment can mislead us into hasty generalizations. This is another good example of the quick slide between a 'mostly-true' claim about a large group of people and a judgment that somehow every member is implicated. A plausible case will certainly include some individuals that do not value large families and so some families that remain small. There are also likely to be some in the nation who argue that government incentives should be offered to help reduce family size. Those who work against the overcrowding trend are included in Miller's judgment of responsibility, though, because they contribute to the culture and they played a role in the democratic debate, or at least could have. A common presumption that seems to be at work here is that the voting process binds everyone to a sort of outcome responsibility

[163] Ibid., 128.

for it because it is democratic. The thinking here tends to be that there is an implicit agreement behind such a process that the losers must abide by the decision just as well as the winners. The plausibility of these considerations in many voluntary social groups notwithstanding, the fact that the results of such a process are imposed on the conational whether or not she chooses to participate in the process, and the fact that she cannot escape from this imposition, work against treating the nations (or states) analogously to voluntary democratic groups. When one is subject to the outcomes of a collective decision process without her consent, considerations of fair play cannot suffice to ground a share of responsibility for what others decide to do. Although there may be contexts in which it is acceptable to say something like, "Nation *N* has an overcrowding problem due to a cultural tradition of having large families," related judgments of collective responsibility, which apply to *all* members, cannot be sustained. This is especially true in a case like this where there is the suggestion of *causal* responsibility (and perhaps attributability) and no real possibility of a meaningful liability.

§4.2 – The Nation as a Cooperative Practice

If we instead construe the shared practice not as a shared voting procedure, but rather as the continuation of the nation itself, some of the above problems can be avoided. On the other hand, it seems that other familiar problems recur. Again, the behaviors we might have to appeal to at the individual level to show the existence of a cooperative practice would be performed regardless of national ties. Those national members who do not take any relevant action toward shaping national policy and national behavior can hardly be said to "participate" in any shared practice. That is, unless we simply define them to be doing such a thing. We can observe conationals interacting, say in market exchanges, social gatherings, and in cultural events;

however, these general sorts of behavior are common to most humans, and understood in this general sense they extend beyond national boundaries.

Engaging in economic and social behavior within a nation is never inherently nationalistic. Living within the boundaries of some nation is just a fact that the individual must take for granted when she gets on with her life. She must work and exchange and develop some amount of social relationships no matter where she lives, and no matter whom she lives around. The essential behavioral features of the common conational do not differ across nations. There is labor, there is production, there is exchange, and social relationships including 'friend' and 'family' are developed. Nothing within these nearly universal ways of living signifies a special connection to any specific nation or national practice. We can certainly find practices that are nation-specific, such as when conationals join to honor their leaders in parades and shows of military power; however, such cases do not cover the whole of the nation, which is why more general and so less nation-specific behavior would have to be appealed to. Once we do this, we have reduced the force of the connection we identify. When a given conational fails to display intentionality directly related to the nation – its continuance, glory, action, *et cetera* – and fails to engage in the decision-making process, in order to spread the responsibility over her we end up positing the existence of a level of cooperation that simply does not exist. The cooperative practice model might be thought to help account for those in the nation that the like-mindedness model might miss. But it looks at this point as if it still just applies a principle of responsibility by association. The individual still need not do much of anything in order to be included. Furthermore, as it is quite likely in all actually cases that some members of a nation will neither be sufficiently like-minded nor engaged directly enough in any nation-specific cooperative

practice to plausibly share in responsibility for what the nation does, it looks as if we would still be forced to subsume innocents within our judgments on this account.

Miller, though, may avoid the above worries. He focuses on two central reasons for treating the nation as a cooperative practice writ large. "First…nations are communities whose members see themselves as having obligations of mutual aid that are more extensive than the aid they owe to human beings generally. Second, nations provide their members with a number of public goods, foremost among which is protection of the national culture itself."[164] It is suggested that this general feeling of obligation for mutual aid is expressed through the creation of social institutions that provide protective and welfare services and redistribute wealth. It is further suggested that conationals value their national membership and the distinct character of their nation's culture.

Our first concern regarding his two claims that support his treating nations in this way may be that not all members of the nation fit his description. As an empirical issue, we cannot be absolutely sure without a scientific investigation, but it is quite implausible that all members assigned responsibility will actually agree that they have special obligations toward their conationals or that there should be certain social institutions in place to provide services and aid. A few dissenters may seem irrelevant in the bigger picture, but insofar as we are concerned with an accurate determination of responsibility, we should not ignore the lack of universality here. And, as said above, we do not show such universality when we identify that certain social institutions are commonly adhered to or when certain behaviors are common amongst a group. Much depends on what exact types of institutions people are following and what types of behaviors they are performing. If such cases are clearly related to supporting some state action, for instance, then it would be appropriate to distribute responsibility collectively. However, if

[164] Miller, *National Responsibility*, 131.

some of these people are simply getting on with their lives within some territory that is associated with some nation, and they do not act so as to further any interests that we might think the nation has, we lack a solid justification for including them in our judgment.

Miller does actually try to account for the lack of universality in these cases. After discussing public goods he says in a footnote, "These features need not be valued individually by *everyone* who belongs to the nation… What is necessary is that the *ensemble* of cultural features should be valued positively by the nation's members."[165] This is the idea that the members of the nation desire that the nation and its particular cultural habits continue and remain distinct from other nations. We should still be worried that even this weaker condition is not satisfied by all national members, but aside from this concern we have to consider whether an imprecise cultural judgment will suffice here. We are again being asked to accept that sharing some beliefs, values, and ways of living is enough to connect one to the responsibility of others. We are again being told that there is a shared culture, and that sharing in it and thereby valuing it (or at least behaving as if you do) is tantamount to engaging in a cooperative practice. As argued more extensively above, claims of this sort are accepted as true according to a relatively weak epistemic standard. The psychological characteristics of conationals and their ways of living vary greatly, even if there is much overlap. Many different cultural traits are shared between some members and not shared between some members. Many members value the nation, and many simply passively accept its existence and go about their lives essentially just as they would if they belonged to some other nation that exhibited similar ways of thinking, believing, and behaving. We may even accept that each member views some part of the "ensemble of cultural features" as valuable, it will still not be the case that every member values the whole ensemble as valuable, given that the ensemble is bound to be composed of features that are actually

[165] Ibid., 131, fn. 23 [his emphasis].

incompatible in some cases. Inconsistencies between members' characteristics within one culture, such as valuing spicy food and not valuing spicy food, for instance, may avoid our notice because we continue to speak of the culture as a single unified thing. But we should always be careful to recognize that the multifaceted complex of mental and behavioral traits that we aggregate together under the label 'culture' is (typically) not actually shared by all members of the set of persons that we assign this label to.

To use shared culture as a central part of a normative judgment that attempts to track individual responsibility is inherently problematic, given that our social descriptions and our normative judgments utilize weaker and stricter justificatory conditions, respectively. It may at first glance seem as though it is true that all value an ensemble of cultural features, but this is only because of the way we mentally represent certain social circumstances. We look at a particular geographic area and we conceive of the person living there as an identifiable group. These persons do not share an exact set of cultural properties, but there is enough overlap to convince us to conceptually group them all together under a single cultural category. We then reason that it is true that all of these persons share in valuing the ensemble of cultural features identified. In fact, this is true. But it is only true because we have insisted on a particular way of conceptualizing the circumstances. In essence, it is by stipulative definition that they all share in the cultural ensemble. We defined the ensemble as we did so as to have it encapsulate everyone in the set of persons in the geographic area in question. In spite of their distinct characteristics, we are able to treat these people as a whole because we have created a new property and ascribed it to all of them. The problem is that this new property is just the union of their individual

properties, which implies that each member actually shares this supposed cultural property to different extents – which is to say, *they don't actually share this property*.[166]

§4.3 – Benefits of Membership

Here Miller would likely stress the benefits of membership as an essential part of the cooperative practice model. He is aware, we can be sure, of the fact that many individuals within nations do not participate directly in national processes and do not exercise a great level of control over national actions (perhaps practically none at all). Miller would insist that many will fall under the like-mindedness model, but, even if many do not, there will still be the consideration that all receive certain benefits as national members. Perhaps this is where the real force of the cooperative practice model lies.

Let us again start with a plausible case of morally relevant group benefits to illustrate the sort of judgment that Miller has in mind. If an accomplice to a bank robbery gets a share of the profits, she shares responsibility for that bank robbery, even if her role was quite indirect. Perhaps all she did was not speak of the actual bank robbers' whereabouts, for which she was given a percentage of the loot. Perhaps she even protested against the robbery, but in the end she accepted a share of its proceeds. In this case the benefits of membership in the group of people intimately connected to the robbery accrue obviously and determinately. We can actually appeal to the dollar value involved. The benefits of membership in the group of bank robbers and associates are rather obvious and actually quantifiable. The case is similar for the firm in Miller's example. Working for the firm has its benefits, and many of these benefits can actually be measured. What about national (or state) membership? What are its supposed benefits?

The benefits of national membership, if there are any particular benefits at all, are not strictly determinable and certainly not quantifiable, as they are for some of the benefits in

[166] *Cf*. Diagram 1, "Southern white culture," for a graphic depiction of this point.

Miller's case and the bank robbery case above. The level of monetary income (or the amount of resources) that a person acquires is generally not directly related to national membership, but rather to market exchange and familial or social connections. The benefits of national membership would have to be something other than monetary, such as the security from outside threats that a national army provides and security from inside threats that a policy force provides. Relatedly, one may point to the legal system that protects property and enforces contracts. At the psychological level, there may be benefits of personal pride due to national membership, as well as a general sense of wellbeing that may accompany a comfortable life within some peaceful nation. We must ask, though, whether these considerations are relevant to responsibility, and this will depend on our answers to the following questions: Are these purported benefits really benefits? What is our comparison class for this judgment? Can these benefits be avoided? If not, how do these facts affect our normative judgment?

First, 'benefit' is usually treated as a relative, rather than an absolute, concept. In order to treat a state of affairs as beneficial to some object, it must be the case that the object is better than it would be under some other state of affairs. Usually this other state of affairs that acts as a baseline for the judgment is simply the lack of the event under consideration, or the lack of the property or circumstance that led to the outcome being evaluated. In the bank robbery example the accomplice's benefit is compared to the baseline of the possible world where she did not get involved with the bank robbers, or where she did not accept the money. Her benefit in this case can actually be quantified. She benefited *D* dollars, or the amount the robbers gave her to keep quiet. In Miller's firm example the contrast class for firm worker *W*'s benefits from working at the firm could similarly be the possible world where *W* does not work at all, but this seems inappropriate insofar as we should assume that *W* will have to work in some way in order to live.

The comparison is not really between some particular work and no work; rather, it is between some particular work and other potential work. For a case of *specific* employment benefits the baseline might instead be *W*'s expected salary, level of wellbeing, etcetera, compared with what *W* would enjoy in the other jobs she is most likely to acquire. If working at the firm causes her to knowingly contribute to some morally wrong collective outcome then our judgment of *W* should involve the fact that *W* was getting something out of the arrangement. *W* may have been against the policy that created the outcome, but *W* was still a member of the group, still had a fair chance to influence the policy, and most importantly, still stands to benefit from the continuation of the group and her membership in it (in relation to her other employment options). Furthermore, *W* could have worked elsewhere (we suppose). She had other options for sustaining herself. She didn't need to be a party to a group that was going to do wrong. Here we again have plausible cases, but how do the benefits of national membership compare?

The first problem for national benefits is that they will not be measurable because we cannot specify a baseline or comparison class. What would life be like for a current national, *A*, if her home nation, *N*, did not exist? There are infinite possibilities for this counterfactual question, and it is not in fact answerable aside from brute speculation. The same problem occurs if we ask how a nation benefitted from some particular policy or action. It is often not possible to determine how an entire group benefitted, just as it is not possible to determine how an individual member benefitted from her membership. We might instead compare the wealth and wellbeing that *A* would enjoy in a nation other than her own, but which one? As opposed to the availability and likelihood of other employment, the availability and likelihood of other national membership or resident status is not determinable. If *A* has a certain skill set, then certain jobs are open to *A*. It is not clear that *A* is most suited or most likely to live in a certain set of nations

if not *N*. In short, identifying a comparison class for this judgment is not possible without the help of very contentious assumptions.

We must worry as well about the nature of the benefits that *A* accrues, since we cannot quantify them as we could if they were monetary. Those who attempt to connect moral and legal liability to national (or state) membership sometimes compare the individual's relationship to the benefits of membership to strict liability for the purchase or inheritance of stolen goods. Their argument is that, much like if one unknowingly acquires stolen goods she is liable to give them back, if one unknowingly or unintentionally acquires benefits from a membership relation, then one can be morally or legally liable in special ways on that basis.[167] One major problem for this line of argument for the national case is that there is usually not a determinate object at issue, and no determinate property title. If land, goods, or money is stolen, then we can determine title to the land or goods and facilitate their return, and with money we can demand an equal sum if we cannot locate the exact tokens of money stolen. If you happen to be in possession of the stolen property, then you are responsible to give it back, regardless of what you did to acquire it or what you knew or did not know. However, with the benefits of national (or state) membership, the matter is not at all so clear. Moreover, it will typically not be the case that everyone has benefitted, say if their nation commits some wrong. Some will benefit, other probably will not. Some members of the nation may even become worse off through some national action that benefits some. There is no non-arbitrary way to make benefit judgments, and so responsibility judgments, if there is no identifiable benefit to be referred to. That is, there is no *principle* that can be given based on national membership that when acted upon will exact justice on such a

[167] This sort of argument is sometimes advanced in favor of forcing reparations payments from the descendants of oppressors to the descendants of the oppressed. It is also common in discussions about reparations for state actions like war, where there is a perceived benefit to the aggressor nation and so even opponents of the war policy in the aggressor nation might be said to have benefitted from the action and so be responsible for the consequences.

situation because the character of the benefit and its affect on the nation cannot be specifically determined. To move ahead with such a collective judgment will not punish the offenders or rebalance the world to rectify the situation. It will simply forcibly shuffle resources around in a different pattern than before, and in the process commit additional injustices toward some persons affected. That is, the result is simply new benefits for some and new burdens for others.

Even in the unlikely case that we determine nation *N* wrongfully acquired some identifiable and quantifiable benefit from nation *T*, say *D* dollars, it may not be true that *N* is collectively responsible to give *D* to *T*. If that judgment implies that all members of *N* must share in the financial burden of making that payment, then it will inappropriately implicate persons in nation *N*, unless *D* dollars was distributed between all persons. This is possible, but extremely unlikely. In the more plausible case where a national action performed and supported by *some* members leads to some quantifiable and measurable benefit that accrues to *some* members in the nation, collective national responsibility for that benefit is not appropriate. A look at the issue on the individual or micro-level will reveal that the responsible parties make up only a fraction of the total population of *N*.

Again, shifting between epistemic standards is what often engenders this type of mistake. Although benefits of actions we ascribe to nations accrue to only some national members, we continue to speak as if the nation itself benefits. From this judgment based on relatively weak standards we infer the related normative judgment that the nation is responsible for what it did to benefit itself – that is, that the population of the nation is collectively responsible. We carry on with this reasoning in spite of the fact that the normative judgment must employ higher standards, especially if it is going to impact the lives of those judged. We cannot ignore vital details at the individual level.

Other approaches to arguing for collective national responsibility based on benefits do not attempt to treat responsibility for national benefits like strict liability for acquiring stolen property. Instead, the argument focuses on general desirable consequences of national (or state) membership and the connection between these consequences and national (or state) action. The argument might run like the following: You, national of nation *N*, have enjoyed certain desirable consequences from your national membership. For instance, you have been protected from threats outside the nation by the nation's armed forces. You have been protected from threats within the nation by its police force and justice system. You have used your nation's roads, school system, and other social services, and all of this has benefitted you. Now your nation has done wrong and all of you who have reaped rewards from national membership are collectively responsible for that wrong.

This is a quite common line of thought that deserves attention. It should first be noted that the typical conational (or citizen) will have paid a share of the cost of these national services, so it is not as if all privileges of membership will be unwarranted. Most of those who we would like to identify as the greatest beneficiaries of national (or state) existence will have been those who have paid a portion of the cost of producing and maintaining those systems through taxation. This is an important consideration. There is sometimes a tendency to pictures those positive features of national membership as accruing to people by good fortune alone, in which case it seems more fitting to claim that the individual owes something back to others who may have had to suffer in some way so that the nation could prosper. The fact of the matter is that most pay their way. Aside from this point, the central problem for this line of reasoning is that no direct link is provided between the desirable features of national membership that the person receives and the wrongful national action. That is, it is not the case that her specific benefits are a

product of the specific wrongs that officials in her nation might commit. The national member is not like the accomplice to the bank robbery, where what she gets is directly related to the wrong. The national member lives within the nation, is forced to pay a part of the cost of the services she receives, and then officials of her nation act in ways that are outside of her control. There is a tenuous link at best between whatever comforts she enjoys in the nation and the wrongs that are done, especially those done in the distant past.

The benefits themselves are not really as obvious of a link with outcome responsibility as we might at first think. To see this, consider a case where an individual lives in a neighborhood that is controlled by a mafia and is too poor to leave it. Suppose that the mafia members provide protection for the neighborhood and in return demand some form of payment from the residents. It is clear that we could identify a general level of benefit that accrues to neighborhood resident *A* in such a case. She is now safe from other members of the neighborhood that might harm her, because the mafia keeps the peace, and she is also safe from other organized crime syndicates that might invade her neighborhood because the mafia in her neighborhood does not tolerate competition. We might suppose further that the mafia members in her neighborhood even sometimes give out favors and do good things for the neighborhood residents. Now, imagine that the mafia members one day invade another crime syndicate's turf and start a gun battle that injures many people in that other neighborhood. Would it be correct to say that *A* shares in the outcome responsibility for such an event because she benefits from membership in her neighborhood? The answer must be no. She benefits against her will. She cannot leave the neighborhood, she cannot avoid the benefit, and she cannot control the actions of the mafia members. The mafia's existence and practices may benefit her, but she is not a cooperating participant in some neighborhood protection program. She just happens to find herself living in

an area that these people protect and where this provides her some positive outcomes. This should have no bearing on whether she is partly accountable for the other activities of the mafia members. The position that *A* is in here is similar to the position of the conational who does not really participate in any nation-specific functions and who does not directly support the actions of national officials. We can appeal to the benefits of membership here, but we are reaching too far for a basis of shared responsibility.

Let us consider one more example to strengthen this point a bit further. Consider the case of a large extended family where a particular grandfather acts as patriarch of the family, and so acts 'in the name of' the family itself. Imagine further that the adult son of the patriarch enjoys many desirable consequences due to his membership in the family, as do the other family members. Now, if the patriarch of the family were to do something immoral and totally of his own accord, would it be correct to spread the (outcome) responsibility of this immoral action to other family members such as the son? As we imagine the case, the son did not do anything to aid in the immoral action, and we can add that he could not have stopped his father from doing it, even if he tried. Moreover, the son cannot revoke his family membership, nor can the favorable aspects of his family membership that he has enjoyed over the course of his life have been avoided or now be given back. It may be true that the son has benefitted from his family membership, but this does not establish any suitable link between the actions of the patriarch and the son's responsibility. We can build into this example any other elements that will make it more closely analogous to national (or state) membership, and this will do nothing toward establishing that the son is responsible. The simple fact is that the son has not done anything related to committing the wrong, and his beneficial though unavoidable membership in the family grouping does not actually serve as a sufficient connection to the wrong to ground any

sort of vicarious responsibility. Thinking otherwise seems to be a product of a preconceived notion that the nation is a more or less unified collective of people are collectively self-govern and so stand accountable together, even though many are not directly (morally) responsible. This image is imposed on the world, it is not perceived in the world.

§4.4 – Reciprocity and Authority

We may be inclined to argue for a sort of fairness account here, where the benefits that one receives as part of a cooperative system are thought to imply that the individual has certain obligations toward the rest of her society.[168] Such obligations might then be the basis for a share of responsibility for the actions of national officials. We might also think that if one is obligated to follow the laws that the government establishes in her nation – if the government has authority, or its rule is justified – then she is also partly responsible for what her government does. The idea here seems to be that if one has some relationship to her government that implies that she must follow government edicts, then it seems as if she must also stand accountable along side the rest of those in her nation, for what her government does. These two ideas about political communities stray a bit outside of what Miller is discussing, but they are related ideas that deserve at least brief attention. Space is lacking to fully address these interesting questions, but a few comments can be made that work strongly against using such considerations as a foundation for a conational's or citizen's (outcome) responsibility for the actions of her government.[169]

An argument against the view that demands of fairness or reciprocity can ground national responsibility can trade on a distinction between different forms of obligation. Though it may seem that obligations of reciprocity may bind a community together in such a way that all

[168] See, for example, John Rawls, *A Theory of Justice* (Cambridge: Harvard, 2003), 96-97; as well as the influential earlier work: H.L.A. Hart, "Are There any Natural Rights?" *Philosophical Review*, Vol. 64 (1955), 185.
[169] The discussion here is intended to apply to states as well. Considerations of reciprocity and of authority are of essentially the same character in both the nation and the state.

members share responsibility for what some members do in the name of the nation, they are actually not the sort of obligations that relate to forms of vicarious responsibility. For on thing, obligations of reciprocity, if they exist in nations, exist between all persons qua conationals – that is, there is no special mention here of a relation between the common members of the nation and the national officials who act 'in the name of' the nation. If a given national has such obligations, she has them to all other members of the nation, as individual members of the nation. She would owe it to other members who engage in a minimal form of cooperation to show at least that minimal level of cooperation herself. If she has such obligations with respect to government officials, then these too are obligations that exist through the relationship of conational, and not because the official is an official.

The reason that considerations of reciprocity may seem to connect up with some sort of vicarious responsibility for national officials is that we often associate obligations of reciprocity in the nation (or state) with obligations to follow the law. Since law is the product of government officials and governing institutions, it seems that an obligation to follow the law is an obligation to follow the edicts of the government. It then seems as well that an obligation to follow the government implies a share of the responsibility for what government does. This can work in one of at least two ways; (a) we might think that one's obligation to follow government decree is closely related to one's obligation to abide by the agreements that government officials may create internationally, which could then imply responsibility for the government's failure to or (b) one's obligations to follow the government may just be a sort of authority relation that is thought to carry vicarious liability along with it.

We will ignore (a) here, because it is a matter of prospective or forward-looking responsibility (obligation). A violation of such responsibility would still be a violation

committed by some national officials, so we can still ask questions of retrospective responsibility once the purported national prospective responsibility has been left unsatisfied, but the issue of whether or not an obligation to follow the nation's laws also obligates one to abide by international agreements is a separate issue that will be left aside here. The authority relation described in (b) is a more promising line, given our focus on retrospective (outcome) responsibility. What can be said about this?

The response to (b) is that the authority relation that might exist between members of the nation and the government of the nation is limited in certain ways. The short answer is that it is perfectly possible to have some form of obligation to follow the edicts of national officials, meaning they have a certain authority, without this thereby implying that the policies of the governors or the actions of state officials are the shared responsibility of all national members. We might think it is not possible that a member of the nation has some normative reason to follow the law and obey the commands of those with political and police power and yet not be included in a judgment of who is accountable for actions ascribed to the nation. But it has been argued in a number of places that one can have reasons to follow the law even if the government is not thereby considered 'legitimate', where this would entail that all members are consenting and all actions of government thereby represent all members.[170] If it was the case that everyone who stood to share in the responsibility for the national action actually agreed to have the national officials act as their surrogate agent abroad there would be no question. But this is certainly not the case. What we have in the national (or state) setting might entail strong reasons in favor of law following and government-edict following, but this scope of authority must not be thought to necessarily (or even usually) entail a relationship of vicarious liability. Another way to make this point is to say that a government can have justification for its actions and

[170] A. John Simmons argues for such a view in *Justification and Legitimacy* (New York: Cambridge, 2001).

provide its citizens with some form of obligation to follow the laws (even if not a *moral* obligation),[171] but the actions of state officials do not thereby the shared responsibility of all members of the nation. The authority relation is not absolute, and it typically does not extend vicarious responsibility, except from subordinate to superior, which is the opposite of what is being supposed here. It is one thing to hold the boss accountable for her employee; it is another to hold the employee accountable for her boss. The national case is similar.

§5 – VOLUNTARISM, AGENCY, AND LIBERALISM

Some writers like Miller attempt to make good on the higher demands of the normative judgment. They try to demonstrate that each individual stands in some relationship to the situation to imply a share of responsibility. Plausible examples are offered that suggest the appropriateness of just the sort of indirect responsibility at issue. The problem for this line of reasoning, though, is that its analogies fail in crucial ways. The examples trade on the nature of many kinds of social groupings, but the examples are never sufficiently similar to the conditions of national groupings to be extended for purposes of evaluating national conditions (the issue is much the same for states). As alluded to above, the most important way in which the analogies used by Miller and others fail with respect to nations (and states) has to do with agency and voluntarism. As it turns out, both of Miller's interpretive models fail to satisfactorily account for the responsible party's volition and the existence of alternatives or the lack thereof.

We are not here concerned directly with agency or volition pertaining to the final action, even, or outcome itself. We can accept various sorts of strict liability, in both the moral and legal sense. The position defended here is this: in cases where we judge that *A* is (outcome) responsible (in whatever way) *for* the actions of others, there must still have been some point at

[171] Margaret Gilbert's view set forth in *A Theory of Political Obligation* (New York: Oxford, 2006) develops an account of political obligations that is of this weaker sort. See also Part III, Ch. 1 of this work.

which a sufficient level of agency or volition was exhibited by *A*, in order for that responsibility judgment to be appropriate. When a case lacks all such minimal acts of agency on the part of an individual, assignments of responsibility 'fall from the sky'. They give one no chance of avoiding the judgment. In a way, they also violate the basic 'ought implies can' restriction on normative judgments. It is at the very foundation of such judgments that an agent's volition is implicated in the normative evaluation, which itself implies that the agent was in control, had certain knowledge (or should have), and so could have legitimately done otherwise, at least at some point. We have seen examples where these conditions do not apply to the specific act in question, but, although we may have failed to realize it, these examples still presupposed *some* level of agency that put the individual in question in a morally relevant relation to the eventual act or event. The parents bear the children and agree to raise them, the spouse marries, and the business partner contracts. The natural conational or citizen often does no such thing.

Explicit removal of the presumption of voluntary membership shows its importance. That is, when we consider variants of Miller's examples where membership is non-voluntary and cannot be revoked, it will become clear that membership itself, as well as its attending specifics such as like-mindedness, inner-group cooperation, and benefits, are not really essential factors in our judgment. What is essential is that some relevant volition was exhibited at some point in the past. It must be the case that the individual's *will* can be implicated.

Miller never explicitly discusses in his examples whether the nature of the membership is voluntary or not, but it is implied that no one is being forced to participate in the groups concerned. Interestingly, though his examples are plausible as they stand, if we explicitly remove the presumed voluntariness of membership our judgments are likely to be drastically affected. Consider how we are to judge worker *W* if she is coerced into working for the firm by threats of

violence toward her family. Suppose she works at the firm even though she is against what the firm stands for and tries to change its policies for good. With the addition of these details it does not follow that *W* can be appropriated lumped in with the rest of the firm in our normative evaluation. We do not see her will and intentionality reflected in what she does for the firm. She is not there to further the ends of other firm members. We do not even see her will reflected in her membership within the firm, as we would at least see if she had taken the job voluntarily even though she was not really interested in being a part of that group and furthering its ends. This last point is of central importance. As we have seen in many of the examples considered in this work, it is sometimes appropriate to hold one morally or legally liable even when her will is not reflected in the particular action, event, or state of affairs considered. Quite importantly, though, this does not imply that one need not exhibit agency *at some point* to establish a connection between themselves and the action, event, or state of affairs. Often, we can appeal to one's decision to join the group and act of joining, or at least to the fact that she maintained her membership status when she could have revoked it. National membership (and state membership) is not of this character for the vast majority of people.

As an example more analogous to national membership and a dissenting member, consider a person, *A*, who is born into a family deeply committed to the KKK. Imagine that *A* is systematically indoctrinated from birth to have racist sentiments and to identify as a member of the KKK. In other words, *A* was taught from a young age that she was a *natural* member of the superior race as well as of the KKK (member through birth), she was intentionally educated to believe that certain darker skin colors identify a person as a member of an inferior race, and she was not able to revoke her membership in the organization. Perhaps *A* lives in a small town that is overwhelmingly KKK-friendly, with very controlling parents, especially with respect to her

identity, beliefs and customs. In this town everyone knows everyone else is racist, so no one needs to talk about it openly. Most members of the town directly engage in KKK activities and express their racism there, but in day-to-day life such perspectives are held privately. Imagine further that *A* never acts in ways that support the KKK enterprise, although she does have a single vote that she can use to help determine KKK leadership positions. That is, she never attends the KKK meetings or activities and never expresses her racist views to others in order to support their racism and racist behaviors, but she does have the formal ability to participate in the group. She identifies as a part of the KKK without really engaging with its main institutions directly and without supporting other members in their beliefs and actions, except in the most minimal sense. Her membership and identity alone, because they are public knowledge, may contribute some small amount to the beliefs and actions of others, since these other people may feel more supported in their racism to some slight extent due to the greater number of members in the group; but *A* never exerts her agency and intentionality toward supporting the existence of the KKK or the beliefs and actions of other members. Let us add a last piece to the story, which is that the Grand Wizard, in the name of the KKK, one day commits an immoral act toward a person of darker skin color. Does *A* share (outcome) responsibility for this act? Is this really that similar to Miller's cases of the rioting mob or another KKK member, *B*, who is like *A* in all other respects accept that she freely joins the KKK as an adult?

In answering this question, we should take into account *A*'s particular situation. This is true of all cases of normative evaluation. We must consider how *A* came to be in the position she is in and what control she has over that situation now. We have to consider whether she has really done anything to link her to the event, or if we are instead simply insisting that she be included because we have conceptually categorized her along with others in that group. Given

that *A* did not *act* in any way to support the Grand Wizard's action, or the existence and functioning of the KKK itself, we will have to look toward her identity and membership in the group and its specific conditions if we wish to show that A is relevantly connected to the behavior of KKK leadership. For many KKK members, including *B*, it will matter here that they elected to join that group and that in doing so they have encouraged others in that group to feel ever more supported in their racist beliefs and actions. However, because *A* was born into her current position and indoctrinated from the earliest age to think in the manner common to members of that group, our first worry about a judgment of *A* should be that her identity is in many ways not under her control. Of course, many of us may have aspects of our identity that we feel we have not chosen, but *A* is special in this regard. Not only did she not choose to identity as a member of the KKK, she has been effectively prevented from confronting other ways of identifying herself, as well as other ways of viewing the relations between people of different skin colors. Much like the member of the nation who has been educated from birth to identify as part of the greater whole and to see others as foreign to that whole, in large part because everyone she knows also thinks that way, *A*'s conceptual scheme, and so the way she carves up the world, almost unavoidably includes identification with the KKK and as a consequence a view of separation from persons who are not also members. From the KKK perspective in particular, *A* has also come to believe that people of darker skin color are part of a certain *other* group that is inferior, and this too is quite parallel to the situation in other social groups. Members of a given nation often not only feel a sense of solidarity with members of their nation, and the opposite sentiments toward members of other nations, but they also often feel superior to people of other nations.[172] We can see parallels here with certain religious convictions as well. People are often raised within a religious tradition and taught to believe that other persons who are not

[172] In the US you often hear talk of 'American exceptionalism', which serves as a good example here.

members are not just different and *other* but also perhaps that they are inferior and will not be saved because they have mistaken beliefs. If this is the way that an individual has been raised to think by all of those around her that she trusts and depends on, it can be extremely difficult and even practically impossible to reform those beliefs later in life. Such indoctrination does not excuse one of her voluntary *actions*, but the whole point here is that there are members of the KKK, nations, religions, and states that do not act so as to further any group-specific project and yet who are nonetheless subsumed within our judgments when we make them of the whole. We should be cautious in our normative judgments to limit the relevance of mere group membership and identification. With respect to each individual there is always a causal story to tell that is vitally important for accurate normative evaluation.[173]

To a great extent in the case above, *A* has not been the author of her own will, as she might if her beliefs, values, and identities were the product of free introspection and reflection. To a normatively relevant extent, A's mental life is the product of forces outside of her control. This is true of all persons to some degree with respect to the social groups they are a part of, of course, but whereas most of us have had substantial freedom to exercise agency in deciding what identities to accept and in the management of our membership in certain groups, *A* has essentially just found herself in her current position. The supposed hierarchy of races and her membership in the KKK are facts of life that she thinks she must take for granted. Much like she simply accepts that there are twelve 'inches' in a 'foot', that she is an 'American' and that if she travels in the direction called 'north' she will eventually end up in 'Canada', she also accepts that she is a KKK member. Much like she shares certain common American beliefs and sentiments she shares certain KKK-specific beliefs and sentiments. However, whereas a more typical case would allow us to appeal to the voluntariness of these mental states and group relations, with

[173] Miller does touch on the issue of brainwashing and strong propaganda in *National Responsibility*, 130.

respect to *A* we must ignore some of these features in our moral evaluation. This sort of case functions even better to make this point if we imagine that *A* does not really share the KKK mindset, or, even better, if she actually attempts to reform, disrupt, or destroy the KKK from the inside. In short, when like-mindedness is not a factor this case acts as an even stronger counterexample to Miller's position, given the lack of agency and control involved.

The other major point to make in the case of *A* is that her formal voting power is also insufficient to legitimately link her to what KKK leadership does in the name of the group. Again, this is not a case where *A* chose to join the group, accept the voting power, and agree to be bound to the decisions of such votes. Her voting power and the effects of group decisions are a given fact of life for *A* that apply to her whether she wants this or not. If it was the case that A had a choice between two or three persons to staff the highest offices in the KKK, but where all of these persons overlapped significantly in their beliefs, values, and plans for important aspects of the KKK, it would matter little whether *A* participated at all in such a vote. If A does participate, but does so with the intention of choosing a candidate that might reform the group, this again falls short of a demonstration of *A*'s shared responsibility. We might add that *A* enjoys certain advantages from her membership, such as that she is treated well by members of the community, is safe walking through her town because of her KKK affiliation, and that she shares in a sense of pride that stems from her KKK membership. But if we are looking for reasons to hold her responsible along with the rest of the KKK for what the Grand Wizard did, then we are still left wanting.

This is not to suggest that *A* cannot possibly share in collective responsibility for actions of the KKK, but it is to claim that her membership, mental states, voting power, and benefits cannot suffice for this purpose. She must *act* and demonstrate a sufficient level of group-oriented

intentionality in order for these other factors to become relevant. The claim being defended here is that *A*'s situation is more closely analogous (though still not nearly perfectly analogous) to national membership than Miller's examples, such as the mob and the firm. This suggests strongly that Miller's two models are insufficient to ground determinations of collective national responsibility – even when like-mindedness is present to the degree that Miller requires and even when we accept that conditions of the cooperative practice model are satisfied. The kinds of beliefs and values that would have to be appealed to in order to connect each conational to some action, or even ascribe that action to the nation itself, would necessarily stray into specifics that are inadmissible in a moral judgment of this sort. Considerations like shared religion, shared manners of speaking, using the words 'we' and 'us' in reference to the national group, shared ways of living, and even a right to vote and the favorable results of membership are not enough upon which to base responsibility, lest we do great violence to other core aspects of a satisfactory normative system. No express consideration of the individual's knowledge and control, or her volition and opportunities for volition are given, and this oversight is at the heart of the problem.

Miller is aware of such worries, and he actually explicitly addresses the elements of his view here which he thinks will "set liberal alarm bells ringing." He asks and responds to the question of whether one can be responsible for outcomes that are related merely to her group membership and practices, even if she did not choose to be in that position (and, of course, didn't participate directly in the immoral act).[174] In response, he notes that there are many more mundane cases where we do not think that one's responsibility need depend on her control. Miller appeals to Virginia Held's examples in "Can a Random Collection of Individuals be Morally Responsible" to aid his point. Recall that Held discusses cases such as happening upon the scene of an accident and being responsible to provide aid. Miller says:

[174] Miller, *National Responsibility*, 122.

> This may be unlucky for [the persons who happen onto the scene]: they may have to miss appointments or dirty their clothes to get the victim to safety, but this is luck of an unavoidable kind. In a similar way, I may see it as regrettable bad luck that I belong to a political community many of whose members are willing to support policies with terrible outcomes, making it incumbent on me to get my hands dirty and help to create a majority for some less objectionable alternative. My responsibilities are thrust upon me by my circumstances, but they do not cease to be my responsibilities because of that.[175]

So, it may seem as if Miller has a powerful retort here. It may very well be true that it is sometimes appropriate to assign responsibility to persons who did not have a choice. Is this the final counter that Miller needs to offer? Have the above criticisms and worries ultimately left his position untouched? Perhaps it is regrettable, but this rebuttal will not do. Miller's response to the "liberal worry" is unacceptable in this context because he has actually equivocated here between outcome responsibility, which was what was currently under discussion in his piece, and what he calls remedial responsibility – the responsibility to provide aid or remedy. The former is a backward-looking or retrospective form of responsibility; the sort of responsibility to remedy a situation is a forward-looking obligation. Although outcome responsibility does not necessitate direct involvement with the action, event, or state of affairs in question, it does require some measure of morally relevant *antecedent* connection to the action, event, or circumstances. Remedial responsibility, on the other hand, requires no antecedent connection to the circumstance. In most treatments of the issue of remedial responsibility (discussed under various names) the only conditions for remedial responsibility that need be satisfied are that some persons are in need of aid or some situation is in need of correction and there is some level of awareness of this fact (or should be) on the part of the remedially responsible. Thus, not only does remedial responsibility not depend on personal agency, it also often depends in no way on group membership of any kind, and actually applies in many cases to persons all over the world, across all group boundaries we may wish to invoke.

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[175] Ibid., 123.

It might be thought that having voting power brings with it a certain responsibility to try to reform a bad government, but this can be true without thereby implying that the conationals are (outcome) responsible when they fail to do so. We might think a stranger has an obligation to attempt to rescue a drowning child, should she happen upon one, but she is not responsible for the child's death if her rescue attempt should fail. Such a conclusion is completely untenable. Similarly, in the national case, we may think one is required to do what she can to control her government, but though this unfortunate circumstance 'falls from the sky' upon her, it cannot serve to ground her (outcome) responsibility for what is ultimately beyond her control. This implies further that the set of persons who are outcome responsible will (generally) not be coextensive with the set of persons who are remedially responsible. It does Miller's argument no good to fall back on remedial responsibility. What was at issue was whether a sufficient connection can be established between all conationals, which results in a share of national responsibility for some *outcome* – not whether there are any moral reasons at all for assigning any form of responsibility that is possible to be assigned. The "liberal worry" is not actually satisfactorily addressed here, and as such Miller's argument for national responsibility is still subject to the various worries raised above.

§6 – CONCLUSION

Views of national or people-based responsibility often trade on the idea of the nation (or people) as having its own moral character, based on the group's shared heritage and culture. Similarities in ideas, beliefs, and general ways of living are appealed to in order to conclude that the whole can bear responsibility through the collective responsibility of its many parts. David Miller provides such a view, and while it should be commended for its attempt to demonstrate collective responsibility in order to ground its conclusion about national responsibility, it

ultimately fails to establish a strong enough moral link between many individual conationals and the actions taken by the leadership in the nation.

Up to this point we have looked at many different ways that collective responsibility in the state (or nation) may be argued for and found them all lacking according to the liberal individualist metric. We will next turn to views of corporate responsibility that may do a better job of capturing features of states that may make them fit targets for responsibility judgments after all. Perhaps it is possible for the group to have moral properties that do not distribute to the entire population. That is, much like a corporation may have moral and legal status that we do not think is a product of the collective status of the individuals in the corporation, a state may function similarly. On the other hand, we may be able to envisage the state as an institution with certain moral and legal responsibility. We will analyze views of the state that entail corporate or institutional state-based responsibility in the next chapter.

Part III: Corporate Responsibility
Chapter 1: State as Plural Subject

§1 – INTRODUCTION

We have to this point looked at various ways that a state may be argued to be collectively responsible, where we understood this to mean that the responsibility of all individuals in the state implies the state's responsibility. This was referred to earlier as a sort of bottom-up approach to state responsibility. We now turn to top-down approaches, which treat certain social wholes as entities importantly distinct from their members, where the corporate responsibility of the group implies the individual responsibility of the members. Although corporate responsibility does not necessarily imply collective responsibility, we will focus only on accounts of corporate responsibility that may have this collective implication. This is because many cases of inter-state action and many judgments from international legal institutions effectively result in collective responsibility, often justified through some variant of a normative theory based on the state-actor model. Reparations payments are taken out of general tax receipts or state-borrowing, trade embargoes and sanctions often affect all members to some degree, *et cetera.* To give an entirely satisfactory account of these practices we must look for ways to show that our theory of state action and responsibility correctly implies that the *whole* is responsible.

It is also important to emphasize the need to show the appropriateness of transferring responsibility to the populace because we are not here concerned with whether there is any reason at all to conceive of the state as an acting entity that exists through time, nor are we concerned with whether it is possible to provide an interpretation of a claim about a state's responsibilities that makes the claim true. We may accept both possibilities and yet still reject that there will be cases where these judgments of corporate agency and responsibility will imply

retrospective state responsibility of the kind at issue here. In other words, there are contexts and circumstances within which state-based claims can be warranted, and certain prospective responsibilities might even be said to apply to them, if we interpret these responsibilities in an acceptable way, but more than this must be demonstrated if retrospective state-responsibility is to be justified. As an example, we may want to speak about inter-state responsibilities such as a responsibility (or obligation) to refrain aggression. We might want to say that all states have a duty to not commit acts of aggression against other states. The point is not that any particular state administration, government, or military has a responsibility to be non-aggressive; the point is that all current and future state officials have this responsibility. To convey this meaning, it is acceptable to assign such responsibilities to the state itself, and under certain interpretations this ascription will be true. Nevertheless, its truth alone does not imply the truth of the claim that the entire population bears this responsibility. Relatedly, we may accept that there are arguments in favor of conceiving of the state as a sort of corporate agent without accepting that the state's corporate agency implies that all citizens are held liable for actions ascribed to the state. As with the treatment of corporations in the law, the state, as an institutionally organized and enduring system, is something that we will sometimes want to refer to as the subject of our sentences. We may want to consider it a legal (fictional) person for some purposes. We may want states to be able to create treaties, for example. If state officials from two states wanted to create a legally enforceable treaty of non-aggression between their respective states, they would intend for that agreement to be binding for future state officials as well. In order to reflect this, the language of such a legal agreement could refer to the state itself, as a legal person. Even if we accept the appropriateness of such practices in the law, it is still an open question whether a breach of such an agreement can be assessed as a breach by the whole. The undercurrent of part III is that we

must be cognizant of the limits of what may be called the *corporate-actor model*. There are areas of inquiry where its use seems acceptable, but we will look more closely at whether this is so for the analysis of retrospective responsibility (of whatever strength).

To see if accounts of corporate agency and responsibility can accommodate the liberal, individualist condition on liability for corporate agency, we will consider two general types of corporate agency in Part III.[176] The *supervenience* view recognizes corporate intentionality and agency to be the product of the intentionality and agency of individual persons, but it insists on the irreducibility of certain group-level intentions and actions. It may be possible on this view to argue that the group has certain normative properties that are importantly distinct from those of the persons in the group. Individuals are an important part of the story, but the group's agency and so responsibility is thought to supervene on the individuals.

In contrast, an *emergence* view (or one sort of emergence view) holds that groups can have minds of their own. Given a certain externalism about mental states together with a view about distributed cognition across group membership, Alexander Wendt argues that the state exhibits intentionality of the kind that is sufficient for 'person' status. This view is stronger than the supervenience view in that it grants a sort of independent ontological status to the state, rather that just insisting on an irreducible collective remainder.

Another variant of the emergence view, which we can distinguish as the *institutionalist emergence* account, argues that certain coordinated groups exhibit agency through their internal structures. According to this sort of position, the hierarchical organization and internal decision mechanism within a group can play an essential role in collectivizing (or corporatizing) individual intentions into a corporate intention. This sort of view shares aspects in common with

[176] I here follow Alexander Wendt's treatment of these distinctions in *Social Theory of International Politics* (New York: Cambridge, 1999), 215-221; and "The State as Person in International Theory," in *Review of International Studies*, Vol. 30, No. 2 (Apr. 2004), 289-316.

the two views mentioned above, but the emphasis here is on the group's institutional structure, or its systemic features, more so than on the input of the individuals, and in fact it is possible on this account for the group to have an intention that is the product of deliberation, although no individual within the group holds this intention or even intends for the group to hold this intention. In such cases it is argued that the group itself must really be the originator of the intention, as it is clearly not the intention of any of the members.

What all of these views share in common is the denial of a *reductive individualism* about group agency and intentionality. Versions of reductionism fit most readily with the sort of liberal individualism that has been guiding our discussion here, as well as with a general commitment to materialism, but reductionism has its critics and detractors and the anti-reductionist alternatives have considerable support. If some such anti-reductionist view can be shown to do an adequate job addressing issues of state action for normative purposes, then we will have a suitable basis for adherence to the state actor model in normative IR. In this chapter we will look specifically at the supervenience approach to group agency that is developed by Margaret Gilbert. A 'strong' emergentist approach arguing for full (real) state personhood will be considered in Chapter 2, and the institutionalist emergentist approach will be evaluated in Chapter 3.

§2 – PLURAL SUBJECTS

Margaret Gilbert does not set out to argue that the state is specifically the sort of corporate agent that acts intentionally and can bear responsibility, but her view focuses on closely related issues and it is well developed and well received. This makes her view a good candidate to orient the discussion of supervenient state agency here. Additionally, of the views we will look at as candidates for group-based or corporate responsibility, Gilbert's view would make the most direct case for collective liability in the state. As we will see in the following

chapters, emergentist accounts of corporate personhood or agency do not necessarily require any particular interrelations between all parts of a whole for there to be an effect from the whole. In contrast, Gilbert's view of group-based agency is rooted in the interrelations between individuals, which allows it to respond most directly to the central concern of this project.

Gilbert's *plural subject* view of group-agency was first developed in *On Social Facts*[177] and her work that most directly relates to the issue of state agency is *A Theory of Political Obligation*.[178] Gilbert is primarily concerned with offering an account of the obligation to uphold society's institutions, follow the laws, and obey the government, but her arguments can also be related to the assignment of responsibility for the results of the actions of one's society that result from those institutions. This is due, in large part, to the fact that Gilbert's view is based on the idea of a *joint commitment* and the attending normative implications of such a commitment.[179] In short, if Gilbert is correct about political obligations within the state then this might imply the acceptability of state-based retrospective responsibility in its many forms, and so the shared citizen liability that results. It appears to be imbedded within the very idea of a commitment that one may stand liable for the consequences of that commitment (other things being equal). To determine whether this view is convincing with respect to the state we will have to look at its specifics in more detail below.

Before we can evaluate Gilbert's view, we will need to be clear about her terminology and her argument. The central operative concepts in her view, at least for our purposes here, are *plural subject*, *joint commitment*, *social group*, and *obligation*. The notion of a 'plural subject' is at the center of Gilbert's position. A plural subject is the subject of a claim about a group believing or doing something. When claims are made about what 'we' will do, or when

[177] Gilbert, *On Social Facts* (New York: Routledge, 1989), especially 408-445.
[178] Gilbert, *A Theory of Political Obligation* (New York: Clarendon, 2006).
[179] In this respect, Gilbert's view shares features in common with Sepinwall's view discussed in Part II, Chapter 2.

something pertains to 'us', we are often using plural subject language. This language is particularly apt when describing cases of joint action or other coordinated group behavior. If you and I work together to move a couch, then there is an obvious sense in which *we* move the couch. Since we coordinate our efforts and act from the common knowledge that we each intend to move the couch together as long as the other one is willing to help, we constitute a plural subject. It is therefore proper to say, "*We* (intentionally) moved the couch." The intentional action is not ascribed to either of us individually and the intentionality of the plural subject is also not simply the aggregate of the two individual intentions. Due to the conditional nature of the commitment – that I intend to help you only if you intend to help me, and conversely – the intention is not for *me* to move the couch and for *you* to move the couch, it is for *us* to move the couch. Gilbert's position here is probably most clear in cases where the individuals involved cannot physically complete the task of the plural subject. Suppose that we both know that the couch is so large that neither of us can move it alone. In this case, it doesn't make sense to say that I have the intention to move the couch and you also have that same intention. To describe the situation on Gilbert's view, the intentionality that exists between us must be located in the plural subject that we create. *We* intended to move the couch, *we* moved the couch, and thus *we* are responsible for moving the couch.

Gilbert puts the matter in more formal terms thusly:

> For persons A and B and psychological attribute X, A and B form a *plural subject* of X-ing if and only if A and B are jointly committed to X-ing as a body, or, if you like, as a single person.[180]

A plural subject, then, is the product of a *joint commitment* between two or more people.[181] This could also be called a 'shared commitment' but it is important to note that this is

[180] Gilbert, *Living Together* (New York: Rowman & Littlefield, 1996), 348.
[181] See: Gilbert, *On Social Facts*, 18; *Living Together*, 292-296; *A Theory of Political Obligation*, 136-141; 144-146.

not simply a commitment that two or more people happen to have in common (and so share, in some sense). It is a commitment that exists *between* persons – a commitment that is conditional in nature and that depends on the related commitment of the other parties. In this way the commitment may be better ascribed to the plural subject, or the 'we', rather to the individuals, because it is interdependent and it is only *as a body* that they are committed to act or believe. Gilbert also at times refers to a joint commitment as a kind of commitment of the will.[182] So, although it is appropriate to speak of the plural subject as the subject of the commitment, this idea is always anchored in the individuals and their relations. She adds:

> Joint commitments all have the same general form. People may jointly commit to accepting, as a body, a certain goal. They may jointly commit to intending, as a body, to do such-and-such. They may jointly commit to believing, or accepting, as a body, that such-and-such. And so on.[183]

What are the necessary conditions for the existence of a joint commitment? When are such commitments operative? Gilbert answers this question in a couple different ways. In *On Social Facts* she refers to ideas of open expression of willingness to be committed with others, and the fact that this is common knowledge.[184] She also discusses the idea of a 'pool of wills' and says, "One might say that one who expresses quasi-readiness to do A in C in effect *volunteers his will* for a pool of wills to be set up so that in certain circumstances, that pool will be dedicated to a certain end."[185] In *Living Together* Gilbert says, "The existence of a joint commitment is a function of the participant's conception of their situation. Roughly speaking, people become jointly committed by mutually expressing their willingness *to be jointly*

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[182] See, for example: Gilbert, *Political Obligation*, 134.
[183] *Political Obligation*, 136.
[184] *On Social Facts*, 200.
[185] Ibid., 197-198 [her emphasis]. 'Quasi-readiness' is an individual's readiness to do *X* that is conditional on other individuals' readiness to do *X*. Gilbert used the language of 'pooling wills' before she further developed her position on 'joint commitment'. In her later work she talks exclusively of joint commitments, rather than pools of wills.

committed, in conditions of common knowledge."[186] So, at this point in the development of the view, Gilbert's language still seems to suggest that a joint commitment is some kind of *express* commitment between people, although she does at times stress that an explicit agreement is not necessary. The 'expression of willingness' that Gilbert is referring to, then, need not be an overt act of agreement or contract, but from what has been said so far, it does seem like some implicit understanding between the parties or some type of intentionality directed toward a group specific end is at least implicit when a joint commitment is formed.[187]

Comments that Gilbert makes elsewhere help clarify her position. In *A Theory of Political Obligation*, after discussing a hypothetical community of people who are jointly committed to believe that democracy is the best form of government, she says:

> It is worth emphasizing that a joint commitment to believe that such-and-such as a body does not – as I understand it – require the parties to the commitment personally to believe anything. The commitment is, after all, together to constitute, as far as is possible, a single body that believes that such-and-such. None of the individuals in question is that body. It is reasonable, then, to deny that their personal beliefs are in question.[188]

A bit later she says:

> A joint commitment to accept as a body a certain goal will have the very same logic as just described. It does not require the participants to have any particular personal goal. Each is required, rather, to act as the member of a single body with the goal in question. That may involve, to a large extent, acting as if one personally wanted the goal to be achieved by virtue of the activity of each of the members. One's personal goals, however, are not at issue.[189]

From the above we see that, ultimately, Gilbert's conception of a joint commitment is not concerned with the individual's own understanding of her commitment relations. We also see that being jointly committed with others to achieve some goal does not depend on one having

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[186] *Living Together*, 349 [her emphasis].
[187] Gilbert discusses coerced agreements in *Living Together*, pp. 301-303. She argues that coercion does not preclude agreement, and that obligations may still arise out of such coerced agreements, although such obligations may be overridden. In spite of her acceptance of coercion, though, her account therein still requires that the individual who agrees actually agree – that is, exhibit some form of intentionality toward the group-specific end.
[188] *Political Obligation*, 137.
[189] Ibid., 138.

any personal goal that aligns with the goals of the plural subject she is a part of. It appears to be consistent with the above that one could be a party to a joint commitment even if she personally has *zero* beliefs, intentions, or goals that align with the intentions of the plural subject she is a part of. She may be a part of such a commitment, on this view, even if she does not believe herself to be, and even if she believes herself not to be. It is further added that the individual cannot unilaterally rescind such an agreement once a part of it. The commitment is jointly created and must also be jointly dissolved.[190]

This is, admittedly, a unique view of commitment. It will be helpful to see a bit more of what Gilbert has to say about it. We should look in particular at how joint commitments are formed, especially in the least explicit ways. She says:

> First, [the creation of a joint commitment] involves a kind of expressive behaviour [sic] on the part of the would-be parties. In each case, each one's expressive behaviour is an expression of readiness *for joint commitment*: each understands what a joint commitment is, and expresses all that is needed on his or her part to bring such a commitment into being, namely, readiness to be jointly committed.
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> Second, the existence of the relevant expressive behaviour must be common knowledge among the parties. To repeat the rough and informal account of common knowledge presented earlier: if some fact is common knowledge between A and B (or among members of population P, described by reference to some common attribute), that fact is entirely out in the open between (or among) them, and, at some level, all are aware that this is so.[191]

It should be more clear now how this view is supposed to apply to modern political organizations like states, where no explicit commitment is made between members. On Gilbert's account there need not be anything resembling an explicit joint commitment in the state, nor is it necessary that all persons in the state conceive of themselves as engaged in a joint commitment. Instead, we rely on 'expressive behavior' to identify where a joint commitment is had, and we look to see

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[190] Gilbert, *Political Obligation*, 143. Cf. John Searle, *The Social Construction of Reality* (New York: The Free Press, 1995), 31-57.
[191] Gilbert, *Political Obligation*, 138-139.

whether it is commonly believed amongst the members of the group that there is a group commitment. Suppose Clare is a US citizen and she says, "We are at war" when the US is at war, and she refers to 'our laws' when talking about the prevailing legal rules in the US.[192] On Gilbert's account Clare implies that she is a party to a joint commitment that is constitutive of the plural subject 'The United States'. She indicates that she is committed with the rest of the members of this political society to uphold, as one body, the US. As the existence of the plural subject 'The US' is commonly accepted amongst the US population (as well as abroad), and the majority of those people also see themselves as part of the US, the joint commitment in the US is considered common knowledge. Moreover, as mentioned above, this matter does not depend on an individual's agreement with the plural subject's particular beliefs or policies.

> Even the dissenters are considered committed parts of the plural subject.
>
> > One who says in protest against a government action 'Not in my name …' marks the fact that, personally speaking, he strongly prefers that the government not act as they are... Meanwhile the government *is* acting in his name insofar as he is a member of the political society whose government they are, and they are acting in the name of that society.[193]

In this way, Gilbert can offer an account of joint commitment in political societies that responds to what she calls the *no-obligation objection* to actual contract theory. That is, she is interested in developing a view within the social contract tradition that can accommodate concerns about the lack of an actual contract existing between members of modern states. In this work we have all along been concerned with liberalism and, above all else, the connection of individual agency with liability. Gilbert's view is important to consider in this context because she deals directly with such issues. Although her supervenience account is collectivist it does ground itself in facts about individuals. Individual intentionality is important even if it is not in all cases directed at a plural-subject specific end.

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[192] Gilbert includes this as a clarificatory example, *Political Obligation*, 242.
[193] Ibid., 281-282 [her emphasis].

Gilbert's remarks about coercive agreements show what kind and degree of individual intentionality she thinks is required for obligations of joint commitment.

> If actual contract theory construes an agreement as suggested, it can allow that coercive circumstances do not deprive an agreement of its obligating quality. In other words, it will be no part of the theory that political obligations *must* be voluntarily assumed. Rather, they must be assumed intentionally, at some possibly quite low level of awareness.[194]

It seems that the intentionality involved in this "low level of awareness" must be the intentionality that lies behind one's speech patterns and behavior in conformity with state-specific rules. It is true that most people think of their state in terms of 'us' and 'we', but even those that don't may still be said to "express readiness for a joint commitment" through their actions that suggest participation in the plural subject that is the state. For instance, the citizen may follow the laws, use the state's institutions, such as the postal service and the roads, and pay her taxes. All of this behavior might seem to imply that one is a party to the joint commitment that creates the state's plural subjecthood, even if the individual has only really 'signed on' in the thinnest possible sense. Thus, for this reason, one so jointly committed may even deny the existence of such a commitment, if asked, especially if she has a stronger conception of commitment in mind. She may be a part of the commitment, regardless. This understanding of Gilbert's view is supported by her comments at the very end of *A Theory of Political Obligation*. She discusses the question of persons who live within the boundaries of a certain plural subject, but without accepting that they are members. Her example is telling. She imagines an island community where some of the 'residents' are self-styled anarchists who are 'hold-outs' on the joint commitment that exists between the other members of the island to uphold the island's political institutions. She says, "The hold-outs *refuse* to become parties to the joint commitment. Perhaps *each lives reclusively* in a particular part of the island, and *each has explicitly rejected*

[194] Ibid., 234. See also Gilbert, *Living Together*, 303-304.

the residents' invitation to join them in their joint commitment."[195] The question of what follows morally from such a situation is not addressed, but Gilbert's development of the example is informative in itself. By saying, "refuse" and "explicitly rejected," she suggests that avoiding the joint commitment that creates a plural subject out of the majority of the islanders requires explicit disavowal of the commitment, and this may perhaps require that the hold-out make this public knowledge.[196] Moreover, her reference to the hold-outs living reclusively suggests that this kind of strict absence of interaction is also necessary to remain outside the commitment. If the express disavowal of the commitment was sufficient to void it, it is not clear why Gilbert would bother to build reclusiveness into the example at all. Thus, it seems that that if the hold-outs did interact on a social/political/legal level with other members of the community (meaning, for instance, that they abided by certain social norms and in accord with certain institutions that are related to the political joint commitment on the island) then they too would also be jointly committed to the plural subject that is the island community. In other words, a very low level of intentionality and interaction is sufficient for joint commitment on this account. Thus, it seems, Gilbert's view implies that almost everyone will satisfy the conditions of joint commitment in their respective states of residence; though, there may be a handful of hold-outs in any given state (and probably not many more than that, according to these criteria).

What is the substance of this joint commitment in the state? What is it that the citizens commit to? Gilbert thinks it could be a mistake to demand too precise an answer here. But she

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[195] Ibid., 296 [my emphasis].

[196] We can imagine other cases where one might follow local customs and laws and yet certainly not really be part of any joint commitment. A spy from a neighboring community, for example, could have infiltrated the island and blended in with the population, even though she is certainly not a part of the committed plural subject (this example comes from Professor Bill Talbott). One important assumption that seems to be underlying Gilbert's example of the islanders is that they are all *natural* members. The thought might be that when one has grown up in a community and conformed to its ways this seems to go further toward establishing joint commitment than if one is conforming under false pretenses. In order, then, for the natural member to avoid this commitment, it would seem that she must explicitly disavow it or avoid conformist social interaction altogether.

does say, "One fairly minimal candidate with respect to the phrase 'our government' would presumably be something like this: 'we jointly accept that *that body* may make and enforce edicts throughout this territory.'"[197] If she were discussing the state in particular, she might have suggested that a claim from a US citizen like, "The US bombed Iraq," could be replaced with, "*We* bombed Iraq." This would then imply something like, "We jointly accept that the state and its agencies (including the military) act in our name abroad."

Before moving on to an analysis of Gilbert's view, we should touch again briefly on how this is a supervenience account. Recall that intentionality on Gilbert's plural subject view is assigned to the collective – the plural subject itself. It does not follow that any given individual must have any particular intentionality for this to be so. As such, the macro-level intentionality will not reduce cleanly down to the micro-level of individual intentionality because the collective condition can be realized from multiple individual conditions. That is, the reduction is thought to suffer from the problem of *multiple realizability.*[198] The intentional features of the state supervene on the intentional features of the individual citizens, not on any particular intentional states in the citizens. It is not just shorthand or loose talk, then, when we refer to what the US *wants*, *intends*, or *does*. A certain level of agency is attributed to the collective itself, because facts about the individuals as individuals, or even a composite or aggregate of individuals, will not capture the features of the plural subject. It is something more than the persons.

§3 – THE STATE AS PLURAL SUBJECT?

On a positive note, there is some appeal in Gilbert's view to the agency of the individual. It just remains to be seen whether we are given an account that shows the level of agency involved to be normatively relevant. The worry with such a view, from the liberal perspective, is

[197] Gilbert, *Living Together*, 370 [her emphasis].
[198] See: Alexander Wendt, "The State as Person in International Theory," in *Review of International Studies,* Vol. 30, No. 2, p. 299.

obviously going to be whether obligations can arise from such thin agreements, if they can be called 'agreements' or 'commitments' at all. In other words, we might push back on whether Gilbert has actually provided us with an answer to the no-obligation objection leveled against actual contract theory. If it turns out that there is no sufficient sort of joint commitment to appeal to for strong obligations to uphold the state's institutions, then the corollary that one must also stand liable for what the state does loses much of its support.[199]

Gilbert's general 'plural subject view' has been developed in a number of places since she wrote *On Social Facts* in 1989. Yet, it is always built up upon commonsensical examples of small social groups where clear commitments are made and where certain obligations obviously follow. Her tactic for arguing that political societies function similarly is to analogize from the small interpersonal case to the large impersonal case. The problem with this move is that the two kinds of case are markedly dissimilar. Gilbert's stock example of a joint commitment is two people going for a walk together. She offers a very plausible understanding of the joint commitment and plural subjecthood of these two people, and furthermore the account seems to naturally extend to many social groups and joint undertakings. However, to extend the plural subject account to the state (or political societies at all) is to strain the analogy beyond the breaking point. Gilbert's view does incorporate elements that are meant to address the concerns that will be raised, but she does not have a satisfactory response for worries about retrospective responsibility or liability. The problems to be discussed have to do with her conception of 'commitment' and of 'obligation' especially. The way that Gilbert ultimately completes her case for obligations of joint commitment without express consent, implicit consent, or even when there is direct coercion, is to greatly weaken the conditions of 'commitment' and great diminish

[199] I should note here that an argument against the existence of a joint commitment to uphold the state and follow its laws does not logically entail that the state is not justified or legitimate, that the government does not have authority, or that the citizen has no obligation to obey the laws.

the imperative function of the concept of 'obligation'. The result of this, in short, is that her account is too weak to satisfy even strict versions of liability.

Let us first consider the behavioral features of persons that Gilbert appeals to as a sign of joint commitment. Gilbert claims that an individual need not have any particular mental states in order to be a party to a joint commitment, nor does she need to perform any particular action for the purpose of achieving a plural-subject-specific goal.[200] In the state, where there is a lack of express consent to any joint commitment, it seems we would have to appeal to rule-following and institution-sustaining behavior to identify the joint commitment. Gilbert discusses sentimental feelings toward the group and language use as identifiers of joint commitment, but, although common, these characteristics will not extend over the whole population. It is quite probable that some members of the state who adjust to linguistic conventions and interact with others in the community in some ways will still lack a personal feeling of commitment to the state. Nevertheless, the other state-specific institutional behavior exhibited by these members may serve to make the case on Gilbert's view. These behaviors do have the benefit of consisting of intentional actions, and thus agency, which satisfies Gilbert's intentionality condition. The question is whether it satisfies the liberal worry.

Some state-specific institutions may make a better case for joint commitment than others. There are certain commonly accepted ways of living, and certain social institutions, that do appear to only exist because people continue to perpetuate them. Even if all of the participants have their own reasons for upholding the institution, if the institution only exists because people continue them, then perhaps it is appropriate to describe the institution as the product of a sort of joint commitment (even if not explicit). If this were correct, then it would seem that there are certain grounds for considering the participants liable for what happens as a result of that

[200] Gilbert, *Political Obligation*, 137-138.

institution, at least in some cases. A common example used to show the collectively created nature of certain social facts and institutions (their basis in collective intentionality), despite no individual intentions to this effect, is the case of money.[201] A 'money' is a common medium of exchange, but, as the argument goes, the institution of money is a special sort of collective institution for two central reasons. First, money, as an institution, is perpetuated by individuals and the interconnectedness of their economic behavior, but one in which the individuals participating do not individually intend to perpetuate the system. Persons using the money need not have any particular beliefs about the monetary system or any intentions with respect to maintaining it in order for their actions, taken collectively, to create and sustain the institution of money. Secondly, the odd nature of this situation is more obvious if we consider the fact that monetary units around the world today are pieces of paper (largely comprised of cotton and other textiles). The practical value or usefulness of paper money tokens approaches zero. One could stitch them together into a light garment or use them for wallpaper, perhaps, but on their own, as bits of cotton paper, they are almost entirely useless and undesirable. Yet, a US Federal Reserve Note, for instance, trades for goods and services that are highly valued for their own sake (valued for uses other than exchange). That is, this otherwise essentially worthless paper is accepted in exchange for things of 'real value'. It seems that it is only through the collective intentionality or joint commitment of the users of the money that it can serve the function that it does (or that something can *be* money in the first place).[202] To put this point the other way around, we might

[201] One such example is John Searle's discussion of the creation of social facts and institutions through collective intentionality in, *The Construction of Social Reality*, 42-43; 45-51. Searle's view shares much in common with Gilbert's plural subject approach.

[202] Searle, *Social Reality*, 26-27. Searle contrasts 'institutional facts' (a type of social fact) with 'brute facts', which depend on the physical and biological qualities of a thing. Social facts have a basis in human thought and action, and so they are synthetic in a way that other facts are not. Consider, for instance, the fact that I cannot put my hand through the table. This fact results from the qualities inherent to the table and my hand, not to anything that humans believe. Contrast this with the fact that one is required by law to obtain a driver's license to drive legally in the US. Searle (and Gilbert) would argue that this latter fact is a social construction generated through collective

say that, were the participants in the economy to one day stop accepting those bits of paper in exchange for goods and services, for whatever reason, then the paper would cease to be *money* any longer. Spontaneous exchange such as barter of goods can take place without a long-term, institutional commitment, but paper can only function as a common medium of exchange if a group of people commit to using it as such. Since it is not the individuals' intention (as individuals) to maintain this monetary system, the ascription of intentionality in this case must be assigned to the collective itself. Using Gilbert's terminology, it could be said that there is a joint commitment between the persons who exchange Federal Reserve Notes. The joint commitment is to accept, as a body, that Federal Reserve Notes will be treated as money. If you asked a given US citizen whether some samples of that paper were representative of the money she uses, she would likely attest, "Yes, *we* us that kind of money in the US."

The existence and maintenance of the state looks similar in certain regards to the case of money. There may be many individuals in the state who do not intend to be a part of the state and perpetuate it as an institution, but these people nevertheless contribute to its maintenance through their intentional behavior. We might make the same sort of counterfactual claims about the state that were made about money above. If all members of the US were to simply discard their belief in the authority of the US government and all other state agencies, disobey the laws, cease all mention of the 'we' that was once thought to signify a plural subject, stop paying their taxes, and otherwise change all behavior that supports the state structure, then the US as a state would cease to exist. For a social structure to function as a state there must be many social facts in place, not just basic physical facts. That is, mental representations and institutionally organized interpersonal behaviors are necessary for the existence and function of something like

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intentionality or joint commitment. It is a social fact, and only a fact at all because people believe it to be so and adjust their behavior accordingly.

a state, whereas such social facts are not necessary for the existence of something like a stone.[203] The point here from the defenders of supervenient state agency is that there is a significant degree of collective intentionality that accounts for the continued existence of the state. This fact could justify the state-actor model in normative IR, as well as its practical consequences, but there are problems to be considered below.

The central problem with this approach to establishing that institutions like money or the state are the product of a normatively relevant joint commitment or collective intentionality is that the intentionality involved is quite indirect. That is, the intentionality of individual agents lacks the joint project as its object, which greatly diminishes the normative import of involvement with the collective result. We should add to this the fact that the intentionality that is exhibited by most individuals is the direct or indirect product of coercion. Rather than freely participating in some social institution, these social institutions are imposed on people through more than simply social pressure. Serious consequences await the individual who does not conform to these institutions.

§3.1 – A Monetary Interlude

Let us look at money first, as it serves as a useful example case. It is common to think of the paper money systems as a good example of the sort of collective intentionality at issue here. To make it normatively relevant, we could imagine that the use of a particular material in the money caused some harm to persons elsewhere in the world. We could simply posit some mysterious causal connection to build our case, but, if we need a stronger anchor in reality,

[203] One could argue (and some do) that it is a social fact as well whether or not something is a 'stone' (or anything for that matter). In a sense this is true, of course. We are describing these circumstances using language and language must be a social institution. To correctly apply to term 'stone' to an object requires a collective standard from which to judge (at least if Wittgenstein and others are correct). However, the case of the stone is still distinct enough from the state to demonstrate the intended point. The stone (that individuated small piece of rock that is not bonded to other rock) exists where it happens to exist, regardless of what persons think about it, how they refer to it, or how they act in relation to it. A state's existence, on the other hand, depends heavily on what persons think and how they act. Without some intentional behavior of persons there can be no state. See: Searle, *Social Reality*, 27.

imagine that the money in use in the US is made from a type of cotton the cultivation of which poisons the nearby population. We might want to conclude that all persons using this money are complicit in the resulting harm to the inhabitants of the area where the cotton is grown because if it were not for their collective intention to use that material as money, it wouldn't be cultivated and no harm would be done. The individual money users may not be morally responsible for what happened, if she did not know anything about the harm being done, for instance. However, her liability seems to be tied to her free choice to use that money rather than something else. This would be to treat this case much like a case of faultless liability. We can spare the individual blame and punishment, but insofar as her voluntary intentional actions were a part of the cause of some result, she can be justifiably held strictly liable for it.

The above reasoning seems plausible enough, but we need to be careful about what we infer form the existence of a purported joint commitment or collective intention of the kind that is said to ground the institution of money (and, as we will see below, the state as well). Although it is common to believe that paper functions as money only because of something like an unspoken agreement between paper-money users, this is not the case. States today commonly use what we would refer to more precisely as *fiat money*. Rather than a 'natural' (un-designed) social fact that simply emerges through interpersonal interactions, and so perhaps something resembling a collective intention, fiat money is a contrived and directed institution imposed onto society through the state's coercive power. Fiat money exists through decree, the restriction of alternatives, and the threat of penalty. The fact that some individuals have made the use of such money compulsory greatly diminishes the plausibility of a 'joint commitment' or 'collective intentionality' description of the case. We can make certain counterfactual claims about the institution of money that suggest that its existence can be attributed to the workings of the whole

of a society, but, although these counterfactuals convey some information that is useful for some purposes, they do not imply a level of collective intentionality or type of joint commitment that would be relevant to retrospective responsibility. To put this point another way, we can say, "if the citizens stopped using that paper as money, then it would cease to be money," but from this it does not follow that, "the citizens collectively intend for that paper to be money," or that, "the citizens have jointly committed to regard that paper as money." In certain contexts it may be acceptable to say such things. Using plural subject terms to describe the situation, for instance, would not be wholly inappropriate in casual conversation. However, strictly speaking, such a claim cannot support a normative conclusion, as it would be able if the basis of the institution were actually free individual action, unguided from above by another human will. With fiat money there is intentional action and so agency, but this thin agency does not relate to normative judgment about liability for the effects of the institution. This would require that the institutional conditions not be forced onto the individuals who participate in it.

Contrast the fiat money case with a case where such a social system is organic or 'natural' as the word is being used here. For example, there may be a social club, *S*, where it is an unwritten but sacred norm that people wear shoes made out of a material *X* that also causes great harm to the people who live near where *X* is cultivated. No club rules exist that enforce the wearing of such shoes, but everyone in the club believes in the convention and all behave accordingly, even though alternatives are available. It is not just that every individual happens to wear shoes made from *X*; the individuals believe that they should wear such shoes because they identify wearing *X* as partly constitutive of membership in the group. It could be said, then, without qualification: "*S* intends to wear shoes made from *X*," or, "*S* is jointly committed to wear shoes made from *X*." Here all participants clearly make a *choice* to be a party to a collective use

of a certain type of shoe, and so all participants exhibit relevant agency and thereby rightly stand in a liability relation with respect to the damage done.[204] The availability of other options, and the character of the intentionality in the case (the fact that the intentionality is focused directly on the use of shoes made from *X*, and not on achieving some other end or avoiding sanction) implicate the individual in the collective outcome. In contrast, the case of compulsory fiat money involves intentionality that is not related to continuing the paper money system and it is not a choice from among options. The individual does not intend to use *that* particular kind of money, as opposed to some other money option. Rather, the intention is to do what is necessary to engage in market transactions, given the circumstances that the individual finds herself living within, which are partly imposed upon her by law. The individual's will is not represented in the choice of money type, only in the act of using money *in general*, which is itself normatively neutral (given its practical necessity). The fact that a legal decree is the force behind the intention of the users of fiat money (rather than anything having to do with the particularities of any specific paper used) can actually be observed in cases when one fiat money standard is replaced by another after the collapse of the former.[205] The general and necessary money-using behavior doesn't change, just the kind of paper that is used.

We might still worry that in the case of natural money the individual is just responding to some other circumstances outside of her control. For she is, let us say, born into a particular economic order that uses a particular sort of money. A natural money may not be imposed on the economy by fiat, but it might as well be imposed on a given user by fiat. For all practical purposes, she does not really have other money options if an insufficient number of market

[204] We could include details in whatever way was necessary to make this case (e.g. that it is possible to abstain from the convention without serious consequences) the important point is that the intentionality in this case is directed toward the use of shoes of that particular material.

[205] The transition in Germany from the *Papiermark* to the *Reichsmark* in 1924 serves as a good example, as does the transition in Argentina from the *Peso Ley* to the *Peso Argentino* in 1983, *Austral* in 1985, and *New Peso* in 1992.

participants are willing to accept other goods in exchange. Therefore, if she decides to use the prevailing money she does not do so absolutely freely. She is coerced either way, just not by a direct authority in this case.

This worry is well founded, but it can be addressed. We can certainly take into account that there are circumstances outside of this person's awareness and control, when we evaluate her share of the liability for whatever harm is done by the whole. She may, of course, avoid moral responsibility and blame altogether. Nevertheless, her uncoerced involvement in an institution that caused the harm looks to be sufficient to ground her liability if there are other options. And as long as one kind of money is not designated as legal tender and all others precluded from use through force, there are other options. Though the individual money-user acts as she must, given her environment, she still chooses and exhibits normatively relevant agency. Her will is not supplanted by another through fiat even though her choices are naturally limited. This must be kept distinct from cases where the willing of others is the causal origin of her limited choices – that is, where it was someone else's intention to limit options in that way. On one hand there are cases of order resulting essentially spontaneously through the many rationally governed decisions and actions of individuals, and on the other hand there is order that arises from the machinations, design, and intention of a human will or group of wills. The former case leaves the agent fully responsible for what she does (at least insofar as she is answerable for her uncoerced intentional actions), while the latter diminishes the agent's responsibility because it diminishes the share of her (unrestrained) will exhibited in the collective action.

It should be noted here that all human decisions are made under constrained conditions of the sort exhibited in the above example. One's options are always limited by her own physical and mental limitations, the physical order around her, and the actions of other persons. A lack of

naturally found options does not diminish responsibility for one's choices as does the fact that one's own will is supplanted in the action by the will of another.[206]

§3.2 – Collective Intentionality in the State

The case of the state, as an institution that is continued through the collective intentionality of its members, works much the same as the case of fiat money. One does not typically join on as a member of this institution and align with its cause. Membership in the state is not like a choice of social club or shoe style where there is a direct intention to be a part of the collective, or engage in the joint activity. For many state members, the sort of behavior we would have to appeal to in order to try to demonstrate that there is collective intentionality or a joint commitment would be behavior that is either not indicative of a *lasting* joint commitment, not state-specific, or is done for reasons having to do with self-preservation and, quite simply, living one's life. That is, we are forced to appeal to action in general or to the basic life-advancing projects that we must expect from all persons in all states. We see conformance to certain rules and norms but we do not see normatively relevant intention directly related to committing to perform the activities in question *in perpetuity* or *as a part of the state* in question. As with the money case, the state is imposed on people; it is not like a voluntary plural subject where group intentionality and action can be clearly linked with membership and participation. These points are developed further below.

The first point to address is raised by A. John Simmons. Simmons stresses the indeterminate character of conforming behavior and its inability to sufficiently ground political obligations.[207] In general, just because one has indicated that she is committed to following a certain rule or engaging in a certain institution, it does not follow that she is thereby bound to

[206] Thomas Scanlon discusses this issue with respect to moral responsibility in particular. *What We Owe to Each Other* (Cambridge: Harvard, 1998), 278-281.
[207] A. John Simmons, *Justification and Legitimacy*. (Cambridge: New York, 2001), 75-77.

continue to do so, or even just bound to do so until the other members of the relevant social group absolve her of her obligation (as Gilbert's plural subject account requires). One could decide to partake for a time and then abandon that commitment if she wished. To insist that one's conformity in the past, combined with the expectations of others, implies joint commitment of the sort that would give one continuing obligations to the state, is to insist on an overly inclusive and binding conception of joint commitment.

Second, the sort of rule following behavior that would have to be appealed to in order to show collective intentionality or joint commitment (sans explicit commitment and identification with the plural subject) are not actually behaviors that show anything normatively relevant about *state* membership in particular. Many such categories of action are common across state boundaries, and even across all of humanity. For example, on a view like Gilbert's, we might interpret a citizen's law abiding behavior as an "expression of readiness to be jointly committed to uphold the state's legal system," but this analysis of the terms of the commitment must simply posit that it is *this particular state* that is the object of commitment. According to this essentially behaviorist program, behavior in conformance with institutional standards satisfies conditions of commitment to *that* institution. However, due to the general purposiveness of persons, we know that the individual would have exhibited the same essential rule-following behavior, regardless of her state membership. Her intentionality need not be directed toward continuing the legal institutions in the state. She is more likely operating on the more general principle that she will follow most laws at all times, wherever she happens to be. This is a rule that seems to be used by most people. The particular state is not an essential feature of the behavior; it is simply a contingent fact that can be tacked on to a description of human action within the institutional structure of a state. Granted, the laws actually followed are a particular state's laws, because the

person in question lives in one of them. Still, though the behavior conforms to *those* laws, the underlying reason (the spring of agency) for the behavior will not reflect a commitment to *that* state (again, taking for granted the fact that the individual does not identify as a committed member). There may be (and probably is) a more general principle of action that applies to members who do not identify with the state, as well as those that do. From the citizen's perspective, given simple motives for self preservation and personal enjoyment in the long run, the general reason for law-following is to act in ways that will diminish the likelihood of sanctions and other interference from state officials, or perhaps a general lack of desire to inflict hardship on others, regardless of their state membership. The citizen does not act in these general ways because she is an American rather than an Indian or Kenyan. She would act in these rule-following ways regardless of the particular state she finds herself a member of, due to practical necessity if not simply a generally sociable demeanor. The individual simply adjusts her behavior to the rules that are operative where she happens to be because she is a purposive agent with ends – one of which is (for most) to preserve life and strive for her conception of the good. Hence, she must adjust her conduct according to her particular. Her actions, although intentional in the bare sense of being guided by her reasons, are not intentionally related to the group itself in such a way that she would be connected to the agency that we ascribe to *it*. With respect to the state, it is very often a matter of contingency, not agency, that it is *this* state rather than *that* state, in the first place.

Our judgments in these cases depend heavily on how we conceptualize the issue from the outset and there is no pre-theoretical reason to prefer a group-based perspective to an individual-based perspective. We can simply insist that certain behavior is indicative of joint commitment, or that certain social circumstances can be understood well through a plural subject account, but

adopting this perspective should not mislead us into thinking that certain normative inferences can be derived from the chosen group-based perspective. That is, we might want to understand certain social institutions through a sort of joint commitment understanding, and we might have reasons to discuss the group situation in terms of the group's actions, the group's intentions, and the like; however, although these descriptions may be acceptable for some purposes and in some contexts, we should not take this fact to imply that we can use the plural subject as the subject of our normative determinations about the case. Again, just to make this point concrete, even if the plural subject can sometimes justifiably be the agent-subject in certain true propositions, this does not itself entail that the plural subject can then be the agent-subject in related retrospective responsibility judgments. For example, "The US wages aggressive war against Iraq," might be a true claim. Nevertheless, it may be (is) false that "The US is morally responsible for waging aggressive war against Iraq," (where this latter claim could be stated in more individualistic terms as, "The whole population of the US is morally responsible…")

Relatedly, again, the counterfactual claim about the collective (if no rule-following, then no state) is true, but this does not demonstrate the collective normative conclusion. The counterfactual does not even logically imply that a majority of the population thinks that the existence of the state (or the particular government) serves their interest (which, if it was the case, might imply some sort of weak joint commitment from acceptance). David Hume is one of many who have argued that all government ultimately rests on the opinion of the governed.[208] Hume did not put the argument explicitly in the counterfactual form, but the logic is ultimately the same. The idea is that the ruling class is actually quite small in comparison to those who are ruled. Given the citizens' greater number, and therefore power, they could overthrow the

[208] David Hume, "On the First Principles of Government," in *Essays Moral Political and Literary*, 32-36. See also, Ludwig von Mises, Human Action (Chicago: Regnery, 1963), 149-150.

government, and would do so unless a majority of them, at least, considered the existing form of government to be in their interest (or at least that overthrowing it would be less desirable than suffering under it). This is, in other words, a version of the contraposition of the counterfactual. *If there is a state, then there must be a* [*joint commitment*] *between at least a majority of the state's population*. Interestingly, this is not the case.[209]

The powers to be compared when assessing whether one group can overpower another cannot be calculated by simply aggregating the ability of the individuals. With joint action comes the possibility of creating a collective power that is greater than the power of the simple sum of the parts. In other words, individual agents can achieve more through coordination than what is possible through their combined but uncoordinated efforts. Recognition of this fact is central to a great deal of work done in the normative dimensions of collective and corporate action. We should apply it here to the state. In doing so, we should include our understanding of how differences in technological capacity affect capability. In short, more efficient technology enables greater productivity and so capability. Together, these facts tell us that it is possible for a minority to rule a majority, even in the long run, as long as the minority is better coordinated, and even more easily if they are more technologically advanced. These factors do not preclude the possibility that the ruled majority might overthrow the ruling minority, but they do show that a majority may conform to state law even though they do not judge it to be desirable in any strong sense. That is, they show that the original counterfactual does not imply even majority acceptance, due to the possibility that the majority simply acquiesces to a more coordinated and technologically powerful minority. Each individual (or small group of individuals) within the state may judge the current government or even the state structure itself to be an intolerable

[209] I mean to be stating here that consent or commitment does not *logically* follow from the counterfactual claim, if we accept the usual, agent-related notions. I am not claiming that a majority in some state has not consented, or that they would not consent. That is, I am not commenting on any empirical fact of the matter.

condition, and yet she might still judge that open resistance to it is futile because she does not have the power, or the connection with others who jointly have the power, to make meaningful changes. A large majority, in fact, can share this individual belief about the limits of possible reform and yet not undermine the general stability of the state. One could respond that even this acquiescence is an indication of an opinion about the superiority of the current condition to any other that could likely be brought about, but if we make the *omission of open resistance* sufficient for *being in favor of the current political situation* we trivialize the judgment. It seems unlikely that Hume intended to state the logical truth about action that when one does not do *X* she must judge that the value of doing *X* to be lower than the value of doing something else, or that when one does not stop *X* from happening she must value doing something else more than she values stopping *X*. The point seems to be, rather, that a majority of the population must actually endorse the current regime or the state structure, or it would be changed.

The mistake that Hume made was to think of the groups in aggregate terms and to neglect the fact that the general lack of coordination between the populace of the state makes it very difficult to organize in such a way that large-scale changes to state structure can occur.[210] This lack of coordination on behalf of the common public is quite the opposite of the coordination that is possible through the institutions of the state. This fact may have been easier to overlook in Hume's time, given the smaller gap between the technological capability of rulers and of the ruled during the time of his writing. With the limitations of rather rudimentary weapons of war, comes the possibility of overrunning your opponent through sheer persistence if one group has numbers of its side. However, the divide between the war-making power of the citizenry and that of modern state officials is now extremely large indeed. When we consider as well the increasing

[210] History provides examples of this happening, of course, but this list has been compiled over a very long time and does not weaken the conclusion that social revolution is quite difficult to coordinate and sustain.

militarization of police forces around the world, we should recognize the implausibility of the claim that government must rest on majority opinion because the greater power of the ruled always gives the potential for regime change. The hierarchical authority structure in the state between persons who have all elected to take on their respective positions and perform them professionally, enables highly organized action on a scale much greater than the common citizens can generate. And this points to yet a further imbalance between state agents and the general population. The agents of the state are professionals, and so coordinate through their jobs, whereas the masses have to maintain their livelihood through other employment and can only create a resistance force to the state agents during their time away from work. These general details of what is an enormously complex subject serve to show that the counterfactual about general rule-following in the state actually tells us very little about the opinions of the masses, their joint commitments, and the normative implications of state action. The mere existence of stable government or state institutions does not logically imply even majority acceptance of the state or the current government.

Much depends here on how we understand the intentionality involved in the cases provided. From a liberal position on commitment and obligation, Gilbert's intentionality condition seems far too weak to create a normatively relevant collective judgment. There can be important difference between at least three categories of intentional collective behavior that we could label, *aggregate*, *joint*, and *authoritative*.[211] These can be represented as:

(1) *A* intends to *x*. *B* intends to *x*. *C* intends to *x*. So, *ABC* does *X*.
(2) *A* intends that *ABC* do *X*, *B* intends that *ABC* do *X*, and *C* intends that *ABC* do *X*.
(3) *A* intends that *ABC* do *X* and instills the intention to *x* in *A* and *B* through coercion, *B* intends to *x* in order to avoid sanction, and *C* intends to *x* in order to avoid sanction.

[211] Even more fine-grained distinctions could be drawn, but for our purposes here this three-part categorization will suffice to illustrate the important variances in intentionality.

In (1) *A*, *B*, and *C* perform the action *x* intentionally but not through coordination or any collective intention to achieve the group result, *X*. The *X* result does occur, but it is simply the aggregate product of the freely chosen individual actions of *A*, *B*, and *C*. Such a case does not preclude that the operative intentions of *A*, *B*, and *C* take into account what the other members of the group are likely to do. It is just that there is no coordination between them. The example above of natural money takes this form, as would a case where three strangers go to a public swimming pool. We could say, "*They* swam in the pool." Each member of the set of people in question swam in the pool (*x*), and together they all swam in the pool (*X*). In (2) *A*, *B*, and *C* are jointly committed to achieve the group-relative result, *X*. Each member may make her own small contribution, but the intention is for the group to achieve a certain result *together*. If *A*, *B*, and *C* coordinate to pain a house together this would be an example of (2).[212] *A* may paint the north and east side, *B* the south and west side, and *C* the windows and trim. As a group *they* paint the house. Examples of (3) may resemble examples of (2), but in (3) we have only some members of the group intending to achieve the group-level result. The other members of the group do contribute to the larger result, but their intentions are narrow. They wish to avoid sanction; they do not have any concern for the group-specific end. This shift in intentionality is normatively important. The hierarchical and authoritative structure of the group in (3) affects our analysis of the collective intentions. Although under one description we can say that *A*, *B*, and *C* intend to *x*, it would be a mistake to claim that *A*, *B*, and *C* intend to *X*. That is, in (3), although each individual intends to *x* in a thin sense, they do not intend to complete the group project *X*, nor do they even freely choose to *x* and so freely create the aggregate result *X*. The sort of intentionality exhibited in (3) does not relate *B* and *C* to outcome responsibility for *X*, as their wills were

[212] This example is a well-known example from Michael Bratman, *Faces of Intention* (1999).

supplanted by *A*'s will.[213] To interpret a case like (3) in plural subject terms, based only on the fact that B and C exhibit conforming behavior and act intentionally in a thin sense toward action x, is to simply insist on a particular interpretation that does not easily fit the facts. It is to force a model onto the case and then extract 'commitment' from the general form of that model, rather than from the particular agential relations in the actual case. It is also to read off commitment from what is otherwise regarded as coercion.

Of course, Gilbert makes room in her view for coercive agreements to still suffice to create joint commitments that obligate.[214] However, in order to make this work she must weaken her conception of 'agreement' and 'obligation' past the point that they can plausibly generate a liability relation, though they may still perhaps suffice for Gilbert's conclusion.[215] We have already seen how an 'agreement' or 'commitment', on Gilbert's view, can be made implicitly, and through simply acting in accordance with rule-following, rule-like, or patterned behavior under conditions of common knowledge (or a general understanding and expectation). This understanding of what a commitment amounts to may not be entirely normatively empty – that is, such commitments (if we call them that) may generate reasons for action – but it does not even approximate the sort of connection with other persons or a group that would be sufficient to imply that one can stand morally or legally liable, vicariously, for actions of other group members. With respect to those individuals who do not self-identify as jointly committed with the state, the conditions satisfied that purportedly demonstrate joint commitment to the state are

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[213] On the affect of coercion and duress on (attributable) responsibility see: Scanlon, *What We Owe*, 279.
[214] Gilbert, *Political Obligation*, 234; *Living Together*, 301-302.
[215] Again, it was not Gilbert's intention to address the issue of primary importance in this project. She simply intends to offer an account of political obligation in her later work. She may succeed in that project under certain understandings of 'agreement' and 'obligation'. My argument here is simply that, although her view may strike us as a prime candidate for making sense of how the state may exist as a sort of supervenient agent, it cannot satisfy the conditions for state liability.

identical in form to conditions that would satisfy joint commitment to many other social groupings that no one would argue are liability transferring (e.g. the entire world community).

Many kinds of explicit joint commitment carry with them obvious moral obligations and also obvious liability generating relations. Of course, in the state this sort of explicit commitment does not exist, which is why Gilbert's view seems like a promising attempt to ground liability, but her weakening of the conditions for commitment coincide with a weakening of her conception of obligation. That is, to balance the view between its permissive account of how one enters into plural subjects and what being a part of a plural subject normatively entails, Gilbert had to remove much of the reason-giving, prescriptive force of 'obligation'. Rather than a moral reason to act – one that is generally quite weighty and rarely defeasible – Gilbert has a more general sort of 'obligation' in mind. She often refers to having an obligation as "having a sufficient reason to act,"[216] but this needs clarification. We should not interpret Gilbert to mean that such an obligation decides the issue of how one should act, but it does always imply *some* reason for action, which Gilbert refers to as 'sufficient'. She says, "If I am obligated to do something I am rationally required to do it, all else being equal. Equivalent in my terms, one has sufficient reason to do it."[217] From just the above we may still have the impression that she is referring to imperative, *moral* reasons, but she immediately goes on to say, "That I have an obligation to do something in a given situation, does not close the question of what reason requires me to do."[218] It seems, then, that a lot of details about one's obligations depend on whether *all else is equal*, and a great deal can be built into that clause. Gilbert wishes to distinguish the obligations of joint commitment from moral obligations and as such allow for the possibility that one can have obligations to her political community and its government, even if

[216] Gilbert, *Political Obligation*, 27-34,
[217] Ibid., 34.
[218] Ibid., 34-35. See also, *Living Together*, 296-300.

that government is quite despotic and oppressive. If the ruler(s) has "standing" as an authority within the plural subject (the jointly committed group) and there is a general expectation of compliance with her edicts (conditions of common knowledge), then members are obligated to abide by her edicts, *all else being equal*.[219] That is, members have a sufficient reason to act in accord with those edicts, unless they are defeated through some other "all things considered" moral judgment.[220] This might be the case, for example, if the ruler orders a member of the group to commit some act that is itself immoral, such as murder. Gilbert can hold, simultaneously, that this order from an official with standing authority obligates one to act accordingly, although one should not follow this particular order (one is not obligated?) because of the weightier *moral* obligation to refrain from wrongful killing. The moral obligation to refrain from murder does not cancel the obligation to obey the order; it merely outweighs it or overrides it, though it leaves it in place.[221] So, it is on this broad conception of obligation that Gilbert is able to develop of view that implies that many people in the actual world have actual political obligations, even if they live under political conditions far removed from representative republicanism or democracy. Further, even if a person explicitly rejects the authority of the state she will nevertheless be obligated to follow its laws and support its institutions as long as she continues living there, interacting with its other members, and conforming to some of its norms and institutions. This is Gilbert's way around the no-obligation objection, as she calls it.

As we can see, although we are technically given an account of political obligations, it is not the sort of account that could justify state liability. It is perfectly consistent for members of

[219] Gilbert, *Political Obligation*, 103-104, 245-248.
[220] Ibid., 257.
[221] In this respect Gilbert's view is somewhat different from even other theorists who accept a version of an implicit consent account of associative obligations. Thomas Scanlon, for example, suggests that obligations can be derived from "the voluntary creation of mutual expectation" but he seems to suggest that when these obligations conflict with moral obligations, or the rights of others, we are "released" of our non-moral obligation, rather than it remaining operative but being overridden. "Liberty, Contract, and Contribution," in *Readings in Social and Political Philosophy*. (New York: Oxford, 1996), 260-262.

political communities to have the sort of political obligations that Gilbert's develops without it being the case that the actions of state officials transmit liability to the population of the state. If obligations of the sort described were to imply liability, this would have the counterintuitive consequence that citizens of despotic states are also liable for the actions of their state officials and agencies. This would prove too much.[222] From the liberal vantage point it cannot be the case that a despot can legitimately bind a dominated population to responsibility or liability for what is entirely beyond their consent and control. We can extract a lesson from this. The authority or the legitimacy of the state (or of the government in power) is a separable issue from whether citizens are liable for the actions of their state officials. If Gilbert is right, then most governments in the world have 'authority' (at least in a minimal sense) and most citizens in the world have corresponding obligations (at least in a minimal sense) to obey that authority. Regardless, establishing this fact, if it has been established, is not sufficient for establishing the further conclusion about collective liability in the state. And, of course, it was never Gilbert's intention to reach this further conclusion, even though discussions of obligations toward a group often morally relate to backward looking responsibility ascribed to the group.

§4 - CONCLUSION

What further implications does the above discussion have for supervenience theories in general? Without surveying the numerous alternative supervenience views of state agency that might be offered, we may still be able to draw some conclusions from what has been discussed thus far. A supervenience view, of whatever sort, will be grounded in the agency of the

[222] The conclusion here conflicts with current international law. A non-representative government can take a loan on the state's behalf, for example, and the state as a whole is considered legally liable for that debt. The argument thus far calls this state of affairs into question. A government may have some standing as a political authority in a jurisdiction without thereby incurring the right to act as a contracting agent for the whole collective. Whether sufficient conditions are met will depend on the specifics of the case, but it should be noted here that weak sorts of political authority cannot, on their own, suffice to create vicarious responsibility or liability.

individuals that comprise the collective. It will be argued that the collection of individual beliefs, actions, intentions, and so forth come together to create some social reality that is greater than, or distinct from, the sum of its parts. Insofar as this is the case, these views will always confront issues at the individual level. In practice they will effectively absorb under their judgment individuals that do not display characteristics sufficient to plausibly establish willful engagement and alliance with the group and its causes, or other facts at the individual level capable of grounding even vicarious or strict liability. A summary of this point my be: though these views give us an interpretation of group action and obligation that is intelligible, its focus on the group-level comes at the expense of an analysis of the individual persons involved, which is vital for proper ascriptions of responsibility.

Of course, it is an explicit commitment of these views that there is a collective or corporate entity that intends and acts in ways that *are not reducible* to the actions and intentions of individuals. However, even if we grant that this is true in some sense it will still not necessarily suffice to show responsibility or liability for the whole. As an example, consider the analysis of some state action that might be described in plural subject terms (or other terms of supervenience). One might say, "The US invaded Iraq in 2003." This claim might be true, and it might imply irreducible plural subjecthood, which could imply responsibility for the plural subject, but this all depends heavily on the referent of 'we'.[223] No complaint is necessary here if the judgment is that the corporately organized collective of persons who decided upon and carried out that war is the 'we' (that is, the subset of the US population that exerted agency with respect to achieving the end of invading Iraq, as well as other persons in other states who aided that effort). There was certainly a sense of joint commitment between the members of the

[223] I do not mean to be accepting irreducible plural subjecthood here. I mean to be arguing that the possibility of a plural subject approach to a given case does not suffice to demonstrate that the plural subject is responsible or liable.

military and other state officials who worked together to achieve the objectives of US foreign policy as designated by government officials. The conditions for plural subjecthood appear to be easily met among this group. Yet, we should not think that this warrants the inference that the entire body of US citizens is the plural subject that stands responsible. At the very least, something more would have to be added to show this further result. The cautionary tale here is that plural subject descriptions (or supervenience descriptions) of these cases can be misleading when used for certain purposes. We say that 'The US' invaded Iraq, and we say we can describe this in plural subject terms. In reality *some* of the US invaded Iraq, and our plural subject terms should refer to that set unless we have some further considerations to offer as to why other persons who did not partake are also responsible.

To further illustrate the potential disconnect between inclusion in a plural subject and retrospective responsibility, consider a case where a member, *A*, of a group of bank robbers, *G*, is coerced into helping the robbery through threats to her children. We might accept a description of the event in plural subject terms. It is true that, "*G* robbed the bank." It does not thereby follow that the whole group is accountable for that robbery. Member *A* was participating against her will. Her relationship to the outcome is different from the other members of *G*. And here at least *A* was acting and *did* something. When one says, "The US invaded Iraq," it is often taken to mean that representatives of the whole did so, and so the whole is responsible. But in this case very many members of the whole performed no actions in support of that project. When using plural subject terms we must be careful when choosing our referents, and when establishing a supervenience view in general we must be careful to identify in a given case which parts of the whole are relevant to a given supervenient property. As an analogical instance, consider that we might agree that mental states supervene on brain states, but this does not mean that a particular

mental state is the product of the whole brain, or that the whole brain is in some sense responsible for that mental state. Though we may not be able to identify exactly which brain states created the mental state, we know that some subset of them did. The case with the state is similar. A given state action is the product of some subset of individuals in the state. As this is always the case, even when we see what looks like regularity of behavior on behalf of the state – that is, similar state-based actions (e.g. espionage) – it is still always the case that some individuals, and their volition, is the root of that state action. Insofar as the relevant set of individuals changes with respect to the state action in question, our normative analyses of such cases need to take this into account. A mere formal or conceptual connection between the actors and the citizenry is not enough to demonstrate a properly retrospective normative link.

A further reason to be wary of a supervenience approach to state action, at least insofar as normative analysis is concerned, is that the state is an involuntary, hierarchical, and stratified organization. Rather than the sort of grouping from which outcomes flow from the free actions of all individuals, the state acts through the policies initiatives of (some of) its members and the delegation of responsibility downward along lines of power and authority. There may be a sense in which the state cannot exist if enough people in it decide to rebel, but this possibility combined with its failure to be realized does not show that the state is somehow the product of the all the individual actions and intentions of the members. Even when we see much conforming behavior we should take into account the fact that in many cases sanctions await those who do not comply. As case (3) above is meant to show, a group result can often be the intention of some subset of the group and then inculcated in others through coercion. In such a case certain forms of responsibility are not correctly ascribed to the group. Perhaps the case still involves the *causal* responsibility of the group, as in the bank robbery example, where *A* was also causally

relevant to the robbery, but moral and legal responsibility could still be inappropriate when assigned to the whole. With respect to the state, when we take into account members who did not act so as to contribute to the result ascribed to the group, and did not elect to join the group in the first place, the referent of our plural subject language for determinations of retrospective responsibility and liability must not be the whole. Our preference conceptualizing these large groups as single wholes notwithstanding, we introduce inaccuracy into our analysis when we stretch the usefulness of a supervenience approach to the realm of normative judgment.

Part III: Corporate Responsibility
Chapter 2: State Personhood

§1 – INTRODUCTION

Although supervenience views of group agency, as discussed in the last chapter, would potentially enable a top-down normative judgment from group to individuals, they are still centrally and directly connected to the actions and intentions of individual members of the group. In this respect there is still an obvious collective aspect to the account. With respect to Margaret Gilbert's position in particular, the foundation of the state's 'subjecthood' or 'self' is a joint commitment between all members. In contrast, emergence views are more heavily focused on the *structure* of the group, though individual members do not drop entirely out of focus. No serious attempt to theorize about state action completely removes all connection to individual persons. The emergentist approach just does more to avoid referencing the particular properties of individuals. To explain the system it is sufficient to appeal to general features of its parts and their structural arrangement, possibly without reference to any specific individual part or individual person. We might analogize here with a combustion engine to make this idea clear. For the engine to run it requires a number of essential pieces including a combustion chamber, piston, air/fuel mixture, injection system, ignition system, and an exhaust system. We can refer to the general types of interconnected systems and pieces and explain how they function together to create an effect that none of them are able to create alone. Once we understand the engine's general functioning, though, we no longer have to refer to the pieces it contains for descriptions of usual operations. And even when we are referring to a particular engine, we need not refer to its particular pieces to describe the normal functioning of the specific system we are observing. When the engine runs we know that the necessary systems must be in place and functioning at

least well enough to enable combustion. The state system resembles an engine in certain ways, and the analogical point here is that state psychology and action may work somewhat like the engine. It may be appropriate to explain what *it* does and what *it* is responsible for, given that we understand how its parts fit together to enable *it* to be the sort of thing that *it* is.

The general emergentist idea would be that the structure of the system takes all of the various micro-level inputs and generates a macro-level, systemic output. The structure is rather like a function in this respect. In certain social groups a set of institutions exists and when all other individual contingent factors combine, through processes shaped by those institutions, the whole group can exhibit its own form of agency and intentionality that is understood to take place at the macro-level. Thus, the whole can take on a sort of identity of its own as well, as the referent of the agency of the group must identify the group itself as the relevant entity. In other words, the emergentist approach can be used to support the real existence of a purposeful corporate entity that is independent of its members, and so possibly a unique *moral* agent. These groups are potentially moral and legal persons that can exhibit *corporate* agency, and so bear *corporate* responsibility. This corporate responsibility can even fall on the strong end of the spectrum, where we attribute literal intentional action to the group and so ascribe moral responsibility for that action to the group (whatever the moral character of the action). This strong (attributable) responsibility could coexist with the personal responsibility of individual members of the group for their particular roles in the group action, and it might also justifiably transmit *liability* to all group members. This would mean that, though the group itself is (attributable) responsible for *X*, and so morally blameworthy if certain other conditions obtain, the members of the group who do not bear personal (attributable or moral) responsibility may still be held liable for certain normative consequences. The distribution of different levels of

responsibility across the entire population would be justified by the fact that the group's intentionality and agency is the product of the workings of the whole system. Some members of the group may not take active steps to contribute to group action, but they are still a part of the complex causal process from which the group, as an entity itself, emerges. Thus, although those members are not fully morally responsible, they can still rightly be held liable.

If we apply this general understanding of the emergentist position to the state, we can easily see how the account will develop. The legal institutions of the state, together with its cultural features, economic structure, political structure, *et cetera*, channel the micro-level inputs of individual persons into an eventual macro-level output that is the state's intentional action, done for the state's reasons, according to the state's beliefs and desires. These properties are decidedly *not* the properties of the persons within the state, so it seems to be an implication of this that the state is an ontologically unique thing with the potential for its own sort of rationality. Given its existence, its psychology, and its agency, the state then would seem to qualify as a moral agent and so bear responsibility, both prospectively and retrospectively. The individual persons in the state may properly share in the consequences of the state's responsibility because they are all interlocking parts of a system where they create the state's reality *together*. Again, according to emergentist normative thinking, although a given individual may not be personally morally responsible for some action of the state, this does not preclude her from a share of the *corporate liability* for what the state does.

Notice that the above analysis of the system acting through the interactions of all its parts, and thereby connecting those parts structurally to the final result, relies on less demanding conditions than an analysis of the state as a joint enterprise, as in the discussion in Part II, Chapter 1. In that earlier discussion we were considering the systemic structure of the state from

the individual's side of the equation. We were using a bottom-up approach and considering whether from the starting point of each individual we could make the case that all were engaged in a sort of joint enterprise that is the state. In order to establish this result it would need to be the case that all individuals had certain mental states and exhibited certain physical behavior in order to demonstrate some sort of identifiable agreement between them that creates the joint enterprise. The lack of unified individual purpose toward some sort of shared goal and the lack of shared identification across all members of the state cuts directly against that sort of perspective. However, the emergentist account of the state need not rely on such factors and so is not vulnerable to the same objections that were raised before. On the emergentist analysis of state action it is only necessary that the system has the various inputs that generate rationally patterned and intentional outputs. What those inputs think they are doing or what they would prefer to be doing is not relevant. Whether the individual wants to be part of the system or not, she lives as a causal factor and input to the system.

Recall that both the supervenience view and the emergentist views are anti-reductionist, or holist. The emergence view denies that you can fully explain the agency of the state through an account of the agency of its members. More specifically, when we speak of the state's beliefs, intentions, interests, desires, actions, and responsibilities these properties assign to *it*, and cannot be fully translatable into claims about the properties of its members. This is not to say that nothing about the whole can be explained in terms of the parts, but it is to say that there are elements of the whole that cannot be totally explained just by appeal to the parts. On this account, although the state is an independent thing, and although it is not reducible to its members, there is a reciprocal relationship between the state's structure and the state's members. In intentional systems we can say that the individual agents in part create and maintain the larger

intentional structure, and that the structure plays a role in creating (or forming) the individual agents. For social factors this point is often put in terms of 'culture'. The society's culture is the product of the actions of the individual persons within it and those actions occur as the product of individual's beliefs, desires, values, actions, and intentions. But it is also the case that the culture plays an influential role in the development of those beliefs, desires, values, actions, and intentions in the individual persons. For the state, the reciprocal agency account and cultural account are complimentary. The state's culture, institutional structure, and agency is a product of the physical and mental properties of the individual persons, or expressions of their agency, and the individual persons are formed in part through influence from the state's culture, its internal structure, and its agency. So there is some form of micro-to-macro and also macro-to-micro causation occurring. The macro-to-micro causal element of this account arguably works against the possibility of a reduction of these societal facts down to the level of the actions and psychology of individual persons. It is argued that we cannot fully explain the society-level facts through mention of only the physical and mental properties of the persons. In effect, we have to discuss the whole if we are going to understand the parts, just as we have to discuss the parts if we are to understand the whole.

Below we will look at a strong view of state personhood from Wendt that attempts to show that the state is a *real* person, perhaps on a par with human persons, and certainly in distinction from 'fictional', 'legal', 'juristic', or 'as-if' persons. If the state were such a person then the state-actor model would again seem wholly appropriate, in both scientific and normative IR. To see if that is the case, we will have to say a bit about Wendt's terminology, his argument, and his overall position. We will also have to discuss what a 'real' person is or what its essential properties are, and in what ways the state exemplifies those properties. In the following chapter

we will evaluate a somewhat more modest proposal that the state is just a rational and intentional corporate agent that might be responsible.

§2 – STATE PERSONHOOD

Wendt's referent of 'state' is, "an organizational actor embedded in an institutional-legal order that constitutes it with sovereignty and a monopoly on the legitimate use of organized violence over a society in a territory."[224] Wendt's "essential state"[225] is distinguished from the society that lives within its boundaries by the fact that he claims the state exclusively controls organized violence *over* the society. In this respect, the referent of 'state' for Wendt overlaps significantly with the referent of 'government', but Wendt doesn't wish to refer to any particular set of individuals with governing powers, nor even to just the institution of law-makers and enforcers. 'State' is distinct from 'society' here, but it still encompasses the large and complex systems of authority relations and institutions that organize modern states, and it is still recognized that the society that lives within the state influences the state's behavior. He says, "State actors are constituted by state structures with political authority over societies, and as such conceptually presuppose their societies…we cannot understand the behavior of these actors without considering their internal relation to society."[226] To the extent that Wendt includes the society in his analysis of the state, his definition is not drastically different from the term as used throughout this project, but we should keep in mind that our referents are somewhat different and although Wendt's view will be treated as a potential justification for using the state-actor model for normative purposes, this critique of Wendt's arguments may not always apply directly to the conclusions he reaches with respect to the state as a person in *scientific* IR. Again, Wendt's view was not designed to address the issue of normative state judgments, but it will still be quite

[224] Wendt, *Social Theory of International Politics* (New York: Cambridge, 1999), 213.
[225] A general description of what states share in common. A "core" concept of the state. Ibid., 198.
[226] Ibid., 209.

useful as a springboard for the discussion of state *moral* personhood, as much of Wendt's reasoning is common amongst other defenders of state liability and he references essential threads of the philosophical debates surrounding the normative issues.

In arguing that states are persons, Wendt sees himself as both following in a long tradition in IR of treating states as persons, but also as arguing against the current majority of scholars in IR who, though they find talk of state personhood intelligible, take a sort of 'fictionalist' stance about the reality of the thing itself. That is to say, strictly speaking, these writers will deny the existence of the state, as such, and adopt some sort of ontological reductionism, as apposed to a holism, about states.[227] Wendt intends to show that this is a mistake. In his earlier treatment of this issue, in *Social Theory of International Politics*, Wendt argues against *nominalism*, or the view that the abstract thing 'the state' does not exist. His approach is to argue in favor of a view of state action as the product of collective intentionality of a kind that may not necessarily be consistent with materialism. This may concern us, but in his later treatment of the issue, in "The State as Person in International Theory," he does focus on responding to the materialist worries about his view of state agency, and there is some attempt to bring his position in line with a commitment to materialism.

Two main tactics emerge within Wendt's two discussions of this issue, and that is, first, to argue that a reductionist approach must confront certain difficult objections, and, second, to argue that a convincing account of state personhood can be given. We will have to look at both aspects of his approach, but in this chapter we will focus on Wendt's positive argument in favor of state personhood. His reasons for rejecting reductionism will be looked at more closely at the

[227] Wendt, "The State as Person in International Theory," *Review of International Studies*, Vol. 30, No. 2 (April 2004), 289.

end of the following chapter after we consider whether the state exhibits its own agency, and the matter will be addressed more thoroughly in Part IV, Chapter 1, as well.

A central reason for Wendt's realism is the fact that state-talk is common, intelligible, and actually explanatorily and predictively useful. He says, "The problem for nominalists stems from the fact that despite this dependence of states on individuals, we routinely explain their behavior as the "behavior" of corporate agents, and these explanations *work* in the sense that they enable us to make reliable predictions about individuals."[228] "If state personhood is merely a useful fiction, then why does its attribution work so well in helping us to make sense of world politics?" "This suggest a 'miracle argument' for a realist view of state personhood: as with other unobservables like atoms and preferences, given how well theories based on state personhood work, it would be a miracle if it did not refer to something real."[229] Wendt applies a sort of inference to the best explanation. To explain the patterned behavior we observe within the state structure and the international state system, across wholesale changes in the composition of the particular states, it is reasonable to infer that these state systems are intentional agents. Wendt considers his realism about states to be on solid footing as long as they are shown to be intentional systems, but, as mentioned, he will go even further to argue that states also have additional properties that put them into the 'person' category.[230]

Wendt makes the case for two additional criteria of a more robust personhood for the state, which are: (i) being an *organism* and (ii) being *conscious*.[231] These are typical features of persons and if the state can be shown to share these features then treating it as a person has all

[228] Wendt, *Social Theory*, 216 [his emphasis].
[229] Wendt, "The State as Person," 290.
[230] His position is actually that intentionality is sufficient for at least a 'thin' sort of personhood, but I will treat 'personhood' as distinct from 'intentional system' or 'agent'. Agency will be considered necessary for personhood, but not sufficient.
[231] Wendt, "The State as Person," 306-314.

the more support. 'Organism' is a difficult term to define precisely, but Wendt picks out five features that seem especially important: individuality, organization, homeostasis, autonomy, and genetic reproduction.[232] The state approximates most of these conditions, at least to some degree. It is an individual insofar as it is distinguishable from other states, although its individuality is subject to change in ways much different from organic individuals. The state is also organized, of course, and the parts and whole are interdependent. "The behaviour [sic] of citizens produces and reproduces states over time, and that behaviour is in turn shaped by states. And [citizens and state] are also mutually constitutive. A state only exists in virtue of citizens and their practices (bottom-up constitution), and the identities of those citizens and practices only exist in virtue of the state (top-down)."[233] Wendt mentions as well that citizens have other non-state identities, though, so in this respect the analogy does break down somewhat. Homeostasis consists of creating and perpetuating a boundary between the subject and the rest of the world and a structure to support the maintenance of the boundary. The organism keeps itself together and alive against the tendency toward decay; it strives to preserve itself (we might relate this idea to the historical philosophical discussions of *conatus*). The state certainly seems to mimic this trait of organisms through the maintenance of its borders and its internal structure that moves state members to keep the state 'alive'. Autonomy, as the concept applies to organisms, generally has to do with the ability to direct action partly independently of environment. That is, take in information and direct behavior based on what is relevant. This need not be a cognitive process.

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[232] Ibid., 307-309. Treating the state as an organism as Wendt does here should not be confused with what is often referred to as the *organic theory* of the state; e.g. Hegel's view as given in *Philosophy of Right*. Wendt is not relying on ideas about the state's ontological priority or superior value to the individual, as an 'organic' theory might typically do. Rather, Wendt is just specifying the features of states that justify the analogy between states and organisms. See Hegel, *Philosophy of Right*. Also, compare Jean-Jacques Rousseau's ideas about the similarities of the state to an organism in *Discourse on Political Economy*, (New York: Oxford, 1994), 6-7. For a more contemporary discussion of the organic theory in the Hegelian tradition, see T.D. Weldon, *States and Morals*. (London: John Murray, 1946), 34-45.

[233] Ibid.

It is enough that the organism's behavior changes given certain information relevant to its survival. The state exhibits autonomous behavior of this sort insofar as it takes in information and directs its behavior according to what is deemed pertinent. The genetic reproduction condition is the one that states fail to exhibit, except perhaps in a metaphorical sense, and for this reason Wendt rejects treating the state as an organism, strictly speaking.

Wendt suggests instead that the state is a sort of *superorganism*[234] more analogous to an ant colony or beehive than a single-bodied, individual organism. Superorganisms do not technically genetically reproduce either, but in all other respects they have the characteristics of organisms. There is still the worry about how a superorganism can be an *individual* with an identity, so that it is a person, but Wendt here appeals to the possibility of a sort of Hegelian move, where we identify the state mentally. "The idea here is that it is the participation of individuals in a collective thought process (in this case, in a 'narrative of state'), whose boundaries are instantiated by the practices that produce and reproduce that process, which enables superorganisms to survive."[235]

Wendt is clear that he is only committing himself to the *psychological* personhood of the state, and is taking no issue with its *moral* personhood, but what he has to say in favor of the former does appear to be able to lend support to the latter. If the state has the psychological properties that Wendt suggests (including an identity, beliefs, desires, and a choice mechanism at minimum),[236] then these properties seem open to moral and legal appraisal. Moreover, if the psychology of the state directs the state's behavior – that is, if the state's psychological personhood is displayed through the state's actions – then the state seems to be a person in more than just a psychological sense. It is agreed that the state acts, so it would seem that an argument

[234] Ibid., 309-311.
[235] Ibid., 311.
[236] Ibid., 295.

in favor of the state as psychological person is indirectly an argument in favor of the state as moral agent. In fact, the state seems to be a (real) full moral person that thinks, feels, and acts, and so is responsible (has the capacity for responsibility) both morally and legally. Although Wendt does not argue for the position, we can take from this that his position in favor of the psychological personhood of the state could function as a unique sort of justification for the state-actor model in normative IR.

Now that some specifics of the view have been laid out we will move on in §2.1 to consider whether the state is really a type of superorganism. In §2.2 we will look into the claim that the state manifests some form of consciousness. And in §3 we will assess an important and related account of state 'self' from Erik Ringmar, which argues that the basis of the state's identity is to be found within the state's narrative tradition.

§2.1 – State as Superorganism

Wendt is upfront about the imperfect fit of the 'organism' label onto the state, and by implication the imperfection of the 'superorganism' label; but he does think there are a number of respects in which the state is very much like a superorganism. The term 'superorganism' is defined as: a collection of single creatures that together possess the functional organization implicit in the formal definition of organism.[237] So, we will want to keep in mind that we are looking for reasons to accept this sort of a description of the state. In certain ways it appears that Wendt is right about there being similarities between the two. In other ways he is reaching, and ultimately the view that the state is a full person (more than an intentional system) does not look tenable when based in part on a comparison with organisms or superorganisms. We can look at a few points about this below.

[237] Ibid., 309. Wendt takes his definition here from, David Sloan Wilson and Elliott Sober, "Reviving the Superorganism," *Journal of Theoretical Biology*, 103 (1997), 144-181.

We can concede that the state has a recognized individuality (distinct identity from other states, a distinct history). Wendt has reservations about this feature of superorganisms, but there is a level of internal and external recognition of the separateness of a particular state from others, just as there is internal and external recognition of the separateness of non-identical beehives or ant colonies. Many people in the state refer to it as a thing they are a part of when they say 'we' in reference to the whole, which is a form of internal recognition. Furthermore, agents outside the state also tend to identify *it* as something distinct from other similar social systems (other states), which is a sort of external recognition. We say 'we' and 'they' and they say 'we' and 'they'. In the beehive you also have bees that recognize the individuality of their particular hive, in contrast to other hives, and you also have the recognition from outside the beehive from bees of other hives. The similarities here seem fairly unproblematic, at least when compared to the other criteria.

As for the other conditions for being a superorganism, the concern to be raised with each of them stems from a worry about a slide in referent for the term 'state'. Sometimes we are referring to the state as a *single system* and ascribing certain characteristics to that conceived *whole*, which encompasses the entire society within the state as well. In other cases the referent of 'state' is not the entire system itself, but just some part of it, or rather some state agency or group of state officials. This is the case, for example, when we talk about the state taxing the people. The whole does not tax itself. Concerns arise due to the ambiguity of the referent. When we move carelessly between different referents of 'state', misleading claims can be made and fallacious inferences can result. This point applies when we are evaluating the similarities between the state and superorganisms on grounds of organization, autonomy, and homeostasis. It is not clear that the *whole* exhibits these characteristics.

It seems rather obvious that the state is organized. It looks to be built into the very concept of a state that there is organization. However, we should not be too hasty with this judgment. It very much depends on our referent. There are often parts of the state that do not easily conform to these descriptions. Wendt says that the state and the individuals are dynamically interdependent and mutually constitutive, but, though this is true of some (maybe most) individuals in the state, it should not refer to all. Some individuals live effectively outside of the influence of the state's institutions and officials, and others actively work against the organizational framework in the state. So to say that these persons are also parts organized within the whole would be to use a very inclusive interpretation. When using 'state' to refer to government and other state agencies, it is unproblematic to describe it as organized, but when you mean to include the whole of the system it comes at the cost of great imprecision. This point applies to the conditions of autonomy and homeostasis as well.

As Wendt describes it, 'autonomy' as it pertains to organisms is the ability to take in outside information and use it to direct inner process and outward action ("autonomy from the environment"). The autonomy that is purportedly expressed when information is taken in and used to direct state behavior is ascribed to the state itself, but the behavior that best exemplifies this autonomy is the behavior of state officials. It is not the system itself that is autonomous in this way. The *system* does not take in and process such information, certain persons do.

The same holds for homeostasis. Wendt describes the homeostatic system as one that resists entropy and one that sustains itself and its identity as an individual. This too is a property better ascribed to the institutions of government and other bureaucracies, rather than to the whole state, which including the society and all individuals. A given individual may not even be concerned with whether her particular state continues to exist or is replaced by some other. In

fact, a given individual may actively work against other members and try to upset the maintenance of the state or the maintenance of its current form. When this occurs we cannot include this member in our judgment that the whole state maintains homeostasis. Some part of it acts directly contrary to homeostasis. The dissident intends to upset homeostasis. In this respect, it again seems incorrect to speak of the *whole* as experiencing homeostasis, because only some of it works toward that end and many other parts may work against it.[238] This possibility is not always a reality, but we should note that it is effectively impossible in superorganisms like beehives and ant colonies. These insect species exhibit near total organizational integration and an unmatched unity in purpose and function. Individuals in the state only crudely approximate these conditions and it is only by obscuring details at the individual level that we could compare the workings of a state system to those of a superorganism.

This last point marks the starkest difference between organisms or superorganisms and states. In superorganisms especially, all parts are physically integrated and almost always instrumental to some essential process for the survival of the whole. Parts that are not vital in this way are discarded if they arise at all. In this way, although some particular part may not be directly involved in behavior that demonstrates the organism's autonomy or homeostasis, as these have been described by Wendt, it is still acceptable to include that part in a judgment about the whole because what it is doing is some other vital process necessary for the existence of the whole and so necessary in an indirect way to the performance of the autonomous or homeostatic behavior of the other parts. The state does not display the same properties because it has many parts (individual persons) that are not obviously integrated into the system in a direct way or through an essential process. The institutional structure of the state does not require a total effort

[238] We might insist that sufficiently dissident members are not part of the state, so that the remainder is our referent when assigning the property of homeostasis, but this is to already move away from the state-actor model. The whole of the state includes all legal citizens. When we start excluding some we are no longer talking about the whole.

from all persons; a certain minimum amount of compliance will suffice to maintain what we refer to by 'it'. And when there is a lack of total participation in the state (which is true very possibly always) the parts of the whole that do not have a clear function integrated into the system seem to be simply lumped in with the rest in our analysis by the fiat of the one doing the conceptualizing. It should be stressed that just as we would not want to subsume a virus within the structure of an organism or a mite on the back of a bee as within the structure of the beehive, we should not want to subsume in our analysis of the state's personhood an individual who is not involved in the organized state structure in any direct or agency-related sense.

The principal difference suggested here between the state and a superorganism can perhaps be best expressed this way: *complete integration* is the mark of superorganisms and the state does not display this characteristic.[239] There is a certain deep interconnection of all parts in superorganisms that is conspicuously absent between many parts of the state. Whereas the superorganism's parts are fully amalgamated and work together to sustain the larger whole, and so exhibit *collective* organization, integrated *collective* autonomy, and *collective* homeostasis, the elements that make up the state, as a whole system, lack this total integration. It is not the case that all of the parts fit into some grand purposive structure, which is generally the case for organisms and superorganisms.[240] There tend to be individuals in the state who do not function in accord with the organizational rules. They may simply fail to identify as part of the whole or contribute meaningfully to the maintenance of the system, or they may even take active steps to violate the law and create discord with others around them. Whatever the case, these individuals are not exhibiting the organizational relation to the whole that is implied when we treat it as a

[239] On this point see also, McCloskey, "The State as Organism, as a Person, and as an End in Itself," 308-309.
[240] Certain parts may not have necessary functions (at least any longer), and may even malfunction and work against the wellbeing of the rest (e.g. the human appendix), but the pieces tend to be necessary for the existence of the whole and work together as a whole. In superorganisms, pieces that are not essential, or that work against the collective purpose, are removed, such as when a sick or dying ant is removed from the colony and left to die.

superorganism. Even aside from the occasional criminal or anarchist, this potential lack of integration between state parts can also exist at the institutional level or within the state structure itself. This can happen when one state agency enacts some policy which conflicts with the policy of another agency, or when laws are mutually inconsistent, which leads to state officials and state agencies acting in opposition to each other's purpose. This is not uncommon in the state, and when it obtains we see a clear lack of complete (system-wide) organization and autonomy, at least. Such a case is practically impossible in a superorganism.

What if we wish to insist that each part of the state (and each person) has an assigned role and function related to state maintenance (at least in a loose sense), and that this feature supports a description of the state as organized, autonomous, and homeostatic, regardless of whether all parts actually work toward those results? It could be the case that a part of a superorganism that is malfunctioning, or at least not contributing to the collective effort, is still a part, nevertheless, and so still properly included in a judgment about the whole. In the state the citizen who disobeys is still a citizen (she still has that role, that legal standing, and that relation to others), and so she is still tied into the state's organization. Her existence is still intertwined with the autonomy and homeostasis of the whole, regardless of what she does. At the very least she is one person among the many that state officials act *for* (we may assume). Even if it is state officials who perform the actions that most readily demonstrate the state's autonomy and homeostasis, this dissenting citizen is still part of the set of people that these actions are performed for, and she is still part of the larger representation of this social system.

In spite of the seeming reasonableness of the above, we should reject that approach. It may be the case that each part in a superorganism has some specified role, which indicates organization regardless of whether each parts functions as intended, but appealing to this

perspective here with respect to the state appears to assume too much if we are interested in a determination of personhood. If the fact of a systemic property like organization, autonomy, or homeostasis is under dispute, then conceptualizing the whole so that all desired parts are subsumed within it – that is, interpreting whatever set of objects one wishes as having state-specific properties – would presuppose an answer to the question under consideration. This would be to simply privilege the holistic perspective from the outset and ignore the uniqueness of the individuals. It would be to impose an all-encompassing order onto what is only partial order, rather than to look closely at the workings of *all* individual variables in order to determine whether they are *all* actually parts of one unified system. This consideration may be overlooked insofar as we sometimes use the word 'state' to refer to different aspects of the state structure, which invites the attribution of properties to one referent that may not be suitable for others. This referential worry should also be combined with an awareness of the limitation of analogies. In some respects it seems perfectly appropriate to use an analogy between the state and a superorganism, but problems can arise in analogical reasoning when we infer from the fact that *A* and *B* share properties *X* and *Y* and *A* also has property *Z*, that *B* has property *Z*. Perhaps *B* does have property *Z*, but the analogy itself cannot show this. Thus, even if we can make the case that the state is like a superorganism *in certain ways*, it can only get us so far.

The last concern about the state as superorganism that Wendt addresses relates back to the individuality condition. In one sense the state's individuality, or distinct existence relative to other states, is fairly unproblematic. We regularly differentiate these systems. However, because Wendt is trying to show the personhood of the state, a simple uniqueness of the state will not suffice. The individuality of the state as a superorganism-like person that Wendt is trying to establish should include some provision for the system having a spatio-temporal *identity* like

other persons. Wendt sees no problem with establishing this for an organism because it has an outer layer that separates it from the world and designates it as a unique entity that can be located in space and time. Superorganisms are not so easily specified in this way. In the beehive, for example, existing member bees die and new members are born. The composition of the group is almost constantly changing. In at least this respect, then, it is more difficult to specify the boundaries of the *self* that we are trying to identify. Here Wendt appeals to a non-physical idea to set the boundaries of individuality. Following Hegel he suggests that we could perhaps treat the state as a 'thought organism' (*Geistesorganismus*).[241] "The idea here is that it is the participation of individuals in a collective thought process (in this case, in a 'narrative of state'), whose boundaries are instantiated by the practices that produce and reproduce that process, which enables superorganisms to survive."[242] Not much more is said, as Wendt is doing more to make these ideas plausible than he is to justify them outright.

It is certainly the case that many persons in the state coordinate some of their behavior with state institutions and according to the directives of state officials, due the former's narrative understanding of their state, its 'purpose', and structure. Narrative ideas of the 'glorious state' and its illustrious history, for example, have been a real motivational force for many individuals throughout time, especially during war. And as we have discussed in earlier chapters, it is certainly true that many persons share this kind of view and that the prevalence of this perspective contributes significantly to the long-term continuation of the state structure. However, as long as this perspective lacks universality within the state, the 'narrative of state' idea cannot encapsulate all state members within the state's identity. As long as we rely on a shared narrative understanding of the state to mark of its boundaries, its boundaries can only

[241] Wendt, "The State as Person," 311. Hegel discusses the state's organic nature in, *Philosophy of Right*, Part III, Subsection 3, see in particular paragraphs 262, 264, 266, 270, 271, 321, and 322.
[242] Wendt, ibid., 311.

reach as far as those who actually share this understanding. Identifying this set of persons may be important for some purposes, but it will not serve to establish that the whole exhibits a single personhood. The members of the state who do conceive of the state as a single person with a narrative history might also believe that other members who do not self-identify as part of the narrative are nonetheless members of the 'self' identified through the narrative, but this cannot establish that they are. Here, again, the unique nature of the state as a collective or corporate organization – in particular the involuntary nature of membership and the lack of unified coordination within it – reveals the limit of the similarities between it and other groups where such an approach might be more appropriate. To insist that all members a subsumed within the state's narrative is to take quite a bit for granted. This is especially true when the individual does not accept her part in the state's purported collective or corporate identity.[243]

§2.2 – State Consciousness

Collective consciousness in the state may turn out to be the most contentious aspect of Wendt's attempt to show the personhood of the state, and it will require a more demanding demonstration. Despite the regularity with which IR scholars ascribe consciousness-related attributes to states such as beliefs, desires, and emotions, the claim that the state is conscious is quite implausible at first glance. Consciousness requires more than just simple intentionality. Conscious persons have a *sense of self* and using Wendt's words this would mean for the state that there is *something it is like* to be a state.[244] It is difficult to convincingly argue that the state is an *experiencing subject* of this kind. We know that developing a full understanding of consciousness at the individual level is difficult enough, but a collective (or corporation) presents a particularly obstinate problem insofar as any explanation of its consciousness will also have to

[243] More on this topic in §3 below.
[244] Wendt, "The State as Person," 312.

move us ever farther away from any materialist commitments we may have. Still, Wendt offers three main reasons in favor of the idea that states may be conscious and experience emotions and we will consider them below.[245]

There is (1) the realist *success argument* (as we might call it). Our "everyday discourse of state emotions" seems to work quite well and the realist will ask why talk of a state's psychology and emotions is so explanatorily and predictively successful if it doesn't refer to anything real. Reason (2) is that consciousness may be a feature of all organisms (and perhaps even some superorganisms), although it may not always be of a "discursive, self-conscious" variety. Humans might be rather special in their capacity for high-level consciousness, but all organisms could be capable of some lesser forms of consciousness. Wendt's point here is that, at the very least, you cannot rule out the consciousness of organisms (or superorganism) *a priori*. And (3), imputing collective consciousness onto the state may work to bestow normative value onto it that it might otherwise lack. Reason (3) is based on the idea that things with consciousness have self-determination and so a sort of inherent importance and value. Wendt is essentially arguing that if the state is accepted to be conscious and self-determining, then it too will be deserving of the sort of care and respect that we think appropriate for living, purposeful beings. If the state is a conscious person, then it has a certain normative standing, far more so than if the state is a mere 'artificial', 'legal', or 'juridical', or 'as-if' person. Part of the point here might be that we have reason to not interfere in the affairs of 'good' states, or reason to protect them when under threat. The sort of peaceful self-organization that carries on in 'good' states should not be interfered with, and if we saw these states as on a par with human persons we might more readily recognize that and grant all such states a sphere of self-determination. Lastly, to supplement these reasons and give an example of a candidate narrative view of the self, Wendt appeals to Erik Ringmar's

[245] Ibid., 313.

paper, "The Ontological Status of the State."[246] Therein, Ringmar argues for a narrative view of the state's identity, sustained through collective storytelling. Wendt considers this a good place to start when looking into the possible collective consciousness of the state.

Again, to be fair at the outset, Wendt was not attempting to give a definitive argument for state consciousness here. It would probably be better to describe what he is doing as 'exploring'. That said, his ideas should be seriously considered, even if they ultimately fall short of a justification of the state-actor model for normative purposes.

As to the usefulness of the state-based discourse with its attending ascriptions of emotions and a sort of conscious life to the state, two points should be mentioned. First, the practical utility of an idea has nothing whatsoever to do with the existence of the thing described in it. It really is no mark in favor of the realist view that we communicate seemingly quite well using references to the state and its psychological characteristics that suggest it has a sort of personhood. We might explain and predict the seasonal changes we observe in deciduous trees by ascribing to them a consciousness and a desire to go dormant when sunlight is insufficient for photosynthesis, and this might provide us some working (functional) understanding of the process and even enable us to make very accurate predictions about future circumstances. However, this is no step toward demonstrating the accuracy of the judgment (theoretical postulate) that the trees are conscious or have minds, identities, or any other mental properties at all. Similarly, we might explain the behavior of a school of fish swimming seemingly in choreographed unison away from an attacking dolphin as due to the thoughts and emotional states of the school itself. We might discover a certain regularity in the behavior of schools of fish when there is danger and so think it is plausible to express what we take to be a law of

[246] Erik Ringmar, "The Ontological Status of the State," *European Journal of International Relations* 2 (1996), 439-466.

schools of fish: "A school will contort its shape or divide and reform if it thinks it is in danger of attack."[247] We can imagine that this greatly helps us make sense of our observations of the fish and that it is also highly predictively accurate. As it turns out, schools of fish – that is, fish in groupings of the same species, able to be demarcated in space – do act in that way. Nevertheless, the 'success' of our law of fish-school behavior would demonstrate nothing about whether the school is a conscious thing. Moreover, this law actually describes reality quite imprecisely, regardless, because the *individual fish* react to the circumstances of a predator attack in their individual ways, responding to the information that is immediately available to them, such as the movements of their closest neighbors in the group. The *school* does not *do* anything. That is, the school, itself, does not and cannot *act*. If it is nevertheless true that talking about the consciousness of the group is useful in certain contexts, then we can admit this to a limited degree. If we merely wish to convey some general information pertaining to the whole group, then it may be no harm to speak about what the group wants or intends, but if we are looking to establish that there really is an element of collective consciousness, or if we wish to establish what instances of agency we can identify in a given situation, then we cannot simply rely on how things may *appear* from outside the group looking 'down' upon it, so to speak.

As this issue of *usefulness* applies as well to predicting state behavior, it should be added that the idea of a state's consciousness and emotional life does not contribute much at all to predictive success, nor can such a judgment be supported except by appeal to the psychology of individuals within the state. The way we arrive at a conclusion about the state's psychology here starts from the action and works backward to the psychology, not the other way around. And this is by necessity, as one who adheres to this view is explicitly avoiding reference to individual

[247] Compare: "A state will use force to attain its goals if, after assessing the prospects for success, it values those goals more than it values the pleasures of peace." Part of the 'Third Image' from Kenneth Waltz, *Man, the State, and War* (New York: Columbia,1969), 160.

psychological states in favor of the supposed psychology of the whole. As an example, we look to history and we see many cases of war. In many of those cases we can trace the conflict back to some other circumstances that suggest that some state involved *felt* a certain way and *desired* some certain ends. This helps us understand why the war occurred (or so we think), and so we reason we can predict when other wars will happen based on the psychology of states. Yet, we have no access to such purported psychological properties in states – not even indirectly through a self-report or other means by which we might try to identify psychological properties in an individual person. It is not as if we can ask the state how it feels. The point here is that we are actually quite bad at making *specific* predictions about state behavior based on a model of state consciousness, and this model is also poorly supported through something resembling affirming the consequent. For example, we might think: if state *A* fears the growth of state *B*, then *A* will attack *B*. We then observe state *A* attacking state *B* and we take that as a reason in favor of believing that state *A* had certain psychological properties. It may, of course, be true that *if* state *A* really did fear *B* it would attack *B*, but this is just one of many sufficient conditions we could name that might lead to war. Without any access to the fact of the state's psychology, without inferring it from some *individuals* in the state or without working backward from action to a posited motive, we are given no reason to accept the existence of the consciousness and psychological property in the first place. If we appeal to the individuals, then we tacitly admit that it is not the state that has these psychological properties at all. If we instead try to infer the state's purported psychology after the fact, we merely introduce an *ad hoc* explanation that comports with our preconceived ideas about how states function. In summation, the state-as-conscious model is less predictively useful than is often implied and it is based more on speculation than it is on some observable, verifiable, or demonstrable properties of the wholes

themselves. At best, it seems that we could establish that there are some meager regularities. It doesn't seem that we could develop a more powerful account that links specifically intentional mental properties of the state to specific future actions. If this were possible at all, it would seem to require appealing to the psychology of individuals, and specifically those with certain powers within the state's institutions. It looks less like the state's consciousness to the degree that this is necessary, and it certainly seems necessary to some degree.

Wendt next mentions that some hold the view that all organisms display some form of consciousness and that, at the very least, we cannot rule out the state's consciousness *a priori*. The claim that all organisms might exhibit some form of consciousness seems quite implausible on its own, but to attempt to go further to superorganisms is even more of a stretch. This should give us pause. To the point about being prevented from ruling out the possibility *a priori*, this can be accepted. However, it cannot work in favor of the conclusion Wendt is considering. The inability to logically or conceptually decide some empirical issue provides no support for any side of that issue. We cannot rule out a rock's consciousness *a priori*, but of course we must agree that this is no reason in favor of the thesis that the rock has one.

Lastly, as to the normative reason in favor of state consciousness, two comments are in order. First, such a consideration is only a reason in favor of the thesis if one accepts Wendt's value-judgment about the need for the state to have "intrinsic value." One cannot be motivated by this consideration unless she agrees that the state is something to be respected, granted rights, and generally considered morally valuable, like a person. Many deny this, and for them it will have no rational force. Second, even if we all shared the view that it was important for the state to be regarded as having normative standing, this would not settle the question of whether the state is conscious or a person. That is, it has nothing to do with the fact of the matter. Our desires

about how world *should be*, have no bearing on how the world *is*. Interestingly, this normative consideration actually seems to support the 'as if' view of the state more than the realist view. In making the case for reason (3) Wendt says, "If…the state were even in this respect a 'natural' person, then it might have more normative standing."[248] This sounds rather like, "*if* you *want* the state to have normative standing, then you should treat it *like* it is a natural person." If he wants to maintain the stronger, realist conclusion, he would want to avoid such reasoning. The takeaway here is that the three-part argument above for state consciousness has little force.

§3 – THE NARRATIVE VIEW OF THE STATE

Wendt's arguments for state as superorganism and state as conscious seem lacking, but we should give some attention to the narrative view of the self that Ringmar develops because this view is yet another candidate way we might understand the state's potential collective consciousness and so self. What is encouraging about this approach, for Wendt's purposes, is that it seems possible that it can show a sort of unity and identity in the many-person state, without violating materialism. The state's self on this view is contained within the narrative tradition that exists between the state's people, which is ultimately rooted in the people's ways of living and in the historical narratives stored in their brains.

To quickly sum up Ringmar's position, he is dissatisfied with 'realism' and 'pluralism' as views of the state, and with 'atomism' and 'empiricism' as views of the self. By 'realism' he means the view in IR theory that treats the state as a *given unit* of analysis and defines the state's identity and interests without reference to any contingencies that might obtain internally or externally. "For the purposes of their theory, the realists have to take the state for granted."[249] In contrast, the defenders of the 'pluralist' view argue that the state is not a unified, purposive entity

[248] Wendt, "The State as Person," 313.
[249] Ringmar, "On the Ontological Status of the State," 441.

with just one identity and set of interests. Rather, the state is made up of many different organizations, which each have their own characteristics. This makes the state's actions not the product of some single rational deliberation, based on one rational agent's preferences (the state's), but instead the product of the workings of the different groups that vie for influence over the state apparatus. These two views each tend to coincide with a view of the self. Ringmar attributes 'atomism' to Thomas Hobbes and John Locke and explicates it in Hobbes' case as the view that "man was a pre-social atom, an entity which was fully formed *prior to* entering into interactions with other men."[250] On this sort of account, the essential nature of 'man' must be taken for granted and used to infer conclusions about social relations. 'Empiricism', on the other hand, is attributed to David Hume, who argued that the self could only be known through experience, and that experience did not provide any impression of a single, continuous self. Rather, given what is open to our experience, the self is just a bundle of sense impressions. For Hume and other empiricists, the self cannot be know prior to experience, so we should not simply posit some transcendent essence for the individual.

As seems natural, Ringmar associates the realist view of the state with atomism and the pluralist view of the state with empiricism. Furthermore, he argues that both approaches are unsatisfactory. Essentially, the realists seem to be simply positing the existence of the state as well as the essence of the state – that is, taking its identity for granted as some transcendent being, which leaves no room for the state to have a *particular* self or historically unique identity. On the other hand, the pluralist view seems to imply that there is no one thing 'the state' that we should be referring to at all. The state seems to lack an identity on this view as well, insofar as the pluralist understands the state's actions as really the product of the competing forces within the state vying for control.

[250] Ibid., 447 [his emphasis].

Finding each of the above approaches unsatisfactory, as neither appears to be able to retain a 'self' for the state, Ringmar suggests his narrative view as a way around this problem. On this view the identity of the state is defined and understood through a narrative, and more specifically through metaphor. "[W]hen we make sense of our individual or collective selves we do so with the help of narrative. What we 'are' is thus neither a question of what essences constitute us nor a question of how we conclusively should be defined, but instead a question of how we are seen and a question of which stories are told about us." About the state in particular, Ringmar says, "[W]hile a state may consist of all kinds of bureaucratic structures, institutional mechanisms and other body-like organs, it is – as an entity endowed with an identity – necessarily at the mercy of the interpretations given to it through the stories in which it features."[251] In this way, Ringmar avoids the loss of self that occurs from the realist and the pluralist views of the state and his account gives an alternative candidate view for how we are to understand the state's collective consciousness, which is the last part of the puzzle for Wendt's argument for state personhood. The state's collective consciousness could perhaps be realized through the narrative tradition that defines the state's identity.

Ringmar's account captures a fairly common and fairly persuasive perspective on state identity, and so one that should be addressed. It is often held that the state is defined, identified, or understood through the stories that we tell about it, or through its narrative history that is shared by its members and also acknowledged by outsiders (this is particularly true in nation-states where there is a shared cultural and historical tradition). In the broad 'narrative tradition' of views of self, Ringmar's account of the state seems like a natural extension. Yet, in spite of its initial plausibility and common advocacy, the approach cannot work as part of an argument for

[251] Ibid., 452. A related narrative view directed at individuals in states is Alasdair MacIntyre's view, which can be found, among other places, in *After Virtue* (Indiana: Notre Dame, 2007). MacIntyre's view of the narrative of the individual will be discussed in Part IV, Ch. 1, §6.

state personhood, and so state corporate responsibility, for two main reasons – one having to do with Ringmar's argument against realism and pluralism and one having to do with his conclusion, or with the narrative approach itself.

Working in the background in Ringmar's discussion is the assumption that there must be a single state with a single identity or self, and although Ringmar is our focus here, this critique applies to other narrative views that also make this assumption. In this particular case, it is on the basis of a tacit assumption of a unity of identity or 'self' that Ringmar can criticize the realist and pluralist view and suggest his own as an alternative. That a state must have an identity or self is a problematic assumption, or, rather, the position should be established through reasoning, not taken for granted. If we do not share the assumption (and we need not), then we can accept that the self is lost in the realist and pluralist accounts, or we can reject that this is a mark against them. If it turns out that those accounts better explain the data or are more empirically adequate, then these considerations should work in favor of adopting those approaches, regardless of whether some special identity or self can be preserved for the state. With respect to normative issues, if other approaches better analyze the *precise* mental and causal process in the collective that culminated in some result, then they should be preferred over an account that simply insists from the outset that the state is *the* enduring entity existing through time that all such results should be ascribed to. It should be added, though, that we could criticize the realist view on a similar count here, and so prefer the pluralist alternative on this basis. The realist too seems to be operating according to Ringmar's assumption that the state must be a unified thing with its own identity. Whether this purported identity is posited as transcendent and eternal or posited as a historical narrative, it is still just posited. It need not be the case that the state is an entity with a discernable identity, and anyway it would have to be shown, not assumed at the outset. The

pluralist view at least has the benefit of looking at a relatively lower level, which could then justify drawing sweeping judgments concerning the higher levels. Whether or not pluralism succeeds in doing this is not our concern. It is enough that we agree that the state's identity through time should be demonstrated and not taken as granted.

Aside from how it is motivated, Ringmar's narrative view is problematic in its own right, and the points raised against it here apply broadly across many other community-based, narrative views. Consider how Ringmar describes the view: "The narratives we construct about our state will specify who we are and what role we play in the world; how our 'national interests' are to be defined, or which foreign policy to pursue."[252] Ringmar, like so many others, has fallen into the trap of the collective pronoun 'we'. "The narrative *we* construct" does not exist, if the referent of this 'we' is supposed to be the entire collective underlying the state. In the least, it is not the case that we all *construct* these narratives. First, many of the narratives are formed long before current membership exists, and second, the state's members are often simply *instructed* in such narratives during their state-sanctioned education. This is important to consider directly when we wish to base normative judgment in part of shared state-specific beliefs and an adherence to a narrative tradition. The main point here, though, is that there is not one single narrative, or even a coherent set of narratives, which captures the state. Rather, there are many competing narratives and much disagreement about historical facts as well as the normative and evaluative status of the facts we do accept. That is, even if a basic narrative and basic facts were accepted across persons, these persons may still differ in their judgment of the normative significance of the facts, the justifications for what happened, and how this all impacts the persons within the state in the present. In short, there will tend to be much disagreement between the persons who are supposed to embody the current collective subject of the state's narrative.

[252] Ibid., 455.

Ringmar seems aware of this worry. He does address the fact that disagreements over the narratives will invariably arise, especially under certain political conditions. On this issue Ringmar's discussion will be reproduced below, both in order to capture the essential flavor of the view and see it in its own terms, but also as a representative sample of the common perspective that his view instantiates. In response to the worry about disagreement, he says:

> (1) Given the political significance of narrative we should not be surprised that stories often are contested, doubted and rejected. Yet the political salience – degree of 'politicization' – of a certain narrative necessarily depends on how many, and which, features of a story that the different audiences of a society are willing to accept. Most of the time, of course, we simply take our selves [sic] for granted and go about pursuing the kinds of goals that people, or groups, like ourselves are wont to pursue. Most of the time, that is, our stories concern our interests, not our identities; while there may be disagreement about what we *want*, we usually do agree on *who we are*. If this was not the case we would not be able to talk about an integrated and coherent 'person' or an integrated and coherent 'state'.
>
> (2) Social stability, the ability to predict the future, satisfaction with one's life, all presuppose the existence of a culture where there is a wide agreement on shared social meanings. The fundamental metaphors of a society must 'grow old' and 'die', as it were, and the stories told about these metaphors must become entrenched in the social institutions and reflected in people's unreflective, everyday, actions (Ricoeur, 1988a: 165-81; Shelly, 1821/1966: 418). This is also indeed the case for a wide variety of social settings – for 'traditional' societies described by anthropologists, 'communitarian' societies described by social philosophers and for contemporary Western, 'post-ideological', societies. Naturally this description also fits a totalitarian society such as Czechoslovakia discussed by Václav Havel. Under the Communist regime, Havel tells us, only one official set of metaphors and one official story were allowed. Czechoslovakia was a 'workers' state', a 'dictatorship of the proletariat', that was 'building socialism' and a 'classless society'; the plot was constructed with the help of Marxist 'laws of history' which gave scientific, and hence objective and complete, explanation of the past, the present, as well as the future (Havel, 1991: 335-6).
>
> (3) The difference between a traditional, a communitarian, a post-ideological and a post-totalitarian society, I would like to suggest, lies not in the fact that the available set of meanings is restricted in the one case but not in the other – meanings are *always* restricted – but rather in the degree to which a taken-for-granted story is able to grab, and hold, the attention of its audience; the degree to which we are still willing to listen to the official story and to tell, and retell, it is our turn. What made Czechoslovakia under the Communists into a totalitarian society…was quite simply that no one any longer believed in the only story that was allowed to be told.[253]

[253] Ibid., 455-456 [his emphasis].

The above seem to capture the more 'communitarian'[254] side of the narrative approach quite well. Many examples of writings on related topics imply a sort of shared group history understood through narrative and often especially metaphor. As a descriptive account of the way that many people (though not all) conceive of their social reality, there are few problems with the view; however, the issue of how we understand *the* identity of the state and determine a single narrative or set of narratives that capture the state's 'self' is a another matter. Ringmar is taking a lot for granted in his analysis and a quick discussion of how this occurs and why it is problematic will be helpful for our broader purposes.

Let us first deal with a minor point. As we saw in the last chapter during our discussion of Margaret Gilbert's plural subject view, an appeal to the everyday behaviors of persons in the state can do little work for us in determining which conditions obtain at the level of the whole community or the whole state. In this case, they can do little to tell us about what the narrative aspects of life are for a set of people. This is because human behavior tends to exhibit great *general* similarity across different communities, which greatly limits the set of behaviors that would be capable of signally something community-specific, in particular something that would be community-narrative-specific. Yet, Ringmar is perhaps not telling us how we identify the narratives in (2), but rather the conditions that are necessary for the narrative to have its effect. Still, we must worry that the functioning of the narrative is merely posited and, in spite of the language used it cannot be shown that it is necessary for the narrative to have effects on the basic behaviors of the persons, as he implies through his comments about the metaphor-based stories becoming "entrenched in the social institutions and reflected in people's unreflective, everyday,

[254] This is not a reference to 'communitarian societies' as Ringmar is using that idea. 'Communitariansim' here refers to the family of views that emphasize the whole of the society and the ways we should understand it and its relationship to individuals. My point is that on the communitarian side of things there is a common tendency to interpret social interaction according to collective or holist concepts and through narrative, historical accounts.

actions." It is certainly true that some persons in the state may conceptualize their state and their place in the state in narrative terms, and it is very likely that many will in fact do so. But this does not show that we are justified in treating such narratives as representative of the whole when that whole is thought to include every single member. Again, conforming behavior reveals little and the probability of major disagreement is high. When disagreement exists the unification of the state that is implied when we try to identify a single identity or 'self' looks to that extent more implausible.

Second, and more importantly, Ringmar's treatment of this issue uses a subtle slide from an acceptance of many competing narratives (and so interpretations of what the state is as well as what is in 'its' interest) to a conclusion of there being ultimately just one narrative that does the job, or just one manageable set of such narratives. This is particularly apparent in (1) above. Ringmar begins with the recognition that narratives compete but he effortlessly moves from this recognition to claims about how "*we* simply take *our selves* for granted." He even suggests a sort of unity of action and purpose when claiming that *we* "go about pursuing the kinds of goals that people, or groups, like ourselves are wont to pursue." Further, though he allows for fairly wide disagreement about what *we* want or what is good for *us*, he thinks that there is at least wide agreement about "*who* we are." It is not clear how we get from the recognition of narrative diversity to the conclusion of a basic narrative unity. We should worry about this because each word in even the simple and seemingly benign phrase, 'who we are', is carrying a lot of conceptual baggage along with it. 'Who' suggests a unification of *identity*, 'we' suggests the *collective membership* of the group, and 'are' suggests a *character* or set of characteristics to be assigned to the *thing* that bears the group identity. If we do not simply take the existence of *a* state identity for granted then what Ringmar suggests about the disagreement over narratives,

which seems quite correct, appears to imply that such a unity of self does not exist. That is, it looks as if we should not talk at all about *an* identity for the state, or *its* or *our* narrative, if we care to be precise on this point and not gloss over the fact that disagreements often exist and often concern fundamental issues surrounding whatever narrative is in question.

Across states and across issues, the level of disagreement in a particular case will vary widely, of course, but its likelihood should not be in question, as examples of just such differences in interpretation abound. The US, for instance, provides many, such as disputes over US involvement in various wars, the causes and solutions to the Great Depression, the merits or demerits of the New Deal, the proper interpretation of the Civil War, and even maximally foundational disputes over issues such as the basic meaning and intention of the Constitution. For certain purposes it may be excusable to abstract away from these long-lived and still fought debates when talking about 'The US', but we should agree that a narrative perspective on the identity of the US faces difficulty when pressed on why we should be able to distill the controversies down into some unified narrative that defines a particular identity or self.

Although the US is our example state here, this worry applies to all cases to a greater or lesser degree. Diversity of opinion will in all cases call into question the very existence of a *singular* narrative tradition that can be used to understand a *singular* identity for the state, or a particular continuing 'self'. The example given of Czechoslovakia is particularly telling in this regard. Ringmar tells us that even the totalitarian model of state can be understood through the narrative approach. In (2) he states clearly, based on Havel's work, that the single allowable narrative in that country at the time was imposed onto the population and maintained by coercion and violence. Then in (3) he implies that it is still appropriate to consider the one forced narrative to be *the* narrative of the state at that time, because he suggests that the reason Czechoslovakia

became totalitarian was that "no one *any longer* believed in the only story that was allowed to be told." On Ringmar's view, it seems that the only story that was allowed was at one time widely enough accepted to be considered the state's narrative *then*, and that it only ceased to be the state's narrative when those who believed it gave it up or dropped out of the population for whatever reason. It looks as if the narratives that state officials endorse have a special importance in spite of the coercive element, although this itself demonstrates the contentious nature of the narrative. The one story that was allowed was a story of building a better community *together*; the reality was that this vision was imposed through violence, coercion, and legal manipulation. In spite of the fact that many people in the communist countries aggressively resisted communist ideas, Ringmar is comfortable using the regime-sanctioned narratives as *the* narratives, for as long as those administrations could retain their power. When changes occurred, regardless of how and why, Ringmar then sees a shift in narrative, presumably to some other narrative that jibes with the given contingencies of the new regime and the new state structure.

The worry here is that too much license is being taken with the narratives offered as definitive. The fact that a state can be described as having a certain sort of system does not entail that the people of the state must *accept* a definition of their system according to a corresponding narrative. That is, the public officials and propagandists may have talked at length about the 'workers' state' and the 'classless society' but this does not show us whether or not the mass of people in the state accepted those ideas or that such a vision of unification around a common identity is properly ascribed to the whole. We can be confident that some accepted this vision and some did not. What we cannot say, without taking quite a lot for granted, is that the narrative of the communist state is *the* defining narrative of Czechoslovakia at the time. Ringmar merely posits that it was, perhaps because this was the 'official' narrative of that time. But this ignores

the diversity of opinion that he is addressing. It simply insists, over protest by many, that a state has a particular narrative identity or that we can meaningfully speak at all of *a* narrative tradition for *it*. This sort of view always finds a coherent narrative tradition embedded within the long-term, multifaceted competition of narratives. This is to acknowledge the competition and then just ignore it away when treating the generalities of the view. In other words, Ringmar (and other adherents of similar, narrative views) presupposes the existence of some *one* narrative tradition that attaches to *single* identifiable communities and then forces whatever case is at issue into that mold. The presumption of a single narrative seems to be doing the driving here, not some other independent analysis that suggests that some unified account can be given that really captures the whole system and all the people in it, now, in the past, and into the future. This leads views of this sort to appear entirely unfalsifiable.

As a last comment on Ringmar's position, it is interesting to note that his narrative view is itself a narrative. He is, in effect, telling a story about how people in states tell stories. In Ringmar's narrative the 'official' stories and the 'common' stories that circulate in the state identify the state and establish *its* self. But his story is just another story, and not one that establishes anything of firm consequence. We can take license to describe the state in many ways. A historical narrative is one of them. However, we are given very little reason to think that this is anything other than a description of how *some* people understand and conceptualize the state and its history and future. As a description of *some* person's thoughts on the matter, we need not worry. As an account of how we determine a state's supposed identity, we certainly should. Claims like, "[W]e simply take our selves for granted," and "The narratives we construct about our state will specify who we are and what role we play in the world," abuse the ambiguity of the term 'we' and essentially presuppose the very thing that must be shown. Ringmar's story

about state stories is created, not discovered. If we care to look more closely, what we will find is a great diversity in beliefs about the state and the stories that are told about it. To synthesize all of that complexity down into a single identity or self for the highly complex and ever-changing state system is to obscure vital detail and speak in poorly supported generalities rather than precise and specific declarations of fact.

What can we say, though, about there being a *single subject* referred to in our utterances about the state? Are we not referring to some one thing, the US, when we say, for example, "The US fought a war against Great Britain in 1812 and then fought along side Britain against Germany in 1917 and 1941"? Does the above argument deny the existence of the state? And would it not be odd if it were, since the previous chapters of this work have all along been talking about *it* this whole time? The reader may have noticed that the language used in this very project seems to imply the existence of some *thing* that is, for instance, 'The US', for *it* has been referred to in many places above. In particular, what sense could we make of the above list of disputed events in US history if that history is not anchored onto a *thing* with an *identity* that captures a referent for the disparate events that happen through time? How can that be 'US history' if it is not the history of 'The US'? In arguing against the narrative view it may have been unwittingly supported.

We will discuss reductionism in more detail in Part IV, Chapter 1, but to respond to the above worry a few points should be addressed in brief here. First, if the phrasing in this work (and much elsewhere) suggests that states are single things that exist in the world and endure through time and change, rather than just an abstract representation of many things, then this is largely the result of limitations in our language. Actually, to be more accurate, this is a limitation of human desire combined with limited knowledge and language's capacity to be concise at the

cost of explanatory detail and precision. In other words, although our language could accommodate extremely informative and precise claims about what we refer to as ‘states’ and ‘state action’, most people are not interested in such a detailed account and so prefer that language be used to condense the information into a simple, easily digestible narrative. If some license has been taken to do that here it is only for the benefit of the reader. Being cognizant of the worry, greater specificity has at times been given, at the level of individuals, in order to make clear that persons are at the heart of the issue, always. Language is not always precise, though, and slips in referent are regrettable. In spite of this, though, we must accept that linguistic convention does not establish the fact of the matter or the existence of a thing. State-talk more than anything shows our preference for simplicity and brevity.

Second, on a related point aside from ease of communication, we should recognize that our conceptualization of states and *their* histories is also the product of the limits of our information and of our cognitive abilities. In many actual cases of international relations those reporting on the events can only gather so much information about the finer details of what may involve millions of people in a given case. Just as well, even if we had more specifics, our conscious minds can only process so much information, and this is especially true for laypeople (in whatever subject). Thus, relatedly to the above, information about governments, and international relations in general, practically necessitates condensation and simplification in many contexts. Of course, this is fine for many purposes. In news reporting, for example, it seems totally appropriate to give an overview or summary of some event, and to refer to states doing such-and-such therein. In fact, an alternative detailed account naming all individuals and describing all institutional relations that exist between them and all causal influence each has had on the others would not even be intelligible for the common reader. Clearly simplification is in

order, and one may just hope that the reader recognizes that the description is shorthand and that more information is available (hopefully) if one wants the details. However, if we are using the information for other purposes, such as determining who is (attributable) responsible for damages in some case, then a simple synopsis of the situation in state-terms will not suffice. We are effectively giving such a synopsis whenever we discuss 'state actions' and 'state histories'. These accounts can be useful for some purposes, but they have serious limitations that should be considered carefully before we rely on them for other purposes.

Lastly, though the view cannot be defended here, let it be mentioned that it is possible to have a state-centered history that does not sacrifice detail to the degree that is currently common. That is, we can give what might be called an 'individualist history' of state structures through time, and this understanding of history can be capable of retaining certain institutional facts that endure across wholesale changes in the membership of a collective or corporate entity. In other words, you do not have to give up on intergenerational policy, law, justice, history, *et cetera*, if you accept an individualist understanding of history. If this is correct, it enables us to accept the intelligibility of something like 'US history' without committing ourselves to the existence of some one *thing* called 'The US' that has *a* history that is relevant to *its* responsibility or liability. This will be discussed in more detail in Part IV, Chapter 2.

§4 – CONCLUSION

In this chapter we looked at a view of state personhood that is on the 'robust' end of the spectrum. This sort of personhood is thought to entail classification as an organism or superorganism and as a conscious thing. Alexander Wendt gave us a starting point from which to evaluate these ideas, but it was ultimately concluded that his explorations on the topic did not suffice to make a case for *normative* state personhood. This result can be generalized a bit and

extended to other accounts that may take a similar, let us say, 'organistic', approach. The similarities between the state and an organism or superorganism are simply too weak to show anything of real normative consequence.

Our second task was to consider a narrative approach to the establishment of a state identity that might serve as an anchor for responsibility. If a satisfactory account of the state's 'self' could be given, then this would give us an important piece of the set of conditions necessary to fully justify state responsibility. Erik Ringmar's view was given as a representative example of a family of approaches centered on narratives. His view of the state's identity as the subject of the stories that are told about the state connects up with very common ways of conceptualizing the state and state-based history. However, a narrative approach must include clear principles for the establishment of *a* correct narrative or set of narratives, if it is to work as a grounding for state personhood, identity, or self of the kind that might support state responsibility. At the very least, it is not clear how we can establish such principles in a way that is consistent with certain liberal commitments made at the outset of this project. Some further discussion of the disagreement between the 'communitarian' and 'liberal' approaches will be included in Part IV, Ch. 2.

Lastly, though it was argued above that the state is not a robust person, or something with a unique identity or self, this does not yet rule out that the state is some lesser form of person, or at least an intentional system that exhibits normatively relevant agency. These are interesting possibilities, which seem potentially capable of justifying the state-actor model, and so the collective responsibility within the state that so often results from its use. In the next chapter we will look at the rest of Wendt's picture of state personhood, and this will also bring us to a discussion of some of the literature on corporate agency and institutional responsibility.

Part III: Corporate Responsibility
Chapter 3: State Agency

§1 – INTRODUCTION

Given the worries raised in the pervious chapters about supervenience, strong emergentist, and narrative approaches to state corporate reality, agency, and responsibility, we should look elsewhere to find a justification for state liability that comports with liberal individualism. Below we will consider more of what Alexander Wendt has to say in favor of a realist, anti-reductionist view of the state as an emergent intentional agent. Here, instead of arguing that the state is a robust person, we can see Wendt's argument as attempting to show the state's intentional agency, which may suffice on its own for judgments of state liability. Wendt's work draws from a large swath of philosophical literature on collective and corporate agency, so within our discussion of his view we will also have the opportunity to branch off into some importantly related views of agency and responsibility. A few main threads of argument from those in the 'emergentist' camp will be isolated here, and we will see if state responsibility can be justified through any of them.

We avoid many of the contentious issues bound up in an argument for real, robust state personhood if we focus instead on whether the state exhibits a unity of intentionality, or shows itself to be a deliberating and intentionally acting structure or system that endures through time. Wendt's earlier treatment of the state (1999) argues for a conclusion of this sort, and related accounts have been developed that support a view of corporate agency that grounds a normative status for institutions and organizations themselves.[255] The force of this line of reasoning stems from the fact that certain minimal conditions for base moral agency can be developed, which

[255] For example, Toni Erskine defends a view of the state as an institutionally responsible agent in "Assigning Responsibilities to Institutional Moral Agents: The Case for States and 'Quasi-States'," in *Can Institutions Have Responsibilities*. Ed. Toni Erskine (New York: Palgrave MacMillan, 2003), 19-40.

imply that certain collective entities can achieve 'agent' status, even if they are not exactly like the paradigmatic case of human persons. What these writers attempt to show is that some systems are capable of deliberative and purposive behavior based on their own beliefs, desires, interests, and the like, very much like individual human agents. Insofar as this is the case, to a certain extent it seems that we should treat these systems, themselves, as moral agents. It must be shown, though, that they are able to fully function as moral agents.[256]

In what follows we will begin with a look at the general development of corporate agency, which is a broad notion that would include state agency. After looking at how the general corporate form is thought to produce unique agency, we can then continue our analysis of Wendt's view and attempt to determine if the state is a corporate agent capable of itself being a responsible agent, and so one that can bear liability. Again, we are trying to identify the sorts of things that can participate in a normative system, which is to say, the sorts of things that can understand rules, act intentionally so as to follow rules, and that have interests or a conception of the good that enables them to be persuaded to alter their behavior on the basis of new reasons that can affect their deliberation.[257] This is taking us close to full, real personhood of the kind that was rejected for the state in the previous chapter; however, we do not need to go so far as to say that an entity or system that displays such agency is an organism or a conscious thing, in a strict manner of speaking. At the very least, they need not be 'persons' in the same way that most human beings are persons. The moderate position that is commonly found in the literature is that certain intentional systems satisfy sufficient conditions to be included in the stock of moral agents, even if they do not all achieve *real person* status of some more robust measure. For our

[256] Recall the discussion of membership in a moral community in Part I, Ch. 2.
[257] Michael McKenna has a germane discussion of this in "Collective Responsibility and an Agent Meaning Theory." Part of *Shared Intentions and Collective Responsibility*. Eds. French and Wettstein (Boston: Blackwell, 2006).

purposes here a general view of corporate agency will first be motivated and we will then proceed to evaluate its merits, as well as its appropriateness for application to states.

§2 – CORPORATE AGENCY

We want to make a distinction between groups that are mere aggregates, such as 'people at the park on Tuesday' or 'American conservatives', which could never exhibit agency, and groups that have an internal structure that coordinates and unifies the members into something that might be an agent. Peter French refers to the first type of group as 'aggregate collectivities' and the latter as 'conglomerate collectivities'.[258] If we wanted to pass normative judgment on an aggregate collectivity, it would have to be because the responsibility of the group is the product of the conjunction of the individual responsibility held by its members. If the 'conservatives' are responsible for the enactment of some law, then, strictly speaking, this is only true if each member of that set is personally responsible (at least in part) for the law being passed. It is argued that the same is not true in cases of conglomerate collectivities, such as corporations.[259] "[W]hat is predicable of a conglomerate is not necessarily predicable of all of those or any of those individuals associated with it, and this is also true of predication of responsibility: only in rare instances does the name of the conglomerate refer to a determinate set of individual human beings."[260] On this view, a corporation can have properties, including moral and legal properties, which its members do not share, even in a derivative sense. That is, in some cases we might be able to say that corporations *A*'s action of doing *X*, is describable as member M_1 doing *Y*, member M_2 doing *Z*, etcetera. But in certain cases such a translation from macro to micro is not

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[258] Peter French, *Collective and Corporate Responsibility*. (New York: Columbia, 1984), 5, 13.
[259] The set 'conglomerates' is larger than and contains the set 'corporations', but I will continue to use the corporate form of conglomerate in my examples. This is for two main reasons. First, most of us are already familiar with the corporate structure and corporations are a major figure in our social lives. And, second, the state structure is very much like the corporate structure in certain ways, so an evaluation of corporations will be helpful with respect to our questions about the state.
[260] Ibid., 13.

even possible. For example, we might agree that corporation *A*'s responsibility to pay off its loans from corporation *B* is not really the individual responsibility of any member of *A*. At the very least, we will all agree that the translation from a claim about the corporation's property of 'having an obligation to pay a debt' to a claim about the properties of individual persons within the corporation cannot retain the exact predicate. Corporation *A* may owe *B* ten million dollars. The property of 'owing *B* ten million dollars' is not ascribable to any member of the corporation, and in fact even the weaker derivative property of 'owing *B* money' fails to be ascribable to any member. We could perhaps think that the shareholders of *A* are potentially the individuals who owe *B* that payment, because they are ultimately the owners of the corporation's resources and the individuals who will bear a loss of value in their property if the debt negatively affects *A*'s net profit. However, the terms of the particular contract that would be enforceable between *A* and *B* do not actually imply that any stockholder must make a transfer payment to *B*. It is not really correct to say that any given stockholder *owes* a debt to *B*, and the money used to pay *B* will ultimately come out of the money holdings of *A* itself. Furthermore, even if some members of *A* do have a derivative responsibility to perform some actions associated with paying the debt to *B* – the CFO, for instance, may have to personally handle the account – there will be many other members who have no derivative responsibility based on the corporation's responsibility. The mailroom staff, for example, does not seem to share in the responsibility to pay off that loan. A corollary to this idea is that the identity of the conglomerate and its properties do not necessary change when membership changes. In a corporation the stockholders change almost continuously in some cases, and even if board members, managers, and other workers come and go, the corporation remains. In corporation *A* there may be a major reorganization where most staff are fired and replaced, including executives and board members. Nevertheless, *A*'s debt to *B* remains

enforceable until it is paid or *A* no longer exists, the latter of which has not occurred even if membership has turned over completely.

French provides a list of three features that conglomerates have, which set them apart from aggregates: (1) internal organization and/or decision procedures, (2) specially enforced standards of conduct within the conglomerate, and (3) members' defined roles specifying authority relations.[261] When a group exhibits these features it distinguishes itself from mere aggregates or simple collections of people. The group's unique identity *emerges* from the workings of the members and institutions within it. Whereas we can only ascribe certain sorts of summative properties to aggregates, such as the property of being left-handed to the set 'left-handed people', on French's view we can properly speak of conglomerates as things that act deliberately with intentionality, from a conception of their own interests. What we need to see now is how it is possible to make true claims about a conglomerate's agency, given that we all agree that individual human beings are ultimately its agential foundation. In the above example we assumed that corporation *A owed B* ten million dollars, but how can a claim of the form: "Corporation *A* has obligation *X*" be true in the first place?

We all agree that certain true claims can be made about the persons who comprise a given corporation, and that these persons are a part of the 'stuff' that makes up the corporation. But why are we ever allowed to say things about the corporation's beliefs, desires, and actions, and if we do say such things, what would make our claims true? The first step in demonstrating the appropriateness of assigning intentionality to a corporation is to make some logical space for the possibility. French accomplishes this by noting the 'referential opacity' of attributions of intentionality in regard to particular events.[262] That is, different descriptions of the intentionality

[261] Ibid., 13-14.
[262] Ibid., 39.

involved in an event will have different truth-values. French's example from Hamlet serves as a particularly clear example of his point here. It would be correct to say, "Hamlet intentionally killed the person hiding in Gertrude's room." However, it would not be correct to say, "Hamlet intentionally killed Polonius," because Hamlet did not know that Polonius was the person hiding in Gertrude's room, and he in fact thought it was the King. Extending this idea to the relation between individual and corporate properties, we can say that there is the possibility that descriptions of the intentionality of the individuals are describable in terms of the intentionality of the corporation. As a quick example to clarify, consider the CEO of corporation *A* signing a membership agreement to have *A* join an organization of businesses *B*, on the basis of a majority vote of the shareholders of *A*. Although it is the CEO who physically performs the action of signing the agreement it would not be correct to say something like, "The CEO intentionally joined *B*." The CEO is not personally joining *B* and does not have any personal intention to do so. The CEO is acting for *A*, and the intentionality of what the CEO does in that capacity looks properly ascribed to *A* itself. *A intentionally* joined *B*. The CEO just intends to handle the legal aspects, sign the forms, and go through the necessary ceremonial conventions to do her part to carry out the intentional action of *A*.

The above examples suggest space for corporate intentionality, but an acceptable description of an event is all we have so far. It is not enough that we show that ascriptions of intentionality in our language sometimes seem more appropriately directed at an organized group than certain individuals. We need to say more about what specific mechanisms enable the intentions of the individual persons within a corporation to be combined into a corporate intention. We need to see a causal story that identifies a systemic element that enables the emergence of the corporation's properties. French's major contribution to the discussion about

corporate agency in particular is his notion of the 'Corporation's Internal Decision Structure' (CID Structure), which he thinks licenses the translation from what we know about individuals to claims about the corporation itself.[263] The CID Structure's important aspects are, "(1) an organization or responsibility flowchart that delineates stations and levels within the corporate power structure and (2) corporate-decision recognition rule(s) (usually embedded in something called corporation policy)." "When operative and properly activated, the CID Structure accomplishes the subordination and synthesis of the intentions and acts of various biological persons into a corporate decision." As mentioned above, "the CID Structure licenses the descriptive transformation of events, seen under another aspect as the acts of biological persons (those who occupy the various stations on the organizational flowchart), to corporate acts by exposing the corporate character of those events." So, in short, "A CID Structure *incorporates* acts of biological persons."[264]

French's account of the inner workings of the corporation, which enable the corporation itself to 'come to life', and express its 'personality', gives us a way of understanding how the corporation itself could have beliefs, desires, interests, and intentions. The individuals within the corporation may have their own beliefs, desires, interests, and intentions, but when they come together to carry out their jobs, according to their assigned roles within the hierarchical corporate structure, under its attending recognition rules, and in accord with the corporation's determined policy, the reasons these individuals act from can be understood as *corporate* reasons and the resulting joint action or activity as *the corporation's* action or activity.[265] When corporation *A* borrows a sum of money from corporation *B*, certain members of *A* (M_1, M_2, M_3,…M_n) make related decisions based on their personal beliefs, desires, interests, and intentions, but insofar as

[263] Ibid., 41.
[264] Ibid., 41-42.
[265] Ibid., 44.

the internal functions carried out by these members is part of the corporate structure that implies its own beliefs, desires, interests, and intentions, it supersedes the individuals' intentional states, and replaces them with a primary concern for achieving corporate policy and so acting in the corporation's interest. The individual's intentional states become partially derivative from the corporation's intentional states, and the product of the actions and agency of these members can thus be assigned to the corporation itself.

That the corporation is the entity with intentionality does not preclude that we take into account the intentionality of the individual members. In short, the corporation and individuals within it can be responsible simultaneously, but in relation to different objects. For example, the corporation itself may be held criminally liable for a set of cases of securities fraud, while a particular broker might be held criminally liable for her particular illegal trades, which are only part of the full set. French further allows that if an individual member of the corporation acts for her own personal reasons, and in conflict with corporate policy, or by breaking rank in the corporate hierarchy and ignoring recognition rules, this person acts for herself, and so the corporation is not the proper target for ascriptions of responsibility for her actions (that is, unless there is some further reason to conclude that internal systems should have done more to prevent her rogue behavior). A corporation's intentional act, done on the basis of *its* reasons, will be one where the CID Structure was followed and where the results of the workings of the corporate system align with basic corporate policy and corporate interests.

A particularly stark example of corporate intentionality can be seen in a hypothetical situation described by Philip Pettit as a 'discursive dilemma'.[266] Before saying more about what a discursive dilemma is and how it might generate an irreducible corporate outcome, consider how Pettit describes what he is trying to accomplish through his argument.

[266] The discussion here is based on: Philip Pettit, "Collective Persons and Powers," *Legal Theory*, 8 (2002), 443-470.

> There is a type of organization found in certain collectivities that make them into subjects in their own right, giving them a way of being minded that is starkly discontinuous with the mentality of their members. This claim in social ontology is strong enough to ground talk of such collectivities as entities that are psychologically autonomous and that constitute institutional persons.[267]

To support the contention that certain collectivities can be institutional persons, Pettit describes a scenario where a voting procedure takes place between members of a collectivity who have the authority to decide on some policy for that collectivity. The basic idea is that the inputs to this decision procedure, from the members of the group of deciders, generate a particular output decision for the corporate entity that is actually contrary to all individual decisions (in the most extreme cases). Put another way, the corporate intention that results from the decision procedure is not what any single individual in the corporation intended. In such a case it would seem that we must treat the corporation as the entity with the intention, since no set of individuals within the corporation has that intention.

A 'discursive dilemma' is said by Pettit to be a generalized account of what is called the 'doctrinal paradox' in legal theory.[268] A doctrinal paradox is a possibility in courts with multiple members, because, though the members may decide upon an issue in their own individual ways, their decisions may be aggregated through a procedure that generates an outcome that no individual judge determined. That is, if the judges vote individually on what the outcome should be, they will reach a different conclusion than if they decided on individual factors that are relevant to the final decision and then aggregate their judgments of those factors. Consider a simple case of a court with three judges who must decide whether the defendant is liable for a tort against the plaintiff. The decision that the defendant is liable is proper if, and only if, (a) the defendant's negligence was causally responsible for the plaintiff's injury and (b) the defendant

[267] Ibid., 443.
[268] Ibid., 444. My example of the simple court below is also borrowed from this source. Pettit cites legal theorists Kornhauser, Sager, Chapman, and Brennan as examples of theorists who have addressed the doctrinal paradox.

had (or has) a 'duty of care' toward the plaintiff. The following decision matrix is one possible outcome that illustrates the paradox.

	Proximate Cause?	Duty of Care?	Liable?
A	Yes	No	No
B	No	Yes	No
C	Yes	Yes	Yes

The two most obvious ways of arriving at a group decision in a case like this would be to (i) use the majority decision of their judgments of whether the defendant is liable (a 'conclusion-centered' procedure), or (ii) use a majority decision on each issue and ultimately decide based on whether or not both factors carried majorities (a 'premise-centered' approach). If (i) is the procedure used, the court will find the defendant not liable, but if procedure (ii) is used the court will find the defendant liable and generate a paradox. Only one member of the court of three thinks the defendant is liable, and yet the court itself, using procedure (ii), judges that she is.

Pettit generalizes this consideration because he does not want to restrict it to just the legal context. Discursive dilemmas can arise from many forms of group discourse, as such, and not merely from applications of legal systems. Consider an employee owned and democratically organized firm that must make a decision about whether to give up some of their wages in order to invest the money in a workplace safety system.[269] The employees decide to judge the matter according to three considerations: (a) whether the danger is serious, (b) whether the safety measures will be effective, and (c) whether the loss of pay is bearable. Individually, the members will only vote in favor of taking a pay cut if they conclude that all three conditions are satisfied. The possible decision matrix below illustrates the same sort of potential dilemma as above. The group must decide whether to use a premise-centered or conclusion-centered approach, and a great deal depends on that decision.

[269] Ibid., 447.

	Serious Danger?	Effective Measures?	Bearable Loss?	Pay Cut?
A	Yes	No	Yes	No
B	No	Yes	Yes	No
C	Yes	Yes	No	No

Again, if the group focuses on the conclusion that each voting member reaches, then the policy will not be adopted. Yet, if the group takes the majority view with respect to each condition to determine that particular factor, then the group as a whole will be in favor of the pay cut. Pettit argues that purposive groups will inevitably face these sorts of discursive dilemmas, and that they will tend to feel pressure to 'collective reason' within the group, as in the premise-centered approach. This avoids the tension that results from the conclusion-centered approach, when the majority of members' views imply a decision that the group then fails to take. Pettit thinks purposive groups will tend to choose the option where the group's reasoning, at the collective level, is consistent all the way through (a majority of the group favors each premise, and so the group adopts the conclusion that follows from the premises).

Many different kinds of groups can display the properties that Pettit has in mind here, and he mentions governments and states as particular examples of such groups. If that were correct, then when the state behaves in the manner described, and adopts a premise-centered approach, then such cases would bode well for the state-actor model in normative IR. Pettit provides a sort of extreme possibility, but it is included here as a limiting case of French's idea that the CID Structure can be the driver of corporate intentionality. It remains to be seen how these analyses fare with respect to the state, its actions, and their normative implications.

§3 – STATE AGENCY

Before we evaluate the possibility of state agency, it should be mentioned again that it is quite common in the academic literature to ascribe agency to states. The state's (or nation's, country's, or people's) personhood or *its* moral or legal responsibility is explicitly proclaimed, or

at the absolute least, directly implied, in many writings on these and related topics. Robert Goodin provides a perfect example when he says, "[T]he state is a moral agent, in all the respects that morally matter. It, like the natural individual, is capable of embodying values, goals, ends; it, too, is capable…of deliberative action in pursuit of them."[270] Speaking of responsibility for reparations Kok-Chor Tan says, "The wrongful actor is the nation, and it is the nation that is now being asked to make repairs. We are not wrongly allowing responsibility to travel across agents; the responsibility stays with the culpable agent, in this case the nation that is responsible for the harm."[271] Examples abound of ascriptions of state-based rights, duties, actions, intentions, beliefs, desires, emotions, and other character traits. Wendt's treatment of this issue, then, shares good company, and it is defended along argumentative lines that are quite common in the philosophical literature. Below we will look at Wendt's reasons for regarding the state as a real, emergent agent. We can refer to Wendt's opposition as 'reductive nominalism', which will be looked at in more detail in Part IV, Ch. 1.

The first property that Wendt discusses is a shared knowledge that reproduces "the Idea of the state as a corporate 'person' or 'group Self'."[272] Though there is a worrisome Hegelian bent to this property, Wendt argues that it is consistent with realism. Citing Max Weber, he mentions the important fact that individuals must orient their beliefs and actions in such a way that the state continues to exist, and citing Margaret Gilbert he claims that the beliefs of the individuals reveal the state's 'self' when they say 'we' and identify as part of a plural subject.[273] Further traditions and institutions may help determine the particular history and characteristics of

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[270] Robert Goodin, *Utilitarianism as a Public Philosophy*. (New York: Cambridge, 1995), 35-36.
[271] Kok-Chor Tan, "Colonialism, Reparations, and Global Justice," in *Reparations: Interdisciplinary Inquiries*, eds. Miller and Kumar (New York: Oxford, 2007), 297. Of course, Tan is not discussing states in particular, but his position on nations relies on similar reasoning to a case for state-based responsibility for reparations, so I don't think this allays the point.
[272] Wendt, *Social Theory*, 218.
[273] See Part III, Ch. 1 for a discussion of Gilbert's view.

the state's self, such as a constitution (which is rather like a corporation's basic policy, or mission statement). All of this will take on a narrative form,[274] though the narratives apply to the structure itself, and so do not require actual collectively shared knowledge. That is, it is not the case that *every* member of the collective must have the idea of the state as a 'self' in her head. "What matters is that individuals accept the obligation to act jointly on behalf of collective beliefs, whether or not they subscribe to them personally." The ability of the state to subsist and to act is dependent on the causal powers created through such joint action. Thus, Wendt concludes, "The concept of state agency is not simply a useful fiction for scholars…but how the members of states themselves constitute its *reality*."[275]

The second property that Wendt discusses is an internal decision structure of the kind developed by French. The internal decision structure serves two crucial functions. First, it *institutionalizes* collective action; that is, it makes cooperative action between the members of the state the default position. When citizens have internalized their roles as state members and have accepted state norms as their own – as partly constitutive of their identity – this satisfies the conditions necessary for achieving collective action in the first place. Very large groups of people do not just spontaneously *intentionally* coordinate toward some specified set of ends without a shared belief-system and set of norms between them that enables highly organized, intentionally directed cooperation.[276] Second, in order to make this more than just an organized group of individuals, the internal decision structure of the group must have an *authorizing* effect.

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[274] Wendt cites Erik Ringmar as one who has developed a narrative account of the state. See my discussion of Ringmar's view in the previous chapter.

[275] Wendt, *Social Theory*, 219 [his emphasis].

[276] To be clear, I am not denying the possibility of spontaneous order on a very large scale. It is certainly possible that institutions that enable cooperation between large numbers of people can arise over time without the direction of a single plan and without a collective disposition to *all work together*. Spontaneous market orders are of this kind. What I am claiming, in agreement with Wendt, is that there must be a shared presumption of willingness to engage in *specific* cooperation toward a *specific* end, in order to get large groups of people to coordinate in something like a state action (e.g. war).

"The key to this are rules that specify relations of authority, dependency, and accountability among a group's members that transfer the responsibility for individual actions to the collective so that individuals act as representatives or on behalf of the latter."[277] This is an old and familiar idea. The authorized agents of the state, usually government officials, are able to act 'in the name of' the state, and so in certain cases what they do *is* what the state does. In this way we are able to talk about the state itself, explain international relations with reference to the states as the primary actors, and predict future international events based on what the states involved think or feel, and so are likely to do.

Wendt concludes from the state's identity and internal organization that the state is ontologically emergent, and that it exhibits its own agency. He concludes, "Insofar as the state is ontologically emergent…anthropomorphizing it is not merely an analytical convenience, but essential to predicting and explaining its behavior."[278] For the purposes of retrospective normative judgment, we are concerned to explain past events, rather than predict future ones, but the relevant implications of Wendt's position for normative IR should be rather obvious. His analysis, if correct, licenses us to re-describe the actions of state officials as the actions of the state, and actually understand the basis of those actions as originating not in the minds of the state officials, but rather from the complex workings of the entire system. Much like French would argue that corporations can act for corporate reasons and so bear responsibility, Wendt's position would imply that states act for their own reasons and so may bear responsibility for what they do. Our worry about how this account will cover all members of the state system is addressed by appeal to the common beliefs and dispositions internalized by the citizens, under conditions of a generally mutual understanding of certain obligations to act jointly on the basis of

[277] Wendt, *Social Theory*, 220-221.
[278] Ibid., 221.

collective beliefs. In addition, there is the authority that exists between state officials and state members via the state's social, legal, and political institutions, which designate structural relations between members and collectivize the 'input' of all members into certain 'outputs', which are the state's intentional properties.

Part of Wendt's argument against nominalism is to point to the explanatory and predictive success of realism. He rehearses a sort of inference to the best explanation to argue that realism best accounts for "the fact that despite [the] dependence of states on individuals, we routinely explain their behavior as the "behavior" of corporate agents, and these explanations *work* in the sense that they enable us to make reliable predictions about individuals."[279] He then compares reference to the state with reference to quarks, capitalism, and preferences, as all being unobservable entities that are taken to be real because "their structure generates a pattern of observable effects." If there are doubts about the reality of the state, consider what happens when its edicts are not followed. "If John refuses to pay taxes on the grounds that the US state is merely a fiction, then he is likely to experience consequences just as real as he does when he stubs his toe on a table."[280] Wendt's thought here seems to be that nominalism works against our common practices, which themselves seem to work quite well. Since these common practices adopt a realist stance with respect to the state, all the more reason for us to do so.

Wendt's view is similar in form and in defense to other notable views about agency and moral responsibility as they apply to institutional groups or social structures. Toni Erskine also follows French's lead on corporate agency to argue that states are 'institutional moral agents'. Her conditions for such institutional agency are (1) an identity that is more than the sum of its parts, (2) a decision-making structure, (3) an identity over time, and (4) a conception of itself as a

[279] Wendt, *Social Theory*, 216 [his emphasis].
[280] Ibid.

unit (the persons must conceive of *themselves* as a unit, rather than be simply defined as one from the outside).[281] Thus, on grounds quite similar to Wendt's, Erskine concludes that the state as *institutional group* is itself a responsible agent that can bear liability. These two perspectives on state agency are the first we have looked at that trade heavily on the idea of the state as a set of social, legal, and political institutions, as opposed to a group of persons so organized.[282] Persons are still relevant on these views, of course, but the *structure* of the state is the central element. Erskine doesn't wish to argue that all members of the state are retrospectively responsible for the state's agency, as in the accounts of vicarious liability discussed in Part II, she wishes to argue that the state itself is an agent, and *the* agent responsible for its actions.[283]

§4 – AGAINST CORPORATE AGENCY

In this discussion of the problems faced by accounts of corporate state agency, we will begin with some comments on corporate agency itself, as the state provides a specific case of the more general phenomenon of corporate agency. If there are reasons to doubt the legitimacy of strong accounts of corporate agency, then these reasons work against state agency as well. Let us first recall that the views under consideration are not claiming that descriptions of corporate agency are merely acceptable, though it is just persons really acting. The position under consideration is that the corporation is a rational agent *itself*. Thus, when inquiring whether this is true, we need to consider whether the corporate entity can actually function as a member of our moral or legal 'community'. Most important to that determination is whether a corporation can really deliberate, have values, form beliefs and desires, and act intentionally. Relatedly, it would seem that it must be the sort of thing that might change its behavior due to sanctions.

[281] Toni Erskine, "Assigning Responsibilities to Institutional Moral Agents: The Case of States and 'Quasi-States'" *Can Institutions Have Responsibilities?* Ed. Erskine (New York: Palgrave, 2003), 19-40, 24.
[282] See Part I, Ch. 1, §2.
[283] Erskine, "Assigning Responsibilities," 22.

From what French has said, it does seem as if we can make sense of the deliberative process that a corporation might undertake. Minimally, it seems quite reasonable to understand the output of the corporation (its actions) as the product of the many various inputs that the individual persons within it contribute. Furthermore, if we look at a corporation's mission statement, and perhaps its company policy, then we could determine the 'corporation's values' and its interests from that. So far, so good for corporate agency, it seems. Yet, questions of corporate beliefs, intentionality, and responsiveness to sanctions are not so easily addressed.

The worry about corporate beliefs is that they could not possibly exist anywhere other than in the minds of the individuals who run the corporation. Literal talk of a corporation's beliefs could not be other than an indirect manner of speaking about what the persons within it believe. It could be that we think we can refer to the corporation's actions to infer its beliefs, but this cannot be allowed. One reason for this is that our interpretations of actions perceived from the outside do not reveal specific underlying beliefs involved and often cannot be used to form reliable conclusions about even general belief-states. This limitation applies even for human persons, and the case is even worse for corporations. With a single person we can focus on specifics of behavior to infer underlying beliefs; when we talk about 'corporate action' we usually have some abstract (broadly representative) processes in mind that 'the corporation' does, rather than the discrete actions of individuals. With a corporation and corporation actions, such as introducing a new product line or taking a loan, there is a far less specific understanding of the situation in play. The story we tell at the corporate level is too crude for proper normative analysis. The one doing the evaluating has much less to work with to infer what beliefs undergird the action, and so to form accurate judgments. A second reason for not relying on descriptions of action to infer beliefs is that to do so in the corporate case would be to simply presuppose the

holistic perspective and, in an *ad hoc* way, 'reverse engineer' the belief data. On such a basis anything at all that acts could be ascribed beliefs. A plant that produces flowers could be ascribed flower-production related beliefs and we could say that a school of fish has certain beliefs about what shapes to take to avoid predators. It should be clear that these entities do not have beliefs and that their actions should not be thought to imply specific beliefs. The same is true for corporations. In short, individuals have beliefs; groups do not.

This worry about beliefs then calls into question the deliberative capacity of a corporation in the first place. What is this deliberation supposed to be based from if not the corporation's beliefs? We might grant that the company policy and mission statement provide the value basis of such a deliberation, and we may even permit that the human persons involved can provide the necessary 'software' to carry out the deliberative inferences and other computations; yet, it still looks as if the 'corporation' is unable to gather outside information to use. Whatever beliefs it is supposed to have that would enable it to carry out a deliberation about how to act in the world would necessarily be the beliefs of the persons in the corporation.

Beliefs seem to be a rather important part of the deliberative process, but it could be possible to do away with them as an essential component in all forms of agency. Perhaps the corporation can exhibit agency without 'holding' beliefs itself. Perhaps we can accept that the persons in the corporation hold the beliefs and still insist that the corporation acts through them nonetheless. Once the individuals bring in their beliefs and add them to the corporate structure (or function) the output could still be considered the action of the corporation itself.

Such a view avoids the weirdness of a group itself having beliefs, but we should worry about the source of this type of agency as well. Even if we are convinced by French's argument that it is the internal structure of the corporation that brings together the various individual inputs

from various persons to create a corporate output, it is still up to those individual persons to initiate and guide that entire process. When persons work together within the corporation they are constrained by the corporation's structure and the hierarchy of authority in place, as well as by the corporation's mission statement and basic policies; however, daily 'corporate actions' and 'decisions' are done through the creative imagination and spontaneous volition of individual persons.[284] It is not at all clear why we should think of it being the corporation's intention to pursue a new product line, say, when that idea sprang from the mind of a corporate member and was evaluated by other corporate members, according to their personal beliefs, and ultimately put into place by still other members, who all contribute their own personal agency to the operation. These people will no doubt act as they do because of their positions within the corporation and because of the way in which decisions are made within the corporation's structure, but they do so for their own personal reasons and through their personal actions. The corporate workers may also share certain ends that are relative to the workings of the corporation, as a group or system itself, but the result of what this group of persons does is ultimately the result of their individual intentions. There is no further, additional, unique intention that is the corporation's.[285] It is only true that a corporation pursues a new product line in the shorthand sense that some of its employees are doing so, with money that may be acquired through the sale of stock, and for the sake of things like profit and stock value. As agents of the corporation they act for it or because of it, but *it* does not intend or act. Certainly, we can agree that there may be an 'as if' sense in which 'the corporation' pursues a new product line, because the end result is produced by the persons in part through the internal structure of the corporation,

[284] Manuel Velasquez's raises a similar point against French's account in "Why Corporations are Not Responsibility for Anything They Do," *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics* (1991, 111-131), 117-118.
[285] Completely irreducible corporate beliefs and intentions will be addressed further in §6 below.

but this is not the thesis at issue. Defenders of corporate agency are arguing for much more than that. The group itself is supposed to have beliefs, intentions, and deliberative capacity.

French will insist that certain things the corporation does can *only* be predicated of *it*, and *its* intentionality (that is, they are not reducible). Recall the example from above where the CEO of corporation *A* signs a membership agreement to have *A* join an organization of businesses *B*, on the basis of a majority vote of the shareholders of *A*. Might not French be right that the action 'joining *B*', and so the intentionality related to that action, can only be ascribed to *A*? Without fully arguing in support of reductionism here, let is just be noted that the observable action in such a case is the action of the shareholders, the corporate officers who compile that data and inform the CEO of the decision, and then the CEO's action of signing the papers and performing the other formalities. Though our language may allow us to describe such a series of events as an action of the corporation's, the physical changes happening in the world all originate in, and are produced through, human persons, and it would seem, then, that the intentionality is as well. French's argument about the untranslatability of certain predicates from corporation to persons cannot be sustained unless interpreted in the weakest possible sense. If French simply means to show that the *identical* predicates that we ascribe to the corporation cannot be ascribed to its members, then we should have no problem accepting this. As in the case of corporation *A* borrowing money from corporation *B*, we can certainly agree that member *M* of *A* does not have the property of 'owing *B* money', even though *M* is a member of *A* and *A* owes *B* money. Accepting this does not force us to accept that no such translation is possible. If the full practical substance of a claim of the form 'corporation *A* has property *P*' can be accounted for in a set of derivative claims of the form 'corporate member *M* has property *P*', then there is nothing

remaining to predicate of the corporation.[286] The fact that some predicates only apply to the corporation and not to the persons within it does not establish anything of normative consequence, just as it does not in the case of crowds or other unorganized groups. The attendees of a music festival might destroy the festival grounds, and the predicate 'destroyed the festival grounds' is certainly net predicable of any single member of the crowd. Nevertheless, the collective predicate is convertible into a conjunction of claims about the individual actions of the individual festival attendees, and obviously so. It isn't clear why the addition of an organizational structure of positional duties and authority relationships should alter this fact. If anything, the organizational structure simply provides further details about the causal nexus underlying each individual person's intentional states and contribution to the overall effect, which is itself simply *conceptualized* as a result of the whole.

We could go further and say as well that even if we accept that corporate predication cannot be translated into individual predication this still does not show that the corporation is responsible, or that the group must be the referent of a claim about agency. We can still maintain that the individual persons are the locus of moral responsibility insofar as they exhibit their agency through their positions in the corporation. Manuel Velasquez offers an example that clarifies this possibility. He says, "Suppose I deliberately chop down a tree and the tree falls. The fall can be predicated only of the tree (i.e., it is then correct to say, "The tree fell"); it cannot be predicated of me (i.e., it is not correct to say "I fell"). Nevertheless, I am morally responsible for the fall of the tree since I am the one who intentionally brought it about."[287] In this case, not only can the exact predicate 'fell' not be ascribed to him, there is not even a workable translation from

[286] I will discuss reductionism in detail in the following chapter. Here I only wish to point out the weaknesses of the account of corporate agency at issue.
[287] Velasquez, "Why Corporations are Not Responsible," 119.

the tree's property of falling to a property of his.[288] The same logic applies to corporate predicates. It might only be appropriate to say that the corporation 'joins the business association', but the responsible parties – the agents who are the originators of the intentions and actions – must be some persons in the corporation. If we ask *why* the corporation joined, a legitimate answer to this question cannot be that the corporation decided to join because joining the association satisfied *its* desires. That is, we cannot claim such a thing and intend it literally, in such a way that we mean to refer to some real entity in the world that is performing these actions on the basis of *its* mental states. Our moral judgment in this case must reflect the agency of the human persons involved who were the springs of the action and whose characters are therefore reflected in it. Not only can the corporation itself not answer for what has happened, it could not offer any of its *own* reasons, even if it could answer. Even if a decision procedure or feature of the corporate structure is important to the final result, the persons within the corporation must always be the physical agents conducting that decision procedure and implementing its decisions. Persons are necessarily always the intending and acting parts of the corporation.

§5 – AGAINST CORPORATE RESPONSIBILITY

On an important related note, consider also whether the corporation itself can function as a member of the normative community, where such a member must be 'moldable' on the basis of deterrent and corrective measures such as blame and punishment. Consider a generic case where corporation *A* transports crude oil. Imagine it is a written policy in *A* that cost-cutting measures should be taken whenever possible, even to the point of taking great risks during transport. Accordingly, tanker ships owned and operated by *A* are not well maintained. Though we might

[288] Perhaps something like, 'is now standing near a fallen tree', but this is not helpful. It is not another way of understanding the property of falling. Contrast such a case where we say, "corporation *A* sold 10,000 widgets this quarter." Here we can break down that corporate predicate and capture the circumstances described in a series of claims about individual persons within the corporation.

say this is *A*'s doing, persons 'on the ground' in *A*'s operations must know about the dangerous condition of the ships. Imagine further that managers have been informed but all continue to approve the use of the ships in their existing condition even though they know a disaster is likely. Perhaps some in the executive ranks are even hoping for such an event because the company's insurance policy on the ships will pay more than they are currently worth. Cutting corners is policy, after all, and an insurance payout is desirable according to *A*'s profit motive. If one of *A*'s oil tankers has a major spill one day because so many corners have been cut, can *A* function as the target of our related normative judgments?

Let us put the issue of corporate *liability* for property and environmental damage aside. It is clear that corporate funds are appropriately used to cover the consequences of *A*'s doing business, and all individuals financially at stake in the corporation are justifiably impacted by such measures. This is due to the fact that they all knowingly entered into a liability relationship with the corporation. Under one possible description, buying stock in a corporation just is putting yourself in a position of financial liability with respect to that corporation's actions. The harder question here is who is morally responsible, and perhaps guilty of criminal negligence or even recklessness. On French's account, *A* itself is responsible because the intention to cut costs was the corporation's, given that doing so was a part of company policy and that the members of the corporation who acted to carry out that policy did so in abidance with the CID Structure. Thus, we can blame *A* for the oil spill, and we can hold *A* criminally responsible for negligence or recklessness. Jail time is not a possible punishment for *A*, since *A* has no body to be caged, so we will instead have to fine *A*, in addition to whatever civil liability *A* may also incur from the spill. This is our normative response to *A*, and we take it not just for the purpose of remedying the harm done, but in addition as retribution and as a deterrent from future risky behavior, for *A* and

other corporations like *A*. We judge that *A deserves* blame and punishment and we hope that we can alter *A*'s character by affecting *A*'s interests. The best way to do that seems to be to take away some of *A*'s money. Can such a practice make sense as an expression of the 'normative community's' reactive attitudes and policy response to *A*? Are we correctly identifying the agency involved so that we direct our normative response at who is deserving and actually capable of reforming *A*'s behavior?

Though the above example describes a truly common practical response to corporate action, it is woefully inappropriate and incongruent with our treatment of human agents in interpersonal normative contexts. In other words, a focus on *A* both misidentifies the relevant agency and misapplies the normative response. Reactive attitudes and the punishment that is supposed to be corrective and deterring are both misdirected, and so fail to serve their purpose in addition to being technically incorrect. In blaming *A* we do not blame something that can experience guilt or shame, which would act as motivating factors for members of the moral community. Since *A* does not have its own identity, self-esteem, and self-image to worry about in the community – no peers to face in public, no awkward relationships caused by past misdeeds – *A* is not itself motivated by reactive attitudes directed toward it in the way that humans are. In punishing *A* we do not punish something that *feels* the negative effects of that punishment and so adjusts its behavior to avoid that feeling. Certainly, in the least, *A* itself is not capable of having any *moral emotions* to that effect, which are the drivers for revising human action through sanctions. The communicative and reformative effects of our reactive measures, at least, are therefore diminished.

One might argue that harming *A*'s profits harms *A*'s interests and so will incentivize *A* to reform its behavior. Even if a corporation cannot feel, it can still be adversely affected by

affecting its bottom line, which is the principal reason for-profit businesses are established.[289] In response we should first consider whether it makes sense to speak of punishing *A* and affecting *A*'s interests in the first place. We should also question whether affecting *A* supposed interests can affect *A*'s behavior. Why does harming *A*'s profits harm *A*'s interests and so affect *A*'s intentional states (again, in more than an 'as if' manner of speaking)? Unlike a human person, *A* does not have its own living expenses and future objectives for its money holdings. *A* cannot think that its life-plan has been stymied or that prospects for future success have been weakened. It is not clear that *A* has any interests at all that are harmed, even if *A* is put out of business. It is not as if *A* has particular *desires* that can be thwarted and so cause *A* frustration or instill in *A* other emotional states that might lead it to change its ways.

Secondly, even if we think it is appropriate to talk about *A*'s interests and incentives, criminal penalties directed toward *A*, such as fines, can simply be a cost of doing business; and as far as *A* is supposed to be concerned, as long as business is profitable (or net profit is trending toward maximization), legal penalties are not a real concern. This is especially true if the savings or profits gained by the illegal business practices are greater than the cost of legal sanctions. In such a case the overall outcome from *A*'s 'perspective' is that the course of action taken was a good one. This is referred to as the *deterrence-trap problem*,[290] and it occurs essentially because the sanctions are not directed at the correct agents. It is quite possible that conducting business illegally will turn out to be the *maximally* profitable way for *A* to do business, in which case fines will have low deterrent effect, to say the least.

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[289] We can ignore the further complications that arise when non-profit businesses do wrong.

[290] The view in legal theory that favors punishing the corporation itself is labeled 'The Chicago School'. A common line of criticism against this school is that profitable corporate members and practices will be accepted by the internal regulatory mechanisms in the corporation in spite of legal sanctions. See John C. Coffee, "'No Soul to Damn: No Body to Kick'," *Michigan Law Review,* Vol. 79, no. 3 (Jan., 1981, 386-459), 407-409.

Now, we can speak meaningfully of the circumstances under which *A*'s purpose is best served, in terms of creating a product or service that satisfies its mission statement, proves to be profitable, or continues the profitable functioning of the business itself, but these are not normatively relevant interests in the sense that they are not interests of a thing that can be impacted so as to reform *it*. We can also speak meaningfully of the interests of a building, such as a strong foundation, serving its function as a place of worship, say, and remaining upright indefinitely. However, it is clear that affecting these 'interests' cannot incentivize the building to change. When a building's foundation weakens or it needs changes to serve its intended function (also a human intention, by the way) persons must be incentivized to do the work needed. The same is true of a corporation. Persons must be incentivized to act differently, if our sanctions program is to be properly carried out.

The obvious rejoinder here would be to point out that imposing costs on *A* has the effect of offering incentives to the persons in *A*, thereby changing their beliefs, desires, and plans, thereby causing *A*'s intentions to change. If *A* cannot remain profitable when sanctioned for engaging in wrongful practices then *A*'s members cannot achieve their supreme goal of keeping *A* in existence and profiting from it. Given that their own interests are bound up in *A*'s continued existence (we shall suppose, though it is not guaranteed), the members of *A* will internally handle corrections and reorganization in order to prevent a future occurrence of the wrongful acts. Let us keep in mind that this could occur through a range of penalties imposed on *A*. The very weakest measures possible are moral sanctions directed at *A*. Then we have criminal fines ranging from those that are less than the profitability of the wrongful practice to those that exceed the profitability of the wrongful practice. On the other extreme of the scale are measures that prevent the corporation's continued operation, such as revoking the corporation's license to

do business in a certain area, imposing fines large enough to cause bankruptcy, or disbanding the corporation altogether by revoking its charter. Measures that destroy *A* cannot reform *A*, but it is possible that they could act as a deterrent for the members of *A* before the fact, since they would know that being shut down is a possible consequence of breaking the law, and such measures could also incentivize persons in other corporations.

Do such measures serve the communicative, corrective, and deterrent functions of punishment? While we can accept that, strictly speaking, some of these functions have been served to some extent, we should also accept that there is a worrisome disconnect between our assignments of corporate responsibility and the causal impact of these judgments. That is, though some relevant persons are affected who may alter *A*'s behavior from the inside, much of the force of the consequences of holding *A* responsible (again, beyond financial liability) is directed toward the wrong set of persons. As a result our response is both inaccurate and less practically productive than it otherwise could (and should) be.

We are already assuming that it is acceptable to hold A financially liable in this case, what is it that we are doing by *further* insisting that *A* is also morally or criminally responsible? Who experiences the consequences of our further judgment? The web of causation begun with a further penalty against *A* beyond liability depends on the specifics of the case, but the set of those affected potentially extends most directly to innocent members of *A* and non-members of *A* related to *A* in morally neutral ways. That is, the effects extend largely to a set of people that are not deserving of negative consequences, not in a position to be motivated to change *A*, or not in a position to change *A* even if so motivated.

In terms of moral judgment, directing our reactive attitudes toward A will have the weakest effect of all on encouraging members of *A* to reform *A* from the inside because the

members are likely to avoid personal feelings of guilt and shame since *A* is the referent of the judgment. In cases of interpersonal moral judgment, the individual judged must face those who hold her responsible. Her relationships with them are affected and she may be motivated to change so as to be on good terms with the community again. The members of a corporation need not experience any of this when they are not personally named. The greatest effect of directing moral judgment toward *A* is to communicate to other members of the community that *A* should not be patronized. An all out boycott could be the most severe result. This can affect *A* indirectly, but it is not the sort of retrospective *assignment* of responsibility that we are looking for, which is itself supposed to efficacious as a reforming or deterrent measure. Persons in the community are certainly welcome to hold reactive attitudes toward A and organize a boycott against it, and this may even have adverse affects on A's profits, but as a moral measure its target is incorrect and so its effectiveness is hindered.

The consequences for *A* serious enough to potentially reform *A* are legal. Let us first take the weak case of fining *A* and thereby reducing *A*'s net profit. If this is not a severe loss then *A*'s stockholders will take the brunt of the damage.[291] These people are not directly causally responsible for the spill and they may have little access to the details of day to day operations that would inform them of the probability of an accident. It therefore is inappropriate to punish them. At to this that these people are not in a position to most effectively alter *A*'s future behavior. Even if stockholders are able to vote-in board members and make big-picture policy prescriptions, it is the other active members of *A* 'on the ground' that cause *A*'s daily behavior. Exacting punishment on the stockholders of *A* in order to change the behavior of other members of *A* is rather like punishing parents when their adult child commits some wrong. Not only did

[291] We could perhaps also mention the 'causal liability' incurred by managers in A who would have to expend labor to make the transfer payments. This sort of result need not concern us.

the parents not commit the wrong, they are also not in a good position to take corrective action since they do not have ultimate control over the responsible agent. And even if some change occurs as a result, it will be due to inflicting adverse outcome onto innocent persons.

This basic idea can be extended. If the fine imposed is large enough to cause *A* real losses, persons other than stockholders begin to be affected. Most obviously, layoffs and plant closures could result, thereby harming innocent low-level workers and the market participants who benefitted from the worker's consumption. If *A* goes out of business altogether, then other persons who benefitted from *A*'s business operations lose, such as consumers of *A*'s products or services. If *A*'s remaining assets are insufficient to cover outstanding debts then *A*'s corporate creditors may be added to the list of those adversely affected. Sadly, the low-level workers in *A* that may lose their jobs, the businesses related to *A* that may suffer loses, and *A*'s patrons are all both not agentially related to the crime and not in a position to effect real change in *A*.

In speaking of corporate crime and punishment French considers this kind of worry, but quickly dismisses it.[292] The 'trickle-down effect' of punishment for corporate crime does not concern him because some of those hurt, such as stockholders, stood to gain from corporate practice in the first place, and the effects on other innocents, such as other businesses and consumers, are simply the sort of collateral damage that often results when punishment is meted out against the guilty. As an example, we may think it unfortunate that the bank robber's children will suffer when we put her in jail, but we must accept that their pain is part of the cost of our institution of punishment. Although they do suffer losses of some kind, we are not actually punishing the children.

These points seem plausible enough, but there are problems when corporate punishment is at issue. In regard to the punishment of persons who stood to gain, such as stockholders, we

[292] French, *Collective and Corporate Responsibility*, 188-189.

must remember that these individuals have already been exposed to losses from *A*'s financial liability for the spill. Further monetary penalties imposed on this group constitute punishment against them for crimes that they did not commit and that they could not have directly prevented (or perhaps prevented at all). And though it is true that punishment often causes unintended negative consequences toward innocents, this is acceptable because the punishment exacted is directed at the *guilty agent* herself, which makes the collateral effects simply the unfortunate though often unavoidable consequences of the proper allocation of punishment. The corporate case does not comport with this justification of collateral damage. In the corporate case we have not identified and exacted punishment on responsible agents. We have not punished *A*, itself, directly and simply harmed other persons unintentionally. Though we explain the punishment in language that suggests otherwise, what we have done is exact punishment fairly directly against primarily innocent persons.[293] This is because A is not a real *thing* that can be punished. Persons are the embodiment of the corporation, persons are connected to the workings of the corporation, and so persons must suffer the effects of punishment supposedly directed at the corporation. Thus, the harmful effects we see are not regrettable collateral damage of properly applied punishment; they are misapplied punishments themselves.

In a case where a scalpel is called for, we take a sort of hatchet approach when we insist that punishment should be assigned to the corporation even though we know its effects will be dispersed across a wide range of persons not directly involved in the wrongdoing. It may be true that some of the responsible members of *A* will also feel the effects of the punishment meted out

[293] Such punishment is disseminated through the corporate structure, so it is not directly applied against innocents, but since the structure itself cannot be punished and we know that innocents will feel the actual causal effects of the sanctions, this is not very different from punishing them directly. It is at least known in advance that the actual harmful effects of the punishment are not going to be *felt* by *A* itself, for that is not possible. Analogous cases spring to mind. The punishment in this case is rather like if a man commits a crime in a Santa Claus suit when he is on his way to give out gifts to orphans and the judge in the case determines that Santa has to be punished. So she takes the Santa suit and the presents away and locks them up. Unfortunately, it is the orphans who pay the price in this case.

to *A*, but perhaps not, and even so we can be sure that much of the impact will be deflected away from them. In fact, corporate punishment can even have the effect of shielding top executives and managers, who themselves may be the most directly connected to the wrongdoing in a given case. If the executives and managers do not themselves own company stock then we have to hope that correction systems internal to *A* will activate to reform or reorganize (perhaps even replace members) so that executives and managers do not repeat their wrongdoing in the future; however, such internal systems are notoriously ineffective at the most senior levels of the corporation.[294] Additionally, the emphasis on *A* as the agent and responsible party has the effect of diminishing the personal moral disapprobation that would be directed at particular members of *A*, had their names been mentioned instead. This is a feature of corporate responsibility that further insulates the parties potentially most responsible. All of this is to say that the most privileged, wealthy, and powerful persons in the corporation may be spared by our condemnation of *A*, while the least privileged, wealthy, and powerful are actually captured and adversely affected by it.[295] Prosecuting *A*, then, can be both technically inappropriate as well as counterproductive, if those persons most responsible for the wrongdoing and most in need of motivational adjustment are the least affected by the punishment.

The likely retort here from the defender of corporate agency would be to insist that corporate agency and responsibility does not preclude individual agency and responsibility. We could have it both ways in the case of *A*'s oil spill. Just because we say that *A* is responsible does not mean that we cannot say that any member of *A* is responsible as well. First, it should be

[294] Coffee, "No Soul to Damn," 408.
[295] This result is even more worrisome in a case where *A* downsizes or goes out of business, especially if executives in *A* have insurance policies associated with their employment. If *A* goes out of business the less wealthy wage-laborers then have no income, but while the executives are also now without a paycheck, they may also have 'golden parachutes' and other compensation packages to aid them in transition, as well as more surplus resources overall. These factors help allay the effects of unemployment for the persons in the corporation who are potentially the most responsible of all.

noted that insofar as it was part of *A*'s policy to cut corners, and the actions that led to that result were carried out in accordance with *A*'s CID Structure, the action should really be ascribed to *A* itself, on any view resembling French's. French allows for personal normative judgment to be included, but it is generally conditioned on the person(s) 'going rouge' or otherwise deviating from the established CID Structure, thereby acting on her own interests rather than the corporation's.[296] The case as described did not involve this. Even so, let us allow that some individuals within *A* are also personally responsible and see how this affects the situation.

It still appears that this response fails to help the case for corporate responsibility (beyond liability). If anything it lends support to the reductionist view insofar as it admits that individuals are the ultimate drivers of what we refer to as 'corporate action'. Furthermore, once we have accepted there is a sense in which it is proper to hold *A* financially liable, and we now include that individual members of *A* can be personally responsible, there seems nothing of substance left for our additional legal judgment against *A*. The judgment merely posits the existence of an incorporeal and unobservable being for no essential purpose and actually implicitly accepts the correctness of at least a partial reduction in doing so. If we can identify individuals who broke the law, then what sense is there in also insisting that *A* broke the law and attempting to punish *A*? For all of the reasons rehearsed above, this extra condemnation is inappropriate. Even if some small deterrent effect is had, it will come at the expense of harming innocents. Just as we do not accept that a legal system is justified in punishing innocent individuals, even when this has a deterrent effect on others, it is not justified in doing so when corporations are involved.

§6 – TOTALLY IRREDUCIBLE CORPORATE AGENCY

The argument thus far has not considered whether a corporation could exhibit agency or be responsible in a way that is totally irreducible to individual persons. The thought is again that

[296] French, *Collective and Corporate Responsibility*, 41, 54.

certain groups can have properties that are not at all shared by the members or even translatable into any other properties of the members. Thus, the group could exhibit intentionality or bear responsibility that in no way relates to the intentionality or responsibility of its members. Recall the examples of the 'discursive dilemma' given previously by Philip Pettit.[297] If the institutional structure of a group causes a group-level outcome that is not the intention of any member of the group, then it seems as if the group itself exhibits the intentionality and so bears the related responsibility and judgment. Many other accounts can be found in the literature that argue for the essential group element (collective or corporate) in cases of complex many-person actions, activities, or enterprises.[298] Perhaps in such cases it really is appropriate to treat the group itself as the responsible agent and distribute moral and criminal responses down upon *it*.

§6.1 – Irreducible Moral Responsibility

Let us again start with the question of moral agency and responsibility. For a case of Pettit's discursive dilemma in action, let us consider a germane example from David Copp.[299] He imagines a case where a tenure committee is deciding on the tenure case of Mr. Borderline. According to university standards, for Borderline to receive tenure he must have demonstrated excellence in teaching, research, and service. The university's rules for the tenure decision-procedure dictate that each member of the committee will vote on the tenure decision, based on her own judgments concerning the three areas of interest. In other words, the committee will take what Pettit calls a 'conclusion-centered' approach.

The three-person committee votes as follows:

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[297] Petit, "Collective Persons and Powers."

[298] The list is long, but three good examples are D.E. Cooper, "Collective Responsibility," *The Journal of the Royal Institute of Philosophy* Vol. 24, no. 83 (1948). Virginia held, "Can a Random Collection of Individuals Be Morally Responsible," *The Journal of Philosophy*. Vol. 68, no. 14 (1970); and more recently Tracy Isaacs has published work on the irreducible collective element of some group actions. See, *Moral Responsibility in Collective Contexts* (New York: Oxford, 2011).

[299] David Copp, "On The Agency of Certain Collective Entities," *Shared Intentions and Collective Responsibility*. Eds. French and Wettstein (Boston: Blackwell, 2006), 194-221; 215.

	Teaching?	Research?	Service?	Tenure?
A	Yes	Yes	No	No
B	Yes	No	Yes	No
C	No	Yes	Yes	No

The result of the committee's decision is, obviously, that the university does not grant Borderline tenure. We assume in this case that no committee member has deliberated irrationally, capriciously, or in a biased fashion, and that none of them has done anything else that might be blameworthy. Copp argues that the decision in this case is both irrational and morally problematic. It is irrational because it violates the university's standards for tenure (by one metric, at least), and it is morally problematic because Borderline has a "legitimate expectation" that the university's standards will be upheld. Who is responsible for this result? Who is at fault? Copp argues that the *university* is at fault for denying Borderline tenure because it is the university's responsibility to uphold its own standards. This is necessary, according to Copp, because no individual involved failed to uphold the standards expected of her. It seems it is the whole institutional group that has failed. Copp thinks that cases like this show that we must abandon what he calls 'agency individualism' and accept that certain groups are 'normatively autonomous'. He nicely summarizes his argument as the following.

> (1) There are possible cases in which (i) individuals act in official organizational roles on behalf of collectives, (ii) the choices and actions of these individuals are entirely rational and morally innocent, or at least excusable, and yet (iii) there is moral or rational fault that must be assigned somewhere, and (iv) the only plausible candidate for the assignee of such fault is the collective.
> (2) If the collective is at fault in such cases, it must have acted.
> (3) Hence, agency individualism is false.
>
> In short, if agency individualism were true, we would be limited in the moral and rational evaluation of choices and actions to evaluating the choices and actions of individual agents. We would be committed to a kind of moral individualism. But our normative views in cases of 'collective normative autonomy', as I call them, commit us to rejecting moral individualism and so commit us to rejecting agency individualism.[300]

[300] Ibid., 216. Notice that Copp's approach is the reverse of what we have been considering. Copp argues that we must assign responsibility to groups in certain cases, which then necessitates that we treat those groups as agents

Copp's argument is important for what we are considering here. If he is correct, then it does seem that there are cases where we have to treat the group in question as the locus of responsibility, which then seems to imply that the group must be an agent itself, because as Copp says, "It is normatively and conceptually problematic to assign blame or fault for an irrational and morally problematic event to anything other than an agent."[301] Thus, if Copp is correct about the existence of cases like Borderline's, it seems that corporations can be responsible agents, at least insofar as they exhibit intentionality that is completely irreducible. With respect to states, this would support the state-actor model to some extent as well. However, it will be argued here that Copp is mistaken. In short, although Copp's argument is valid, premise (1) is false. In what follows we will focus on the Borderline case, but the argument is generalizable across all social groups that we might think display irreducible moral agency.

We can certainly accept clauses (i) and (ii) of premise (1), but we should take issue with clauses (iii) and (iv). Let us begin with clause (iv), and let us assume for the time being that there is fault to be assigned in the case above. Since we have absolved the committee members of any wrongdoing, Copp's move is to point to the incoherence of there being fault in this case but it not being able to be assigned to anyone involved. The first worry to mention is that Copp has identified the university as the agent at fault in the case at hand, but it isn't clear what the referent of 'university' is supposed to be. A university is a large and complex public or private corporation consisting of an administrative, instructional, and maintenance staff that can number in the thousands. The questions that immediately arise are: what is it supposed to mean that 'the university' is at fault and how are we supposed to act on that judgment? As our discussion of the

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because it doesn't make sense to assign responsibility to non-agents. These arguments tend to start with an argument for group agency and then infer responsibility from that.

[301] Ibid.

communicative function of reactive attitudes above suggested, this judgment directed at the university would have little normative force. It identifies no *will* that has done wrong, and so no obvious agent that must answer for what has happened, that is, unless it is reduced to a claim about some particular individuals within the university. There is no *thing* 'The University' that can be the judgment's target, and the entire set of persons that make up a university – even excluding students and others who are clearly not among the set of those who are to blame – cannot seriously be responsible in this case.

The second point to make in response is that there are in fact persons involved in such a case other than just the members of the committee. Other members of the university may be responsible for setting up a proper system and ensuring that a case like Borderline's does not occur. We might identify the persons who initially devised the decision procedure and hold them at fault for creating an irrational and immoral system. Copp considers such a worry but decides that it simply pushes the problem back a level. Consider the possibility that no individual in the university is actually at fault for creating the system. "Perhaps no one anticipated the kind of problem that arose in the Borderline case, and perhaps no one can sensibly be faulted for failing to anticipate this kind of problem, either individually or together with others."[302] To this it can be responded that insofar as these persons who developed the tenure procedure accepted the positions at the university responsible for producing that set of rules, this opens them up to normative judgment when the rules lead to irrational results or otherwise fail in morally problematic ways. We may not wish to actively *blame* these persons, but this does not mean that they are not responsible for the outcome and at fault to some degree. This applies to those who initially created the rules as well as those who have since taken over the positions with regulative

[302] Ibid., 218.

authority over the tenure process. If we need someone to be answerable for what has happened, clearly these are the persons we need to speak with.

Copp quickly dismisses the above possibility in part because he thinks this issue rests entirely on metaphysical or conceptual grounds, and not on a normative challenge to the case as provided. However, this is because he also takes it for granted that fault *must* be assigned. It is not clear that it must be, which is to say, we should also take issue with clause (iii).

We can accept that a case like Borderline's is "morally problematic" but only if we interpret this ambiguous phrase to mean something like, 'inconsistent with our values', 'harmful to a moral agent', or 'interpersonally undesirable'. Copp uses the ambiguous phrase 'morally problematic' but then consistently interprets it to mean that fault has occurred and that blame is warranted. We must be careful to distinguish between cases where some undesirable outcome occurs as the result of persons acting, and cases where someone is at fault and to blame for the occurrence of an undesirable outcome. Certainly, the former situation does not necessarily entail the latter. Borderline's case, though unfortunate, can be interpreted as morally neutral in the strict sense of 'not rights-violating or obligation-failing'. If we want to go so far as to say that no individual person in the university, now or in the past, is at fault for the tenure system that is in place and its effects on Borderline, then this need not force us to assign moral or rational fault to the committee, the university, or any other abstraction. It is possible that bad things happen as a result of human action, but due to the *fault* of no one at all.[303]

If there still seems to be some lingering intuition that responsibility must be assigned in Borderline's case, it is perhaps the feeling that someone must now do something to correct matters. We can all agree that the system needs to be reviewed and reworked, and whoever holds

[303] It should be noted that Borderline's case is also one where no failing may have occurred because acceptable tenure standards may have been carried out. The point here is that we can imagine cases where someone is actually wronged, and yet where no one is at fault.

positions in the university that are responsible for this task now have an obligation to get to work on that. It could even be the case that someone owes Borderline an apology. We can accept all of this if we wish. This judgment of prospective responsibility need not concern us, for it does not relate to retrospective assignments of responsibility as fault. This tells us as well that it is possible to have cases where prospective responsibility is appropriately assigned even though there is no legitimate retrospective responsibility involved.

At a more foundational level, it seems that Copp does not take the suggested possibilities seriously because he is privileging the collective moral assessment from the start. As he says, "The argument turns on noticing that our normative stance with respect to collectives in at least some cases commits us to viewing them as intentional agents."[304] We have seen a similar sort of reasoning a few times throughout this investigation. It is a subtle appeal to common practice in order to support metaphysical conclusions. Copp is correct that people often speak of certain groups as agents and often assign moral and legal responsibility to them, but this does not establish anything about the metaphysical facts of the matter. If we are not already committed to the necessity of the irreducible judgments of collective and corporate responsibility, then there is no force to an appeal to spare them by assigning agent status to those groups as well. We may just as well insist that such judgments are wrong in the first place.

§6.2 – Irreducible Criminal Responsibility

When our concern is criminal responsibility, as opposed to moral, it is difficult to see how a case like Copp's could arise. It is quite implausible to suppose that a corporate entity might decide on some criminal policy through something like a multi-premise voting procedure where a majority favors each premise but no individual favors the conclusion. It is even less plausible to suppose that such a case might occur where the relevant conclusion was whether to

[304] Ibid., 214.

adopt a policy that explicitly violates the law. Decision procedures do exists in such groups and those decision procedures do, in a metaphorical sense, 'incorporate' individual intentionality, but this does not supplant the individual intentionality, particularly in a case where law-breaking is the determined course of action. Furthermore, even if we could imagine some case where something like Pettit's described process was used to the effect that the corporation decided on some policy and not the individuals, individuals in the corporation would still have to carry out that policy. They would have to accept that the procedure was binding and then exercise their individual agency to put it into effect. Insofar as the individual can will that she stop participating in such illegal corporate activity at any time, she is personally responsible for what she knowingly contributes to. We can imagine that no one in the corporation satisfies such conditions, but then it again seems that there just may be no one who is criminally responsible. If some damage was done or some other bad consequence needs to be rectified, then corporate liability is appropriate; but if no individual in the corporation really knowingly broke the law, then the corporation itself could not have knowingly broke the law, and we must accept that no *criminality* occurred.[305]

A last point to be raised with respect to corporate criminality was also raised in response to corporate responsibility generally. A judgment of criminal responsibility implies a response to the guilty party (i.e. punishment). If we judge that the abstract entity the corporation is itself criminally responsible our response is to sanction it financially. Yet, as we discussed above, the corporation itself cannot *experience* this sanction, so individual persons, who are necessarily always the recipients of the harms of liability and punishment directed at a corporate entity, will suffer the adverse consequences of such sanctions. We might think this appropriate if the effects

[305] This is also to assume that no one in the corporation *should have* known laws were being broken. Ignorance of the law is not always an excuse. *Mens rea* would look to be clearly absent here, though, so any response beyond civil liability is going to be on shakier ground.

of such measures tended to impact causally relevant corporate employees, particularly managers and executives or anyone who had some role to play in producing the illegal outcome. However, the consequences of legal sanctions directed at the corporation tend to extend predominantly to individuals who are not at all directly involved in the crime. Supporters of corporate agency may appeal to something like the 'doctrine of double-effect' or a distinction between 'intending' and 'foreseeing', in order to justify imposing sanctions supposedly on the corporation itself, even though the sanctions then spread inevitably to innocent persons, but this appears to be a quite weak response to the worry that punishment is not impacting the guilty party and is instead befalling innocents. Again, such cases are not analogous to the collateral harm that is caused through appropriate punishments, where the guilty party is the recipient of the direct punishment and others are harmed simply due to the fact that indirect effects of proper punishment are sometimes unavoidable. If we cannot identify and exact justice on a specific agent that acted and can personally experiences the consequences of sanctions applied in response, then punishing no one (or nothing) looks to be the most justified response. Our common judgments to the contrary should not dissuade us from this conclusion. Either we can, in principle, identify some individual persons who are guilty of criminal acts, or we should admit that no criminal acts occurred.

§7 – AGAINST STATE AGENCY AND LIABILITY

The above analysis of corporate agency in general applies to state agency in particular. In fact, whatever problems the case for corporate agency has with respect to the voluntary corporate forms that we find in the business world will be amplified when directed toward the state. The central issues to consider are, again, whether the state can hold beliefs, whether it can exhibit its own intentionality (and so agency), and whether state responsibility satisfies the communicative (retributive, reformative, and deterrent) purposes of sanctions.

Let us quickly recall that views like Wendt's and Erskine's hold that the state is a real agent on the grounds that it is based on an 'idea' of corporate agency and a decision structure that both institutionalizes and authorizes corporate action (what Wendt refers to as 'collective action' and 'joint action').[306] This is to say, the state's agency flows from the shared beliefs and identities of the persons who work together through it. The state structure enables these individuals to overcome coordination problems and achieve more in cooperation together than they could in the simple aggregate. The system comprised of these parts, the state itself, then displays purposiveness and so intentionality, and it seems that it could function as any other moral (responsible) agent because of this.

Before critiquing the state's purported corporate agency and responsibility, let us briefly address Wendt's argument for realism based on his judgment that the regularity in the behavior of states is best explained by positing that the state is a real corporate agent, separable from the individuals in the state. Recall that Wendt appeals to the observable effects of the unobservable state, and gives as an example a case of failure to pay taxes. "If John refuses to pay taxes on the grounds that the US state is merely a fiction, then he is likely to experience consequences just as real as he does when he stubs his toe on a table."[307] Part of what Wendt is doing here is making a comparison. He is saying that realism does a better job of accounting for the consistency seen in state behavior than nominalist reductionism does. We will deal with reductionism in more depth in the next chapter, but for now we should ask whether there is something to Wendt's idea about state regularity. It does seem that he is right that consequences will befall John in the example, and it does seem that what happens to John would happen even if different people held positions

[306] Wendt, *Social Theory*, 219. Erskine's criteria are developed slightly differently, but they are largely the same. Erskine, "Assigning Responsibilities to Institutional Moral Agents," 24.
[307] Ibid.

of authority in the state. That is, it does seem as if states are fairly predictable, regardless of who is running them. What should we make of such an argument for the reality of the state?

First, in response to the example of John, it should be noted that the consequences John will feel really do not work in favor of the existence of a *real* independent *thing* that is the state. In the US, what John will experience if he does not pay his taxes will be a product of persons working for the IRS. Obviously, in a real case, a tax issue of this sort would be handled electronically, for the most part, by sending John a bill, or directly garnishing his wages, but John may also be paid a visit by IRS agents like it was done in the past. Yes, John experiences consequences for not paying his taxes, but we clearly see individual persons carrying out those consequences. The interaction that John has with those IRS agents, should they visit his house, is as real as his interaction with a table if he stubs his toe on it, but there is no further reason to think that John has had some encounter with 'the state' itself. What if it is insisted that the IRS agents are not acting for their own reasons, but rather for the state's reasons, so that really it is a case of the state exhibiting intentional agency in relation to John? We will look at state agency more closely in the following section, but for now let us just note that what is clear in the case is that some persons had some beliefs and intentions and acted in certain ways because of that. A full explanation of why those IRS agents showed up at John's door may require mention of many other people and their beliefs and intentions as well, but the conclusion from this that there is a larger intentional entity that is doing the acting looks quite weakly supported by such a case.

As for the regularity, it too is not something that we see 'the state' do. The observed regularity is of course the regular behavior of *individuals*. Someone in the IRS will submit some forms and someone else may have to enter some information into a computer, and then John's wages will be garnished. We can replace the individuals who hold those jobs and essentially the

same result will follow when John has back taxes. Yet, again, this is inadequate to bolster the realist's case. It is hard to adjudicate between competing inferences to the best explanation, but when you can physically witness persons doing things, an explanation that is based on those persons and their individual intentional conditions is a strong contender for the better explanation when compared with an explanation that invokes an unobservable corporate entity. Again, reductionism, and so competing explanations for such cases, will be discussed in detail in the following chapter. Let is suffice here to say that it is at least unclear that the IBE favors the existence of a corporate agent, and it does not look to be a strong argument to invoke a regularity in the behavior of individuals. Again, we are not here concerned about defending or refuting a view that the state acts 'as if' it is an agent. The views considered are much stronger.

§7.1 – Against State Agency

We can begin a critique of state agency by looking again at the issues of collective belief, joint action, collective intentionality, and joint commitment in the state. Wendt claims that the "individuals [in the state] accept the obligation to act jointly on collective beliefs, whether or not they subscribe to them personally."[308] According to the concept 'joint action' explicated in the second chapter of Part I, no joint actions of the entire state are at all likely, given the tendency for states to be very large groups. Wendt seems to have in mind here the idea that the persons in the state are acting jointly in a looser sense, such as the sense that they are all (or nearly all) willing to behave in accord with the laws of the land, which they all believe are binding, or at least act as if they do. 'Joint activity' might be more apt here. We can see the obvious parallels with Margaret Gilbert's view, and Wendt does cite her explicitly. Unfortunately, as our discussion of in the first chapter of Part III made clear, it is not appropriate to discuss the whole state in terms of collective belief, collective intentionality, or joint commitment (in Wendt's

[308] Wendt, *Social Theory*, 219.

terms, ‘acceptance of an obligation’). Such a stance may be somewhat more acceptable for the political scientist that wants to describe and predict on a general level, but even then we must admit that these suppositions introduce imprecision into our analysis. A collective intentionality or joint commitment model of interpreting the state is inherently disconnected from the microstructure of the state at the individual level. To the extent that we desire our judgments to be precise, we should avoid such generalizations, but even if we thought them acceptable for certain scientific purposes of explanation and prediction, we should reject them for normative purposes, as they do not track individual intentionality and agency. Instead, these views help themselves to a holistic conception of the individuals involved (define them as a unit), take a sort of behaviorist approach to support this, and then infer from what has been assumed that the whole is an intentional agent and so responsible. In other words, a certain interpretive model is simply forced onto the ‘ground level’ facts of the matter. This then has the effect of obscuring details vital to accurate normative analysis.

To take this point a bit further, even if we could derive some group-level intentionality out of the complex sociopolitical processes that provide the inputs that generate state output, this would still be insufficient to show group-level responsible agency. Moreover, even if we could show some form of group-level agency in the state, it will not be the *whole* state that exhibits it. More about these two points below, beginning with the latter.

We have to be careful with our referent if we wish to make true claims about a whole group acting intentionally or exhibiting agency, and so about the responsibility that might result. We say that state *S* performed action *X*, but the intentional agency of ‘the state’ alluded to will not be the product of *all* members of *S* unless they were all somehow agentially involved. Again, such a claim about the whole state (including all members) acting can be informative and useful

for some purposes, but as an account of collective or corporate agency it misses the mark too widely. In any plausible case of state action there are bound to be individuals who do not engage with the deliberative and action-generating process. To include these individuals in the referent group of our analysis is to knowingly include 'noise' along with the 'signal' – it is to privilege the holistic conception rather than looking more closely at the individual 'inputs' themselves.

Under the republican forms of government common today, the majority of cases of state action we wish to analyze involve the government of the state, or more precisely, the legislators and executives, deliberating and then other state agents, such as members of the armed forces, carrying out the policy results of that deliberation. If we want to say that there was corporate agency being displayed in such cases, then this set of people looks to be the proper referent of our judgment. We can agree that there was joint action or activity, collective intentionality, corporate intentionality, and joint commitment pervading the relations of this set of people. We can accept that they all decided and acted together as a group, in some sense, that they did so on the basis of an institutional structure and its attending recognition rules and general policy, and that there is a sense in which 'the state' did whatever it was that was done because the individuals involved are state officials. However, 'the state' in such a judgment cannot be properly understood to be the *whole*, where this includes all of the citizenry. Despite the other people that we might include in our broadest conceptions of 'the system', many of the individuals in the whole really play no relevant role in the state action. Thus, it is not the whole system doing anything, but only a part of it at any given time. It is really our laxity in language that invites the slide from a recognition that *some* state officials act through their state authority, to a judgment that this is a case of the state exerting its own agency, which then seems to imply that the state itself is responsible for that action. Wendt an others may have reasons for drawing

the first inference, but when normative issues are our concern, we must certain never draw the last without further reasons in favor.

This point alludes to a breakdown in the analogy between states and corporations, when the 'citizen' predicate is treated like the 'stockholder' predicate. We might argue that stockholders in a corporation are sometimes rightly included in judgments of corporate intentionality and agency because they at least elected to have some say in corporate affairs, align their financial interests with that of the corporation's, and expose themselves to whatever liability might follow. The natural citizens of the state make no such choice. To include non-participating natural-born citizens in an analysis of state agency in a particular case is to insist without justification that all pieces of what we may conceptualize as 'the state' are part of the set of things referred to in our judgments of who exerted relevant agency. This is where the slip in referent occurs. We say that 'the state' did such and such, when clearly only a subset of the state did such and such, and then when we wish to infer normative judgments from that action claim we again refer to 'the state', although this time it is clearly the whole that must bear that responsibility. Even more generally, this applies whenever we say that 'the state' desires, intends, believes, *et cetera*. The substance of such purported mental traits of the state can only really be derived from the related mental traits of *certain* persons in the state, and definitely not all of them. As merely a way of accurately accounting for what intentional properties of persons are relevant to a particular case of collective or corporate action, we should avoid referring to a whole unless the whole is really sufficiently interconnected to bear such a judgment. It is only through extreme abstraction that we would think we can legitimately discuss what 'the system' or 'the institution' that is the state is doing, in the sense of exhibiting its agency, and what it is

therefore responsible for. The observable agency is that of the individual persons, and almost certainly not all of them in the whole state in any plausible case.[309]

As to the first issue of the two mentioned above,[310] this is the point that we can sometimes describe collective and corporate situations in such a way that there seems to be group-level intentionality, even though there has not been legitimate group-level agency, and so no legitimate group-level responsibility. We are often simply taking license to infer group intentionality, rather than looking at the complex of individual intentionality that leads to the collective result we are interested in. For example, we might point to some construction near a college campus and say, "The University intends to keep expanding." Here we are ascribing intentionality to a large and complex corporate entity, and this intentionality does not fit well when we understand the referent of 'university' to be the *whole* (all members, facilities, and assets, plus the institutional conditions that interconnect them). If the expansion was somehow morally problematic, it would certainly not be appropriate to form normative judgments about the whole group 'the university', where this set of individuals includes many members who have no normatively relevant connection to the activity ascribed to group. It may be true in some sense that the whole community is relevant to the decision to expand, made by whichever subset of the university has that authority, insofar as the statistical features of that group may be relevant to such a policy decision, but this does not mean that the entire university is part of the agency demonstrated in deciding on the policy or in carrying it out. In short, although we can

[309] It may be common to believe that the acts of government represent all members of the state because at least the majority of them must be supportive of the state's form and function, or they would otherwise reform the state (politically or through revolution). However, as we discussed in the first chapter of Part III, the mere stability of a state structure does not demonstrate popular support for the government or the general state structure that is used to carry out actions ascribable to the state. The erroneous thought that stable, representational governments have the *consent* of the populace, because the populace really holds ultimate sovereignty, lends support to the mistaken inference that the populace must stand liable for all official actions of state organs.

[310] That even if we could derive some group-level intentionality out of the complex sociopolitical processes that provide the inputs that generate state output, this would still be insufficient to show group-level responsible agency.

explain what is happening to the whole in 'intentional' terms, that intentionality is not properly ascribed to the whole for normative purposes.

With respect to the state the case is much the same. We might say, "State *S* declared war against state *T*." There may be some sense in which this decision was made, by whichever set of persons in the state made it, because of the rest of the persons in the state and the complex of institutional connections that exists between them all, but this does not mean that this particular decision or the resulting war is an example of the agency of the whole. To insist otherwise is to simply take it for granted that the entire group acts as one entity, rather than to offer the more accurate general depiction of state actions, which is that the set of persons truly underlying them varies with the contingencies of the particular case. Thus, the individual agency underlying them, and the (attributable) responsibility resulting from them, also varies from case to case. The whole state never properly exhibits a unified agency, not even to the extent that a business corporation might achieve. In fact, in many cases, some members of the state actually actively work against the officially determined policy and related actions. Such persons provide counterexamples to claims about 'the system' as a whole doing anything. Some collective that we might want to refer to as 'the state' is acting, and exhibiting corporate agency, and so responsibility in these cases, but this collective will not extend to the whole of the state's membership in cases resembling the actual world.

What about democratically organized states? If all full citizens can participate in governance through voting, can they not also be included in the set of those who are involved in the state's decision-making process? Even under a system of direct democracy you would not have full state-wide systemic involvement in resulting state agency unless all members engaged in the voting process. Given the low likelihood of a 100 percent participation rate in some

democratic process, we may want to allow that even non-voting members be included in the range of those who are part of the political process, because these individuals had the opportunity to exercise voting power, from which we can interpret a willful non-vote as one possible expression of these individuals' agency with respect to this aspect of the state's decision-making process. However, we should resist this approach, as it would allow for mistaken applications of (attributable) responsibility. The natural citizens who do not participate in the vote do not exhibit any normatively relevant agency through their omissions, as they would if they had freely elected to join the group and share its liabilities, in which case a failure to exercise voting control over group policy will not absolve one of her share of the liability. The non-voting stockholder, for example, is not spared her share of the liability for the corporation's debts that result from bad policy, and it also does not matter whether she exercised her vote against the policy chosen. The fact that she accepted the terms of her membership in the corporate structure is sufficient for her to be liable for her share of *its* liabilities.

We would usually like to say the same of the minority voters in a democratic process. We think an agreement to participate in the process is an agreement to accept the results of that process as binding, even if one happens to find herself in the minority. Yet, even if this were correct, it would still be insufficient to establish corporate responsibility for the results of the voting process. It is easy to overlook the supposition that the individual has freely agreed to engage in a binding voting process in the first place. We cannot appeal to any such agreement for the vast majority of citizens. Thus, even their voting behavior does not necessarily reflect an acceptance of a share in liability for the results of the state's deliberative processes. The individual voter may just be doing what she can to prevent what is in her judgment the greatest of the possible evils that might result from the vote. The vote's results will impact her either

way, since her membership in the state cannot practically be rescinded, so she may as well act to minimize the damage, though she does not thereby accept liability for what occurs as a result. This point is strengthened to the extent that the voting system in question is not directly democratic. In most states today the actual *direct* democratic control exerted by the populace at the federal (state-wide) level occurs almost exclusively in the election of representatives.[311] In such a system the typical citizen, even when participating in the vote, is merely one vote in a sea of votes that will go toward selecting *part* of another group of individuals who will each have one vote in a smaller sea of votes, a majority of which may then determine state policy (when state policy is the decision of the legislature and not simply an executive decision). The natural citizen who engages in this process to contribute her very small and very indirect share of the collective decision-making process that culminates in policy and ultimately state action does not necessarily stand to be one of those included in the agency behind that result. That is, her participation is not enough to show this. She essentially just found herself in the position she is in. She may have voted simply in order to mitigate the predictable undesirable effects of the other members' intentions. And even if she was one of those who selected one of those who eventually voted in favor of some policy, she did not vote for that policy herself. We cannot treat all eligible voters, or even all participating voters, as necessarily agentially related to state action, at least not solely on the grounds that they are eligible or participating voters. Though many think the cases similar, the properties of citizenship are agentially quite different from other authority relations that properly transmit liability from agent to principal, such as when a lawyer has 'power of attorney'.

[311] This admits of few exceptions. Switzerland serves as an example of a relatively directly democratic state, but even it is essentially 'republican' as the term is used here.

Does the above entail that state law resulting from a state's internal decision-making process is not obligating? Recall that the issue of a government's authority (a state's internal sovereignty) can be separated from the issue of whether liability properly transmits from the actions of the state to the state itself as a whole. In other words, it is logically possible for it to be the case that the citizens in a given state do have obligations to follow the laws in the state, even though they do not stand in a vicarious liability-relation for the actions of government or other state agencies. This should not strikes us as strange in regard to the relation between citizens and agents of the state, as the same sort of disconnect between authority and vicarious liability can be shown in cases of completely voluntary authority relations. For example, *A* may take a job working for *B*. As the boss, *B* has a certain authority over *A*, which implies that *B*'s commands create new obligations for *A*. Nevertheless, *A* is not necessarily liable for anything that *B* does, even when *B* acts 'in the name of' the entire corporate entity that they are both parts of. It might be thought that *A* can be liable to certain consequences of holding the *corporation* that *B* 'acts in the name of' liable, and this may be true, but we should not think that the case of the state is sufficiently analogous. The natural citizen does not sign on for such vicarious liability, and such liability does not properly transmit to the citizen solely due to her membership in the state, even if we think she is obligated to obey the law.

§7.2 – Against State Liability

Although the case for state liability depends heavily on the case for state agency, we should look at the liability side of things to complete our analysis. Independently of whether the state exhibits systemic agency we should reject treating the state as a retrospectively liable corporate agent.[312] As the argument against corporate responsibility in §5 above suggests,

[312] It should be noted that "Arbitral jurisprudence and the majority of writers support the rule that states may be responsible for *ultra vires* acts [acts of organs of the state or state officials that are beyond their specific authority] of

corporate liability is imprecise and potentially counterproductive. In short, because such corporate responsibility often fails to properly identify the agency involved at the individual level it also fails to properly distribute the burdens of moral and legal responses such as blame, punishment, and liability (regardless of fault), and so fails to perform the retributive, reformative, and deterrent functions of a retrospective, agency-based normative response.

Beginning again with moral responsibility as we did above, what happens when we hold moral reactive attitudes directed at the state itself, such as blame? First, because such a judgment is directed at the whole, it is effectively dispersed across potentially many millions of persons. This not only means that the impact of this judgment may be felt by persons who did not exercise agency relevant to the state action in question, but it will also have the effect of greatly diluting the normative force of the judgment and so the likelihood of a corrective or reformative response. Individual persons are always at the root of state action, and so to encourage desired state actions *certain* individuals must be motivated to work together to make that happen. Normative responses to state action, then, in order to be most meaningful and effective, must offer incentives to persons with the requisite control of the state's major decisions; that is, persons with institutional authority. Rather than accomplish this, judgment aimed at the state is more likely to have the effect of shielding those individuals in the state that are most directly (attributable) responsible for the action in question. Of course, these shielded individuals will tend to be members of the government or related agencies such as intelligence agencies or the armed forces. This relatively small group of persons is greatly outnumbered by the set of persons who are far removed from the specifics of the state action, but who nonetheless absorb their share of the moral judgment.

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their officials committed within their apparent authority or general scope of authority." Ian Brownlie, *Principles of Public International Law*. (New York: Oxford, 1998), 453. In this respect, the popular opinion on state liability in international law is even farther removed from agency than Wendt or Erskine would attempt to defend.

As for legal state liability, the most common general sort would be reparation. Such reparation can follow from various acts or omissions of state. Though reparation measures in international law can take various forms, including monetary compensation, apologies, obligations to punish guilty individuals, reform to prevent future breach of duty, and other forms of 'satisfaction',[313] we will focus here on monetary liability. Let us ask what the practical consequences of such a liability would be.

First, it should be clear that there are only three ways that the government of a state can gather the money to pay such a debt, which reduce down to two ways that the debt can ultimately be settled. To collect the money to pay the debt the government can tax the citizenry directly, borrow the money, or inflate the money supply (if the government has direct control over the state's central bank). The first two possibilities inevitably involve the taxpaying class of citizens shouldering the burden of the debt, and the third possibility institutes a sort of tax on the whole of the users of the state's currency, as, other things being equal, the creation of more of that currency dilutes each unit's purchasing power as prices rise (unequally) in response to the adjustment toward a new equilibrium between the supply and demand for that currency relative to other goods.[314] In the case of taxation, or borrowing to postpone inevitable taxation, the chance of the actual payments at the individual level reflecting actual contributory agency toward the state activity in question is astronomical. The likely result is that the responsibility for what occurred as the result of the personal agency of some in the state will be spread to some extent over all members of the state, including the poor and politically powerless. This is not only the administration of a penalty onto individuals who do not deserve it; it is also a

[313] Brownlie, *Principles of International Law*, 460.
[314] See Mises, *Human Action* (Chicago: Regnery, 1966), 408-416. The prediction of a rise in prices, rather than some other result, follows from the additional assumption that increases in productive capacity do not outstrip increases in the money supply.

completely ineffective way of influencing the motivations of persons who can reliably ensure that the state does not repeat its previous wrongful behavior. Settling the debt through monetary inflation is comparably misdirected, and is likely to create an even less efficacious communicative result than direct taxation. This is due to the fact that the effects of monetary inflation are less noticeable for the majority of people than a change in their overall tax bill (although from the perspective of those paying the price neither are all that obviously connected with the relevant state wrongdoing that would have to be corrected). Either way, the bulk of the citizens, most of which have no personal involvement in the state action, bear the burden of liability, even though we are supposedly holding the corporate state structure itself liable.

To hold the state financially liable is not to impose liability on individuals who have put themselves into a position to be so liable. It is, for the most part, to impose liability onto persons who do not *deserve* liability, because they have not exercised their own agency and thereby incurred a liability relation unto themselves. Liability for the natural citizen who does not partake in the state's actions, nor support those actions, is rather like imposing liability for a father's transgressions onto his adult children. Imagine a family consisting of a father and his 18 year old daughter and son who all live together. Each family member earns his or her own money, but they all store their money in a common room in the family's house. Imagine further that the father commits some crime, which he commits in the name of the family (perhaps for their honor). Now what if we judge that the family itself is liable for reparation? To collect payment an official of the state takes an equal amount from each family member, the father, the daughter, and the son. The family has covered the liability, but the children have paid for a crime they did not commit. This is not a case of punishing the father and just creating unfortunate collateral

effects. This is a case of extracting resources from innocent persons because of a faulty normative judgment. State liability is highly analogous.

The central point here is that these measures of state liability fail to serve a legitimate retributive, reforming, or deterring function. Beyond the claim that these measures are technically misapplied, we can go further and argue that they are also counterproductive. That is, state liability not only applies reactive measures against innocents, it also tends to shield from responsibility the individuals most personally responsible for the state action in question. Let us take the US invasion of Iraq in 2003 as our example. As the reader may recall, this war was rationalized through faulty intelligence and baseless supposition rather than fact. State officials in the US carried out a war against Iraq that was very unpopular amongst US citizens by many measures, but we may assume that all proper political and legal channels were taken and that the actions of the US were 'state actions' as a result. We might infer this along the lines that French specified. The US government acted in accord with the state's CID Structure, and in accord with US policy (e.g. in the interest of 'national security'). Let us suppose that this war was illegal, due to it being unprovoked aggression from the US. Given the heavy cost borne by the Iraqi people as a result of that war (in lives, wealth, and wellbeing), we might judge that the US is liable for reparations, as we have judged that the US is the responsible agent in the case. However, we also know that high-ranking officials in the US government misled the public and speculated when they should have claimed ignorance. We know that the resulting state action of invading Iraq was directly a product of the design and intention of those high-ranking officials. We further know that a significant percentage of the US population was vehemently against that war, and many in that set of persons did everything within their power to stop it. Unfortunately, the power of the anti-war collective was insufficient to change state policy, as it so often is. That war was going to

happen whether the public liked it or not, because the state officials wielding state power were intent on making it happen. Now, given this interpretation,[315] we should worry that a response of state liability will have almost no retributive, reformative, or deterrent effect. The high-ranking officials who are most personally responsible might even feel some small cost of an increased tax burden, or loss of purchasing power, but hardly enough of an impact to be motivated to correct their wrongful behavior. If anything we have shielded these individuals from what they individually deserve. Their decisions and actions resulted in a great loss of life, among other things. We would hope that such decisions would be made with the utmost care, and that the greatest restraint and caution would be observed. The stakes are quite high in war after all. Yet, state liability strips away almost all incentive for state officials to exercise such care. On the contrary, it promotes negligent and reckless behavior by diverting liability away from the persons with the most control. The historical record is replete with examples of state liability in practice, but the list of trials for high-ranking state officials is conspicuously shorter.[316] As far as constitutional and common law courts are concerned, each additional instance of the use of personal discretion by state officials that results in state liability without individual liability is ever further precedent that state officials are personally legally out of reach. That is, they are

[315] Whether it is historically accurate or hypothetical matters little, actually. It is undeniable that state action is often the direct product of the agency of high-ranking officials in the state, in opposition to the intentionality and agency of many citizens. In such cases we should be concerned that the state-actor model misinforms our normative analysis.

[316] In US law this is in part due to the use of the 'political question doctrine', which holds that it is not within the purview of federal courts to decide on issues that are essentially political. In practice, this means that the manner in which the executive branch handles foreign relations is considered a political issue, and so high-ranking officials cannot be held personally liable for their conduct in determining or carrying out matters of foreign affairs. We should be aware of the relatedness here of the political question doctrine and French's appeal to the CID Structure and recognition rules in the corporate case. The CID Structure's mitigating effects on the liability of managers and executives in the corporation is very much like the 'political question doctrine's' mitigating effects on US officials. For more on the political question doctrine, see: Louis Michael Seidman, *The Secret Life of the Political Question Doctrine,* 37 J. Marshall L. Rev. 441-480 (2004). http://scholarship.law.georgetown.edu/facpub/563. For a recent example of the political question doctrine at work, see: *Nasser Al-Aulaqi, et al., v. Leon C. Panetta, et al.*, Civil Action No. 12-1192 (RMC). Last accessed June 8, 2014, https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2012cv1192-36.

legally out of reach unless they tread very far outside of their perceived authority (and then only if the members of some court and some institutions of punishment are willing to carry out the legal proceedings against them). Depending on the state in question and the applicable courts of law, the probability that a given state official will face any serious personal consequences for her policy decisions or even her own unlawful actions done in her role as state official, can be exceedingly low.[317]

The case for state legal liability suffers from many of the same problems as the case for corporate moral or criminal responsibility. In the corporation, managers and executives are often the most at fault, personally, for significant actions of the corporation. Yet when liability is directed at the corporation itself, these individuals avoid the brunt of those judgments, even if the entire company fails as a result. Compensation packages for the highest-ranking members can be quite generous, and so can act as strong incentives at the individual level that work against whatever incentives these individuals might have to follow the law, or even to be concerned with whether the corporation itself survives in the long run. Similarly, in the state, the incentives of the high-ranking, policy-driving members may be in conflict with reasons in favor of doing what is lawful and what protects innocent life and livelihood. We only exacerbate this problem if we insist on directing our responses to such cases toward the entire corporate state itself, and in the process away from the individuals who are most deserving of our normative scrutiny. When there is an implicit understanding that personal consequences will not befall one when she is acting in her official capacity, then a 'moral hazard' is created, and abuses of office are thereby encouraged, not deterred.

[317] In the US there have been many examples of proven law breaking by high officials that is goes unpunished. Richard Nixon's Watergate scandal comes to mind here.

If we are here worried about the victims of such state actions, and who is going to pay to make them whole again (or at least try), then it should be said that none of the above precludes the distribution of remedial responsibility. We are concerned here with identifying the agents that are normatively relevant to a given action, and so which agents are retrospectively liable for its consequences (a sort of 'outcome responsibility'). This is a different question from the question of which agents may have obligations to help fix the situation after the fact. As a moral matter, at least, we can decide on remedial responsibility in a number of ways, and we can insist that even those who are very far removed from the case still have a moral obligation to help.[318]

As a legal matter, though, this is a problematic proposal. We may want to say that the population of the state that committed the wrong at least stands in a stronger relation of remedial responsibility to make the situation right than the population of some other state that did not have anything to do with the case. And on this ground we may want to argue that the state at fault is legally liable. However, this would be to do what was argued above to be unwarranted and counterproductive. As a legal issue, such remedial responsibility is not properly enforceable. To attempt to do so would be to treat legal liability as arbitrary and capricious. One's liabilities that may be enforced through coercion would be disconnected from one's agency entirely. It would 'fall from the sky', as it were, insofar as it would attach to the individual through mere birth in one location rather than another, in many cases. Some of the practical results of this are troubling. For example, on such a view an individual may stand in the liability relation to a state action simply because she was born on one of two sides of a river, a road, or even an imaginary line on a map. If she is born in the north of Nogales Mexico, then she is not liable for the US invasion of Iraq, but if she is born a few miles to the north in Nogales Arizona, then everything is

[318] The point here is that this is a possibility, and that such a possibility is not logically inconsistent with the argument given against any sort of responsibility or liability as an 'outcome' concept. The point is not that such state-based remedial responsibility is actually justified.

different. Such a possibility points to the untenability of such a concept of liability in the law. It would effectively lack a justifiable, rational foundation. Just as one's personal liability in domestic law relates (in minimal ways, at least) to expressions of her agency (e.g. through contract, direct action, or voluntary special relationships), so must liability in international law, if it is to remain consistent with the individualist basis of liberal normative theory. It is common to treat the relation of 'citizen' as a special relation of the kind that would confer such vicarious liability, but this has not been shown so much as it has simply been commonly assumed. When we look more closely at the conditions of natural citizenship, according to the tenets of liberal individualism, the sort of minimal agency required to establish vicarious liability through a special relationship is clearly lacking.

In summary, we do not exact justice if we attempt to hold the state financially liable. First, it is doubtful that the whole is capable of exhibiting agency, so retribution toward the state looks out of place. What punishment is meted out largely falls upon innocent persons, which is not a case of collateral damage, since there is no real thing 'the state' to be punished. Second, a state-based financial liability will be paid through tax receipts or inflation, and in this way the adverse effects of such sanctions will be dispersed amongst the state's population and so be greatly diminished in strength with respect to those individuals in the state who have the most control over state policy and action. In this way the sanction will have far less reformative effect, since the costs involved do not directly impact the primarily responsible agents to a sufficient degree. Third, due to the second worry, there is little deterrent effect through state financial liability. High-ranking state officials are unlikely to be persuaded to change when they personally feel little consequence from state-based sanctions, and the citizens (like the shareholders to some extent) practically lack the ability to reform many state practices, even if

they are motivated by sanctions to do so. In fact, by directing our legal responses at the state itself we may even encourage state officials to be more negligent or reckless in their behavior, since a precedent is set that suggests that the highest authorities are above the law. It might be responded here as well that state liability does not preclude personal responsibility, but once we have admitted that individuals in the state are essential parts of the story – exhibiting their own intentionality and agency and using their positions of power and authority to direct others to engage in wrongful behavior – we have already implicitly admitted that the state itself is not the culprit. To insist on state liability in spite of this is to insist on delivering punishment upon many persons who simply have the misfortune of living where they do.

Lastly, it is sometimes argued that justice in international relations requires that the victims of state atrocities be compensated, and that it is most appropriate for the guilty state to pay for such reparations. This is because the populace is assumed to benefit from the existence of the state structure, and because that state structure enabled the state action that caused the harm. According to this line of reasoning, it is not the case that the common citizens are morally or legally judged themselves – it is not as if they are necessarily blameworthy. The citizens are merely liable to pay damages through the taxing power of their government because they have enjoyed the fruits of the state and because they more than anyone else are connected to the institutions through which the action was carried out. Such arguments are often made from a standpoint in civil law that takes a victim-centered approach and is primarily directed toward making people 'whole'.[319] Great harm is often done through state actions like war. Dropping bombs, for example, causes much damage. In fact, so much damage can be caused that the funds necessary to cover it may far exceed what could be generated through penalties against specific state officials who may be (attributable or institutionally) responsible. Since this is likely, it

[319] See Peter Cane, *Responsibility in Law and Morality*, (Portland: Oxford, 2002), 49-53.

seems at least intuitively plausible that the aggressor *state* should pay for what it does, since the state as a whole can generate greater sums of money.

In response to this line of reasoning it must be noted that a concern for victims in the civil law does not trump all other considerations. Liability is often strict primarily because of a concern for compensating victims, but such liability must still be tied at some point to the liable party's agency. The liability must still be something that the agent could have practically avoided, at least insofar as there was some step in the agential chain that linked the individual to the liability where she could have altered her fate. The unsteady driver may not be morally responsible for causing the accident, but she chose to get behind the wheel. The business owner may have taken every precaution to prevent her employees from causing harm to third-parties, but she still chose to run the business. The spouse may have nothing directly to do with her partner's transgression against a third-party, but she may still have to pay, and this is justifiable given that she voluntarily married. The parent may be liable for the actions of her child that she cannot control, but she in effect created the child and is liable for it on that basis. In all of these cases the liable party has some agentially significant relationship, even if weak, to the harm that occurred and liability is distributed on this basis. When we remove that agency the liability in such cases is no longer justified. If the unsteady driver is forced to drive through threats to her life, or if the spouse is in an unavoidable forced marriage, then these considerations work against liability, even when victims go uncompensated.

The case is much the same for the state, which is actually quite a bit like a forced marriage, as alluded to earlier. The natural-born citizen never enters into an agreement with state officials that is liability transferring. If she acts in no way to perpetrate or support whatever state action is in question then her liability will have to rest on a feature of her life that is outside of

her agential control. Her liability must 'fall from the sky'. It might be argued that she pays her taxes and uses state institutions but, as we have discussed, these expressions of her agency are not expressions of acceptance of a relation of vicarious liability for state officials. Participation in the state's institutions and cooperation with some of its citizens is not like starting a business, getting married, or having a child. That is, being a participating citizen in a minimal sense is not an expression of some kind of joint commitment. On the contrary, they are merely expressions of a desire to live a productive human life under the conditions that one finds herself, including legal, political, and economic conditions. To refrain from this would be to refrain from living what most consider a meaningful life.

The suffering of victims does not override the agential requirement, even when it is severe. If *A* hurts *B* but is unable to afford the costs of the reparation, it is not acceptable to go find a random person, *C*, and force her to contribute, simply because *B* was hurt and victims are the primary concern of liability law. Even when *C* has some relationship with *A* that benefits *C*, or that affects *C*'s identity, it is not permissible to hold *C* liable for what *A* does unless *C* has voluntarily put herself into such a position, and in a fairly straightforward way. To clarify this point, take the case of a person's liability through family relations. *C* may be *A*'s daughter, and so *A* stands in some kind of 'authority' relation with respect to *C*, but this does not establish that *C* is liable to pay to compensate for the harm that *A* causes. No justifiable legal system forces children to pay for the crimes of their parents, without some further considerations that link the child *agentially* to the parent's action. To force *C* to compensate *B* for the crimes of *A* would be to make liability rest on arbitrary grounds (that is, grounds having nothing to do with agency). The 'daughter' relation is a relation much like the 'citizen' relation. With respect to most citizens this relation is something one is born into. As such, a system of liability that would rest on such a

relation is a system that holds one accountable for people and events far outside of her control. To do so is not to create conditions of justice by compensating victims. It is to commit further injustice by taking from innocents. Reparation paid to victims may balance their loss, but it creates a further unjustifiable loss in the process.

If we here wish to redirect the focus to *remedial* liability, such as a prospective positive obligation on the part of the members of the aggressor state to compensate the victims of their government or military's actions, then we step outside the boundaries of this inquiry. Insofar as such a position would not be concerned with identifying retrospective assignments of (outcome) responsibility, the argument in this work takes no position with respect to whether it is appropriate or not. Although, it can be mentioned that a position of liberal individualism does suggest that directing such prospective obligation at the state itself will be problematic, because state officials must use coercion to generate the funds that would go to discharging this prospective obligation. That is, even if we judge that there are moral reasons in favor of the people in the offending state compensating victims for their losses, in which case we do not use legal coercion to make this happen, state officials in the offending state must still forcibly extract that compensation from innocent taxpayers. It would seem that the only way to make such payments in accord with proper conditions for even strict liability would be to appeal to individuals in the offending state to voluntarily contribute to making the victims whole again. To carry out such a policy through the coercive institutions of international law or domestic law is to force liability onto innocents.

§7.3 – Totally Irreducible State Agency

What about the possibility of completely irreducible state agency? If a decision procedure produces an outcome that no individual in the group favors, has not the group itself exhibited

intentionality? The first thing to say about this possibility is that it is extremely implausible in cases of state action where we might want to apportion responsibility and liability. Even if state policy was decided by vote (in a direct democracy or a republic) it is still unlikely that such a vote would be structured around the premise-centered approach so that the group might end up 'choosing' a policy that no one wanted. Major state decisions like espionage, war, and humanitarian aid are simply not made in such ways. Even in the legislative debates in congresses and parliaments, the final results of such collective deliberations are agreed to by at least some members. The law-making and policy-deciding processes do not produce outcomes that *no one* intends to produce. This is not in the nature of law and policy-making. In fact, in making law and setting policy there tends to be direct personal intentionality on the part of those persons most intimately involved, or from those with the most institutional authority. This intentionality is directed at producing specific outcomes with respect to the law or policy and is seen perhaps most clearly in the decisions for what those outcomes should be and in the resulting work to craft the law's language to produce those desired effects. Even if that intentionality may be related to the individual's desires for the whole, this does not supplant their own personal intentionality toward their favored political ends.

Furthermore, even if some state were to be organized according to decision-procedures that enabled results that were universally undesired, there would still be two major problems for a view of state agency based on irreducible state intentionality. There is first the fact that we can direct our judgments of fault at those individuals who originally devised the state institutions that enabled the irrational or immoral result of the decision procedure. Along lines parallel to the discussion of Copp's case of Mr. Borderline above, insofar as persons accepted positions in the state that entailed the responsibility to produce a proper decision procedure, these individuals

share in the fault when this does not occur. If we want to imagine that even these people are faultless, for whatever reasons, then we can mention second that even if a state's decision procedure were to determine a law or a policy that was wrongful, the resulting actions to codify and enforce it, or put it into place, would still have to be carried out. That is, individuals would still have to believe themselves so bound by the formal institutions that they did not stop to question whether it was morally appropriate to follow through with such a decision. Insofar as these individuals carry on and implement the wrongful law or policy, they can share in the (attributable) responsibility, and so the liability for the result. It is not as if the institutions themselves are the drivers of state action. We must never neglect to take into account the individual persons and their exhibited agency from moment to moment. The common belief-systems and institutions may connect them, and this can affect our normative judgments in some ways, but the corporate element in the case does not replace the individuals' agency altogether, and therefore it does not remove their normative liability. Lastly, we should quickly recall that it is possible for a collective or corporate action to produce undesirable results or negatively impact moral agents without this necessarily implying that anyone is at fault. This is a possibility for state action as well, and in such a case we may want to argue for remedial responsibility rather than retrospective (outcome) responsibility or liability.

§8 – CONCLUSION

At this point we have covered many different ways that we might defend the state-actor model. We have looked at bottom-up approaches of collective responsibility in the state, and now we have looked in-depth at top-down approaches of state corporate responsibility. In none of these possibilities did we see a convincing way to demonstrate the appropriateness of retrospective state-based normative judgment that impacts the non-acting natural citizens of the

state, according to the liberal commitment to individual responsibility. So, it does not seem that we can adequately dissolve the tension between the state-actor model and the individual-actor model of basic normative theory. In Part IV we will look at the beginnings of a way we might resolve the tension instead. If we retain a commitment to liberal individualism, then we must revise our methodology in normative IR in order for the two theoretical spheres to stay consistent. The major issues confronting us in this endeavor are (a) worries about reductionism, and (b) concerns about how an individualist methodology can be equipped to address the systemic, institutional nature of states, and their continued existence through time and through wholesale changes in membership. In Chapter 1 of Part IV some common arguments against reductionism will be addressed, and then in Chapter 2 we can look at some general individualist approaches to collective and corporate action and discuss their merits and shortcomings with respect to the state in particular.

Part IV: Methodological Individualism
Chapter 1: Reductionism

§1 – INTRODUCTION

It has to this point been argued that accounts of collective and corporate agency and responsibility do not satisfactorily support the state-actor model in normative IR. Although arguing that collectivist, holist, and realist views of the state are not appropriate for normative analysis goes some length to support a reductive individualist normative program, it must still be shown that such an individualist methodology is acceptable and workable, in principle. The part of Wendt's argument for state personhood that we have not yet looked at is the part that argues against reductionism. His holist (and realist) position about the state in part stems from his rejection of reductionism as a viable option, so if we are to be sure that we should adopt an individualist position in contrast to his view, we must be sure that his arguments against reductionism are not decisive. In this chapter we will look at five main argumentative threads that Wendt mentions and that have been developed in the literature of collective and corporate action. Two of these arguments are developed somewhat in Wendt's writing, and three others are only mentioned, though other writers have developed them. A brief treatment, at least, will be given to all five objections. Below, we will first discuss why a collectivist or holist view must resist reductionism, and in the process give some insight into why reductionism looks plausible, given our other theoretical commitments. We can then move on to how reductionism is often resisted and give an analysis of the common arguments used against it.

The central thesis to be defended here is that a reductive individualism is, in principle, feasible as an analytical methodology in normative IR. Wendt may offer forceful criticisms against certain forms of reductionism in scientific IR, but our theoretical underpinnings for

normative purposes can and must reduce from claims about the state to claims about individuals. This need not imply that individuals are not interconnected, or that ideas and intentions about the whole play no role in an individual's participation in state structures. The point is, rather, that state actions are necessarily the product of the intentionality and actions of individual responsible persons, and as such they must be normatively analyzed accordingly. Moreover, this analysis is possible and does not result in the inclusion of irrelevant detail or the loss of normatively relevant information at the collective or corporate level.

§2 – WHY REDUCTIONISM? WHY ANTI-REDUCTIONISM?

We might begin by asking, why reductionism at all? That is, why do we even think that there is such a thing as 'the state' or 'state action' that must be *reduced*? If we leave aside our common language practices for a moment, and focus on what we observe in the world and what actors are usually our units of analysis in applications of action theory, we will be confronted with individual human persons. We might *say* something like, "The US and Canada signed a trade agreement," but what we *see* is US delegates *A*, *B*, and *C* working out the language of a written agreement with Canadian delegates *D*, *E*, and *F*. When *A*, *B*, *C*, *D*, *E*, and *F* are our focus and we describe the situation no other way, and utilize no referents pertaining to states, then there is no need for any reduction. Why would we complicate this perspective? The answer is, of course, that we interpret the actions of those six individuals as the interaction between two groups of three persons, where each group represents its own multi-million-person group. We do not think of the case as: individuals *A*, *B*, *C*, *D*, *E*, and *F* interacting. It is, rather, an interaction between {*A*, *B*, *C*} and {*D*, *E*, *F*}, which itself represents an interaction between the US and Canada. In fact, it actually seems as if we cannot even really make sense of what *A*, *B*, *C*, *D*, *E*, and *F* are doing unless we understand their interactions as the interactions of persons with certain

state-specific authority. Thus, we think the state must be posited as a necessary explanatory element and this seems to work in favor of the reality of its existence and provide credibility to claims about *its* agency. This shifts the burden to the individualist. If we want to only talk about the persons in the case, then it must be shown that a reduction is possible.

What about the holist side of things? For the holist, it is not enough to argue that the state can be treated *as if* it is a moral agent. The holist would like to resist the reductionist position for a few reasons, at least. First, in line with our purposes and as we have been supposing all along, liberal individualism treats the individual person as primary and assigns responsibility to persons on the basis of their agency. Thus, on this liberal basis, which is itself quite common, even if the state were accepted as an agent of some kind this would not matter unless it was also true that the state's agency was not reducible to the agency of individual persons. We are only missing something in our normative picture if reduction from state-based claims to individual-based claims is not possible. Second in regard to how we theorize and explain international relations, reductionism must be resisted for the sake of basic simplicity of the kind suggested by the *principle of parsimony* (or Ockham's razor). It may seem as if reference to a single agent, the state, greatly simplifies our understanding of international relations, but the state is actually an addition to our ontology over and above the persons who remain and are simply subsumed within it. Thus, we have one more variable in our theory, and no sufficient reason for its inclusion if that variable can actually be reduced to other variables. Third, the state is some sort of incorporeal and unobservable entity, which works against a commitment to materialism, as we discussed briefly in Part III, Ch. 2. If the state's purported intentionality, agency, and action can be reduced to that of human persons much of the force of state-based normative judgments are lost. If some form of explanatory reduction is possible the state-actor model of interpretation

appears to merely posit the existence of an abstract entity to be included in explanations that might just as well discuss persons. There would seem to be more detail in the individualist analysis of whatever state action is in question, so an insistence on a state-based approach looks ill supported if reduction is possible.

This last issue is particularly interesting since the state, as a theoretical postulate, is unique in certain ways. In much scientific practice there has traditionally been a privilege for larger, observable things. Certain empiricist leanings have led many to think that one must have special justification for positing the existence of what is too small to be seen and directly manipulated. In many cases we have that justification, and this is considered progressive, because it is often the case that the better we understand phenomena at smaller levels, the better we understand certain phenomena at the higher levels. What is interesting about these questions of reduction in IR theory is that the unobservable entity here is actually something larger than the objects at the micro-level. Rather than positing the existence of small unobservables to account for observables, a macro-level *unobservable* is posited as part of an explanation of what is *observable* at the micro-level of persons.[320] This is rather like if we posited the existence of unobservable mind-states to help explain observable brain-states. An explanatory reduction is supposed to increase understanding because we bring into our view the more numerous small pieces in the system, and when we understand those we have a fuller understanding of the larger pieces of some yet larger system. Yet, in IR many writers argue that we should talk about the state itself, and not the individuals, and so it seems like they are moving us away from a more fine-grained understanding of international relations at an observable level. To do so, and to insist on the existence of something unobservable to do so, seems odd, until we see that these

[320] The explanatory reduction of the state to persons might be hoped by some to continue, say to psychological states, which may perhaps be reduced to brain states, and those to cell-states, and down to the smallest 'micro level', the quantum level. However, social theory typically treats the level of persons as 'micro'.

holists also think that a reduction of state action to persons is not possible. Wendt, for example, is not just offering a different referent for our talk about international relations, though he also thinks a discussion of individuals would suffice; he is arguing that we *must* talk about the state because talking only about the persons would leave out essential parts of the story. On his account our scientific understanding and predictive powers with respect to international relations will suffer if we do not treat the state itself as a rational agent.

A similar commitment to holism and rejection of reductionism is common in the normative literature. Views of collective and corporate agency that accept the ontological, and in some cases agential, independence of collectives of certain types do not simply wish to offer a separate way of understanding the workings of persons; they think that an essential component of the story goes missing when we fail to refer to the group or system itself as the agent involved.[321] Because of this, at least in part, these writers reject explanatory reductionism in regard to certain groups they think are capable of irreducible agency.

Of course, it is an entailment of such holist commitments that the groups themselves are capable of being the subject of our claims about action, agency, and responsibility. It is for this reason that concerns in social science about the proper level of analysis, the reality group entities, and explanatory reduction have bearing on our normative theorizing. In practice, to make a moral judgment one must employ a *description* of the action or event in question. This can be done with hypotheticals or in the abstract, but actually cases generally rely on *observation* and historical accounts of the past. Descriptions of these cases necessarily rely on a conceptual scheme that enables an interpretation of the action or event. That conceptual scheme is a theoretical edifice, which includes certain ontological and epistemic commitments. Furthermore,

[321] See, in particular, Tracy Isaacs, "Collective Moral Responsibility and Collective Intention," in *Shared Intentions and Collective Responsibility* (Boston: Blackwell, 2006), 59-73.

in a given case of normative judgment, a potentially quite large (even infinite) number of possible facts must be narrowed down to a set that is relevant to the judgment. Decisions about which considerations to include and how they should fit together to produce an analysis of the case that enables normative judgment depends on our *non-normative theoretical commitments*. Thus, those of us who are interested in the normative questions of state action must pay attention to issues of explanatory reduction, if not necessarily in the realm of pure theory, at least in the realm of practical methodology.

We must agree that our understanding of some normatively relevant occurrence will require a commitment to some views about what sorts of things exist in the world and how we come to know things about them. For scientific purposes we want to talk about what really exists and we are typically not satisfied with talk of merely theoretical, legal, or fictitious entities. For normative purposes the case is very much the same. Although in practice people pass normative judgment on imaginary or inanimate objects that are certainly not agents, this is both technically incorrect and also practically pointless. If no *willing* occurred, then there is no object to reform, and no agent to hold liable. If we express our reactive normative responses toward the inanimate thing, we waste our breath. The practical value of a normative system is its regulative effects on moral agents. The actual practices of praising, blaming, rewarding, and punishing lose much of their rational basis, both theoretically and practically, if our judgments refer to fictitious entities or objects that cannot exercise and adjust their own agency.

The above relates to normative IR and ‘state actions’ as well. To make proper normative judgments in cases of international relations our claims about states must refer to real entities that have the properties necessary for inclusion in a moral and legal community. Since any observation of the case will show individual persons acting, it is important that the holist show

that a description only in terms of those acting individuals is insufficient for normative purposes. It is important to show that the state is something over and above them, and that it is a separate locus of moral and legal responsibility. In other words, it is important to show that reductionism is not possible in IR for normative purposes.

For these and other reasons, reductionism has been strongly resisted by holists in the normative literature. To support the possibility of an explanatory reductionism in normative IR, it is important to address the ways in which holists have challenged it. We turn now to five common lines of objection against explanatory reductionism and a discussion about what methodological individualists can say in response.

§3 – OBJECTIONS TO REDUCTIONISM

Wendt develops two central arguments against reductionism and mentions three other objections to the view.[322] Wendt's first argument against reductionism is essentially an argument from *multiple realizability*.[323] In resisting the idea that we can reduce the actions of states to those of government, he says, "Yet, we normally think of states as persisting through time despite generational turnover, in part because their properties seem quite stable: boundaries, symbols, national interests, foreign policies, and so on." This stability helps us identify the series of governments in a state as governments of the same state. "Had Bob Dole won the 1996 election, even though the US government would have changed the US state would have remained the same." "Individuals are the 'leading-edge' of state action, so to speak, but insofar as macro-level regularities are multiply realized by their behavior, we have a situation in which state action cannot be reduced to action by governments." In other words, we can observe regularity in state behavior over time and over complete changes in the states membership. Thus,

[322] This occurs between the two main works of his that I have cited (*Social Theory* and "State as Person"). The two main arguments he gives in *Social Theory* are among the list of five he mentions in "State as Person."
[323] Wendt, *Social Theory*, 217.

when we see such state behavior, we cannot reduce it to any particular set of persons and personal properties in the state, because no particular set is necessary to create the state-level effect, as witnessed through its being realized from multiple micro-states in the past.

Wendt's second argument is that reductionism may be *circular*.[324] In the case of the state, reductionism trades on the indispensability of reference to the state's structure itself when explaining the actions of governments. Since structures are both *causal* and *constitutive*, they cannot be entirely dissolved away in our understanding of the properties of the persons within them. If the structure-individual connection was merely causal then in principle we could understand the properties of the individual without reference to the structure, and thus be able to complete the reduction. The fact that the structure is also a *constitutive* element of individuals' properties suggests that it cannot be reduced away. To understand the individual it may be necessary to understand the whole structure she is a part of. In Wendt's words, "Individualism depends on aggregating independently existing parts into a whole. Holists think this presupposes the truth of holism, since assuming that we can know a whole from its parts begs the question of how we can know ourselves as parts if not by prior knowledge of the whole."

Briefly, the three other problems for reductionism that Wendt mentions in his 2004 piece are the following.[325] (1) Wendt mentions the possibility of cases where groups intend things that none of the members intend. Pettit's cases of the discursive dilemma give examples of this possibility and explain how it may occur in structured groups. Pettit's work suggests that reductionism will fail in such cases. (2) Wendt thinks an "arguably decisive" problem for reductionism is the fact that "groups can do things individuals cannot, making some group intentions 'indivisible'. Sanctions, war, and humanitarian intervention are all highly complex

[324] Ibid., 217-218.
[325] Wendt, "State as Person," 299.

social practices that no individual can perform by herself." This criticism is distinct from (1) because it is not reliant upon *entirely* irreducible group intentions, only that a complete reduction is not possible because the group-level is essential to the analysis. Objection (2) is reminiscent of numerous accounts of collective responsibility, where this is not understood in the strict sense with which it has been used throughout this work. Collective responsibility on these accounts is the responsibility of the collective itself (the group itself), and not simply the universal individual responsibility of all members.[326] Lastly, (3) "in order to have an intention to do X, X must be something an actor can control, and individuals cannot control the actions of a group." This third and related worry, then, questions the very possibility of individual intentions directed at group-level ends (that We-intentions can ever be understood in terms of I-intentions).[327] This approaches things from the other direction, as it were. In (3) it seems that the point being made is that individuals cooperating are not actually capable of intending the group result. Only the group can intend such a result. Altogether, then, Wendt lists five lines of objection to reductionism and rejects it on these grounds.

§4 – RESPONSE TO (1), (2), AND (3)

Let us address the last three objections first. In regard to (1), and as we discussed in the last chapter, it is very unlikely that a state would ever have a decision procedure that used a premise-centered approach when faced with a 'discursive dilemma' in a collective decision-making scenario. Although such a case is logically possible, it fails to describe any realistic decision-process in a state. State actions are, practically, always guided by individual

[326] This is sometimes referred to as 'substantive collective responsibility'. See, for example, Tracy Isaacs, "Collective Moral Responsibility and Collective Intention," *Shared Intentions and Collective Responsibility*, eds. French and Wettstein (Boston: Blackwell, 2006), 59-73; 63. Compare: D.E. Cooper, "Collective Responsibility," (1968).

[327] See: Michael Bratman, "I Intend that We J," *Faces of Intention* (New York: Cambridge, 1999), 142-161; Raimo Tuomela, "Joint Intention, We-Mode and I-Mode," *Shared Intentions and Collective Responsibility*. Eds. French and Wettstein (Boston: Blackwell, 2006), 35-58.

intentionality and agency. No set of procedural voting rules is put entirely above the individuals who hold the positions of state power, where this could produce a policy result that no one in the state really wanted.[328] Furthermore, even if we did suppose that such a decision mechanism was created within a state there would still be at least two problems with state agency and liability in such cases. First, the whole state is not involved in such decision procedures. In most states the populace (part of the populace) votes on representatives who might then engaged in a collective decision procedure about policy. Perhaps it is true to say that the legislature, say, engages in a decision process that results in group-level intentionality that looks unique from the individual intentionality underlying it. However, this would not be to show that the whole state engaged in such a procedure, which would then show that the state itself is exhibiting intentionality and is therefore responsible. If we grant irreducible agency in such a case it would be the legislature that is the relevant agent, not the whole state. Second, as discussed previously, in such a case we would still be able to direct our judgments about the consequences of that decision procedure toward the persons who created the system, those that had the power and authority to change it but did not, and those who willfully carried out the policy decided upon, despite its (presumed) wrongness. This last group is particularly important. In any such case of a collective or corporate decision procedure that might generate a group-level result that no individual intends, such a decision must still be carried out by persons who have accepted that the decision procedure is binding and who act so as to create the outcome desired. Even if it is conceded that in some sense it is the group that decides, it is still the individuals who act.

There a further possibility that we should not overlook. It is possible that no one is (attributable) responsible in such a case. As Pettit's (and Copp's) cases are designed, it looks to

[328] It is sometimes argued that compromise in collective bargaining scenarios can lead to a result that no one wanted. But even here the deciding members *choose* the compromised position, and so accept it and intentionally follow through with it, for whatever reasons.

be hypothetically possible that groups with certain internal structures can encounter situations where the institutional bonds between persons really do drive the overall results, and so where it seems that the group itself would have to be the bearer of any intentionality we wish to assign.[329] Still, if we imagine that neither the individuals that designed the group, nor those currently in membership, are at fault in any way for some group-level result, then we must accept the real possibility that no one is (attributable) responsible and so no one is morally responsible, or blameworthy (or worthy of any negative reactive attitudes). An assignment of liability without fault may be appropriate, but whether such liability can directly impact all members of the group must depend on other factors. In a voluntary group, such as a business corporation, it is perfectly acceptable to assign liability to the corporation itself and take payment from corporate holdings (which are essentially joint stockholder property), because all affected parties have consented to, or freely entered into, the liability relation they now stand in. We should clearly distinguish such a case from a case of liability in the state, where it is overwhelmingly the case that no such act of freely joining occurs.

4.1 – Response to (2)

As for objection (2), let us look briefly at some of Tracy Isaacs's work on what she calls 'substantive collective responsibility' (that is, group-level responsibility that does not reduce).[330] Isaacs's position is that collective entities (even non-organized ones) can display intentionality, which is enough for these entities to be moral agents and so morally responsible. She argues for a separate, collective level of responsibility using two main lines of argument. First, she argues that "some actions are essentially collective, and that, therefore, an adequate account of moral responsibility in these cases must include responsibility at the collective level." And second that,

[329] This potentiality depends on the assumption that intentionality must be assigned in the first place.
[330] Isaacs, "Collective Moral Responsibility and Collective Intention," 61.

"if we try to give a thoroughly individualist account of these actions, we not only sacrifice collective moral responsibility in collective cases, we also leave ourselves unable to provide an adequate account of individual moral responsibility."[331] One of Isaacs's examples is of genocide, which is supposed to be necessarily collective and not reducible to an analysis about individual persons. "While it is true that individual participants in genocide are blameworthy for their participation…the individual's acts are not the same as the collective's act, and the moral impact of the individual's acts are not the same as that of the collective act." "No one individual perpetrates the Holocaust or the Rwandan genocide." "The collective as whole, not each individual contributor, perpetrates the genocide…" "Collective action, such as genocide, is not simply a concatenation of individual acts which add up to genocide…Instead, there is an overarching sense of purpose and joint effort that defines the action and gives it its character as a collective action."[332] This supports the position that collective actions are not analyzable in individual terms, Isaacs then argues that we cannot account for the full moral gravity of certain cases without doing so. "When individual acts take place in these collective contexts, we cannot explain what the individual is blameworthy or praiseworthy for unless we have an adequate account of the collective action *as* a collective action."[333] On this basis, Isaacs argues that the collective level is a necessary level of normative analysis and that collective responsibility (assignments of responsibility to collectives themselves) is a necessary and substantive form of responsibility. She understands these positions to necessitate an irreducible collective level of moral analysis, which is not just shorthand for talk of persons.[334]

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[331] Ibid., 63.
[332] Ibid., 64.
[333] Ibid., 65 [her emphasis].
[334] Such a view shares many similarities with holistic views in the social sciences. See, for example, Maurice Mandelbaum, "Societal Facts," reprinted in *Modes of Individualism and Collectivism* (Hampshire; Gregg Revivals, 1992), 221-234.

What can the reductionist say about such cases? We should first notice that Wendt and Isaacs make a pair of similar odd claims when arguing against an individualist interpretation of certain collective events. Wendt says, "Sanctions, war, and humanitarian intervention are all highly complex social practices that no individual can perform by herself." Isaacs very similarly claims, "No one individual perpetrates the Holocaust or the Rwandan genocide." These claims should give us pause. As they stand, they are quite puzzling. Why would Wendt and Isaacs even suppose they had to claim that a single person could not perform those highly complex social actions? Who would argue otherwise? Certainly, no defender of reductionism means to be arguing that we can always take group-level intentionality and agency descriptions and assign them, as is, to individual persons. In other words, no defender of explanatory reductionism argues that the *identical predicates* pertaining to group-level action and intentionality can always be assigned to individuals in the group. It may be that certain aggregate collective properties encourage this interpretation of reductionism. We could look at the set of red-haired people, for example. If we can give such a set a name, we could assign the property of 'having red hair' to the referent of that name, and we could make true claims about the set referred to (true under some interpretations). If we cared to reduce those claims directed at the group, the same property 'having red hair' is assignable to all members of the group. Such a benign case may encourage us to think that a reduction in a case like genocide must work similarly. If 'The Hutus' committed genocide against 'The Tutsis', then perhaps the reductionist wants to claim that an individual Hutu 'committed genocide'. However, reductionism is definitely not committed to this.

What about the other, more plausible, claims that are made against reductionism? Isaacs says that collective actions are not just the concatenation of individual actions, and that we cannot understand the normative implications of an individual's actions in one of these collective

cases, unless we have an account of the collective action *as* a collective action. To the first point it should be responded that the reductionist does not have to rely on the collective action being "just a concatenation of individual actions." To see why we should look at Michael Bratman's view of collective intentionality, or shared intentions, as based on constrained and interrelated individual intentions.[335] It is interesting to note that Isaacs cites Bratman in support of her own view.[336] Bratman is known in the literature for his decidedly individualist approach to analyzing collective intention and action, but Isaacs thinks that its "individualist flavor" just adds to its appeal, while not making is a fully individualist view. She conceives of it as a sort of middle position between reductionism and holism. However, Bratman's position is not a middle position, and it is important to see why one may think that it is, as well as why it is not.

In "Shared Intention," Bratman gives the following account of shared intention, which Isaacs appeals to in her paper.[337] We intend to *J* if and only if:

1. (a) I intend that we *J* and (b) you intend that we *J*.
2. I intend that we *J* in accordance with and because of 1a, 1b, and meshing subplans of 1a and 1b; you intend that we *J* in accordance with and because of 1a, 1b, and meshing subplans of 1a and 1b.
3. 1 and 2 are common knowledge between us.

Isaacs argues that this is not a strictly individualist account because, "the relations between the individual intentions matter just as much to the structure of collective intention as the individual intentions do." Further, "Taking these relations seriously, we can see that they produce an element of irreducibility that would not be present were collective intentions simply aggregates of intentions of individuals."[338] In distinguishing her view from Searle's, Isaacs

[335] I do not wish to adopts Bratman's position just yet. I only wish to demonstrate how an individualist account can work in collective contexts.
[336] Isaacs, "Collective Moral Responsibility and Collective Intention," 66-69. See also, Michael Bratman, *Faces of Intention* (New York: Cambridge, 1999).
[337] Bratman, *Faces of Intention*, 121.
[338] Isaacs, "Collective Moral Responsibility and Collective Intention," 68; also 62.

explains that individual intentions are components of collective intentions, of course, but that "collective intentions are not themselves states of conscious beings. Instead, the relations between individual intentions, the overall structure of them, is as much a part of the collective intentions as the individual intentions are. They are states of affairs rather than states of consciousness."[339] Thus, on Isaacs's view, certain collectives are 'dependent agents' (dependent on individuals) that can nevertheless display their own intentionality, when intentionality is understood as a state of affairs, rather than a mental state. The collective itself can be responsible, then, because of the collective intentionality it displays.

Why would an account like Bratman's be considered a middle position when it quite clearly refers to a first and a second *individual* intending, albeit intending based on beliefs about the other individual? The answer seems to be that individualist reductionism is often treated at a sort of *atomism*. That is, the individualist position is considered to require that all cases of collective action be explainable and normatively analyzable solely with reference to individual intentions and actions, *without any mention of relations, social context, institutional structure, et cetera*, as if collective results follow from the simple totaling of effectively isolated individual beliefs, intentions, and actions.[340] We can see this presumption implied in Isaacs's claim above about irreducibility because the group intention is not *just an aggregate* of individual intentions. Wendt makes similar claims in his circularity argument against reductive nominalism when he says, "Individualism depends on aggregating *independently existing* parts into a whole" [my emphasis]. If individualism is atomism and holism is understood as a family of views that posit the existence of metaphysically dubious things like group minds, then Bratman's view does seem

[339] Ibid., 72.
[340] In normative theory in particular, this could be called a form of "evaluative solipsism." See Christopher Kutz, *Complicity* (New York: Cambridge, 2000), 4.

'moderate' with respect to individualism and holism. Below we will see whether it may be better to see Isaacs's view as a middle view, rather than Bratman's.

Isaacs seems to view Bratman's position as a middle position also because of her interpretation of Bratman's notion of collective intentionality. Bratman says, "[S]hared intention, as I understand it, is not an attitude in any mind. It is not an attitude in the mind of some fused agent, for there is no such mind; and it is not an attitude in the mind or minds of either or both participants. Rather, it is a state of affairs that consists primarily in the attitudes … of the participants and interrelations between those attitudes."[341] As her quoted remarks above show, Isaacs takes Bratman's account of intention to enable her to assign collective intentionality to a collective itself, and so understand actions of many persons as intentional collective actions (actions of the collective itself), and so understand collective responsibility as assignable to the collective itself. The relations that exist between the persons create an irreducible collective dimension, according to Isaacs.

What can a reductionist say about this? A response from the reductionist side can begin by objecting that Isaacs's treatment of individualism as atomism misrepresents individualism. It can further be argued that her view of collective action and responsibility is problematic as a companion to Bratman's view of intentionality. That is, it seems that Isaacs's view cannot borrow Bratman's account of shared intention and still remain a view of *substantive* (non-reductive) collective intentionality and responsibility.

First, no serious individualist view of social intentionality, action, and responsibility takes an atomist approach. Common experience of the world reveals an obvious interconnection between a given individual and the other individuals the first one interacts with. It could be that commentators on this issue are sometimes misled by the methods of theorists like Hobbes,

[341] Bratman, *Faces of Intention*, 122-123.

Locke, or perhaps Rawls. It is true that some social theory uses imaginary constructs where individuals are solely self-interested and not meaningfully interconnected; however, they use this construct as a tool for theorizing – perhaps as an ideal kind. This should not be confused with the sort of methodological individualism concerned with analyzing historical collective action. The former is attempting a justification of social order; the latter is attempting a retrospective analysis of social action. The normative issues concerning liability, though they may seem more akin to the justifications, are actually more closely concerned with historical analysis. The normative evaluator must interpret the situation in order to form her judgment. To do so she needs a theory of social action from which to base her analysis. If she is also concerned with accurately capturing the reality she means to analyze, then she will also concede that the individual units that comprise the group in her analysis are interconnected in many ways, physically and psychologically. She must do this because it is obviously the case. Accepting this undeniable fact does not force one to abandon methodological individualism. An insistence on reduction from claims about groups to claims about individuals does not have to entail an insistence that those claims about individuals not cross-reference. We might be worried that such claims will still have to refer to the whole group itself, and so that the reduction is not possible. This issue will be addressed below when we discuss Wendt's circularity argument against reductionism.

As for Isaacs's appropriation of Bratman's view of shared intentionality, let us ask whether his view comports with substantive collective responsibility, where responsibility is assigned to the collective itself, for *its* intentionality and *its* actions. If this pairing can work, then Bratman's view does look again to be a middle position because no individualist position will allow *substantive* collective judgments. But let us see what he says about his own view.

In his closing remarks to the paper Isaacs cites, Bratman says:

> This approach to shared intention is broadly individualistic in spirit. Granted, much recent work in the philosophy of mind has argued that our ordinary ways of specifying the contents of the attitudes draw on features outside of the individual whose attitudes are in question. … The individualism of my approach to shared intention can grant these insights about what determines the content of an individual's attitudes. *The claim is not that we can specify these contents in ways that do not appeal to elements outside the individual whose attitudes are in question. The claim, rather, is that shared intention consists primarily of attitudes of individuals and their interrelations*. The coordinated planning and action, and the framework for bargaining, characteristic of shared intentions emerge from the proper functioning of these attitudes of the individual participants.[342]

Here we see Bratman categorize his own view as individualistic, but not atomistic. More importantly for whether his view is compatible with Isaacs's interpretation, we see Bratman emphasize that shared intentions consist of attitudes of *individuals*. Looking more broadly at the rest of Bratman's writing on these issues we will not find mention of a group, itself, displaying intentionality, and no mention of (substantive) group responsibility.[343] That is, Bratman is not developing a view that allows for groups as entities to have intentionality predicated of them. Bratman always interprets such cases as cases of combinations of individual intentionality and responsibility. His view is not a middle position. On the contrary, Bratman provides exactly the kind of individualistic understanding a reductionist would want.

On Bratman' account, when collective action occurs we are able to describe the intentionality behind those actions in terms that refer to interrelated individuals. From there we can go on to evaluate the normative standing of those individuals, based on our foundational theories of normative interpersonal relations. Never do we have to literally assign intentionality, action, or (attributable) responsibility to the group itself. This is the whole point of developing an account of how two or more people can jointly act from shared intentions, even though the referent of the concept 'shared intention' can never exist in any mind. When Bratman argues that shared intentions are states of affairs, rather than mental states, he does not mean to be opening

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[342] Bratman, "Shared Intention," *Faces of Intention*, 129 [my emphasis].
[343] See: Bratman, "Responsibility and Planning," *Faces of Intention*, 165-184.

the door to a view like Isaacs's, where we can say that the group acts intentionally and therefore bears responsibility as a result. What Bratman is really doing is giving a sort of 'deflationary' account of collective intention. As he defines them, 'shared intentions' are not 'intentions' at all, strictly speaking. The individuals in Bratman's account have their own intentions, and there are common intentional elements existing between them, as well as an interrelation of intentionality, but there is no *thing* that is really a 'shared intention', as analogous to an intentional mental state in an individual. Bratman's point in treating shared intention that way is to show that it is a species of individual intentionality. It is precisely *not* his point that, because shared intentions are states of affairs, groups, themselves, can possess them and act on them.

If this is correct, then substantive collective responsibility is not compatible with Bratman's account of shared intention. There does not appear to be any remainder once we interpret the group intention and action as really the interrelated intentions and actions of individuals. In other words, there does not seem to be a proper referent for attributions of substantive collective responsibility. An assignment of (attributable) responsibility to the group will be understood as an assignment to the members of the group, based on their interrelations. Collective responsibility is possible on such an account, but only when all members of the collective named are individually responsible in some form or other. Never does the reductionist have to concede that there is some group entity that is itself an intentional agent.

§4.2 – Response to (3)

If a view like Bratman's is accepted, we also have a response to objection (3) above.[344] Recall that Wendt says, "[I]n order to have an intention to do X, X must be something an actor can control, and individuals cannot control the actions of a group." It is hard to know exactly

[344] It should be noted that other individualist accounts compete with Bratman's and, again, his is only being used at this point as an illustration, and because his view is most relevant to Isaacs's discussion. See, for example, Seumas Miller, *Social Action* (New York: Cambridge, 2001); Christopher Kutz, *Complicity* (2000).

what to make of this claim, but we may suppose Wendt does not mean to be making the false claim that an agent cannot intend to achieve some result that is not in fact possible to achieve. This would be to treat 'X' as the intended *result* itself. If Wendt was to mean this, the claim would be quite dubious, since it is certainly true that persons can intend to do things that they are ultimately incapable of doing. He does mention the actions of the group, which would suggest that he has the action itself in mind as being *X*. If he does, then the claim is problematic in the same way it would be if 'X' refers to the result. One can intend to perform some action that they are not in fact capable of performing. In that regard, the *X* in question would be an action that the agent intended to perform even though *X* was not within that agent's control. It is possible to intend to perform action *X* even though one cannot actually *X*, which would be a counterexample to the claim. The most charitable reading we can give Wendt's statement is that 'X' refers to the *attempt* at action or the production of some result, though the phrasing makes this non-obvious. If this is the case, he can be understood to be saying that in order to intend *X*, *X* must be a goal that the one intending could direct herself toward, and so in some sense *control*, even if the attempt is ultimately unsuccessful. In the case of collective action, then, Wendt would seem to be saying that a single individual cannot instantiate the group intention, because the group result depends on agency that is beyond her control. Whereas the individual can attempt to use her own will to achieve some impossible goal, she cannot use her will to control the wills of others and will *them all* to do something *together*.

For our interpretation of Wendt's third short objection, it seems that we can either read it in one of the first two ways described above, in which case the objection can be ignored because it mischaracterizes intention, or we can read it in the third way described above and respond to it along the lines that Bratman has developed for meshing individual intentions. We can argue that

a so-called group intention is really just a state of affairs related to the intentions of the interrelated individuals. If we wish to claim: "The loggers intend to clear-cut the forest," we do not have to posit the group as the entity that holds the intention. We can simply understand the claim to be about a state of affairs involving each individual in the set 'the loggers', and their individual intentions to cut down individual trees, as determined by their meshing subplans, under conditions of common knowledge, together with the desire to produce the collective-level result of clear-cutting the forest. No one logger need be assigned the intention of clear-cutting the forest, and there need not be a group entity posited for the ascription. The loggers can individually intend what they individually intend, and yet all the while share a particular end or purpose.[345] A group can intend to do something insofar as the individuals in the group maintain certain relations, beliefs, and intentions. It should be noted with respect to objection (3), as we saw with regard to (1) and (2), that there seems to be a strange presumption underlying the anti-reductionist's perspective here. This presumption holds that individualism has to be able to assign either identical predicates to both the group and the individuals in the group, or that it must analyze group properties atomistically as aggregative isolated properties of individual persons. Neither of these positions is necessitated by a commitment to individualism, and neither would be offered by a plausible individualist account.

Even if we reject Bratman's treatment of collective intention as states of affairs, rather than mental states, we can still resist Wendt's concern in (3). We could, for example, just deny collective intentionality altogether, given that we cannot seriously maintain that groups have collective minds. If we want to restrict intentions to mental states, we can retain Bratman's analysis of the interrelated intentions of individuals (or one like it), and simply insist that talk of collective or corporate intentions is imprecise shorthand for what could be described at the

[345] On this point see also: Seumas Miller, *Social Action*, particularly 56-69.

individual level. This is not very far removed from Bratman's view at all, actually, and it allows us to respond to (3) by accepting Wendt's claim, and arguing instead that a group, and specifically the state, does not exhibit intentionality, strictly speaking. Thus, whether Bratman is right about collective intention, or not, objection (3) need not concern us.

The last worry to consider in this section before moving on to Wendt's other two arguments is whether individualism can handle the moral gravity of certain collective action situations. Isaacs's case of genocide provides a good example to motivate this worry. It does seem that we could lose the weight of a moral judgment about something as horrific as genocide, if we reduce such a case down to individual actions. Perhaps this is because an individualist account will misrepresent what is really a collective's actions, the scope and severity of which is much greater. In answering this worry, we can use the Rwandan genocide as our example.

The reductionist can admit immediately that genocide is not something that an individual can intentionally do.[346] Yet, the reductionist does not need to argue to the contrary. Take a claim like: (i) "The Hutus attempted to commit genocide against the Tutsis." The reductionist can accept that (i) does not reduce to any claim like the following: (ii) "Hutu A attempted to commit genocide against the Tutsis." The reductionist can also accept that (i) does not reduce to a claim like: (iii) "Each individual Hutu attempted to commit genocide against the Tutsis." The reductionist can still say that (i) is reducible to a conjunctive claim (or series of claims) about individual Hutus who committed acts in support of genocide or acts that directly contributed to the desired result of genocide and with the intention of a genocide occurring overall. For example: (iv) "Hutu A intentionally committed actions X and Y in support of genocide against the Tutsis; Hutu B committed an act of murder against Tutsi C, as part of a conscious effort to

[346] This is at least typically true. It is conceivable that an ethnic or cultural group could be so small that a single individual could eradicate them. However, historical cases of genocide have tended to involve many people.

contribute to the cause of wiping out the Tutsi population (i.e. committing genocide against the Tutsis); …" These statement can also refer to the 'meshing subplans' that Bratman identifies as essentially relevant when analyzing collective actions. When all of this detail is accounted for the serious moral gravity of such a case can be captured in our individualistic descriptions.

Since we have responded to the presumption that a reduction to individuals must be atomistic, we can go a long way toward addressing Isaacs's concern about the additional level of moral responsibility (such as blame or praise) that is involved in cases of large-scale collective action. It is not true that the larger goal and its implications of moral weightiness cannot be accounted for. It is certainly possible to look at a single direct contributor to genocide and see her action as not simply the isolated action of murder, but as the action of murder as part of a joint effort to collectively realize a far worse result than one death or even many deaths.[347] The intention to commit murder as part of a collective project to eradicate a whole class of people can certainly be appreciated as more morally damning (and perhaps legally damning) than the intention to commit a single isolated murder. It is not as if there are only two choices – hold each individual responsible in isolation, without reference to the actions of other persons, or hold the whole collective itself responsible. We can direct our normative responses toward individuals and allow those responses to reflect the full situation without thereby committing ourselves to the necessity of any sort of holism.

One worry that may crop up at this point is the following. The sketch of an individualist normative analysis of genocide above admits that we must refer to the collective level in order to fully capture what any particular individual did. It may seem that we have to analyze such cases in collective terms, because we cannot understand the individuals' actions otherwise. It looks, then, as if a complete reduction cannot occur because it would have to abandon that essential

[347] See: Seumas Miller, *Social Action*, 247-250.

collective level. This would be especially problematic in the normative context, as Isaacs alludes, because the full weight of the situation may be lost. This worry is akin to Wendt's circularity argument against reductionism, so we will turn to that now.

§5 – THE CIRCULARITY OBJECTION

The objection against reductionism that Wendt is referring to here has a long tradition, especially in the social sciences. The thought is that you cannot interpret and explain the individual's beliefs, intentions, and actions without reference to the *whole* (society, culture, collective, institution, etc.) she is a part of. Wendt discusses this in terms of the *causal* and *constitutive* effects of structures. Again, he says, "Individualism depends on aggregating independently existing parts into a whole. Holists think this presupposes the truth of holism, since assuming that we can know a whole from its parts begs the question of how we can know ourselves as parts if not by prior knowledge of the whole."[348] How does the whole affect the parts? Wendt offers an analysis of culture as a system of collective beliefs that have constitutive effects on individuals.[349] The systemic level of the collective culture, keeps it at a level not reducible to the individual persons, even though it admits of their influence on it. "These are knowledge structures held by groups which generate macro-level patters in individual behavior over time. Examples include capitalism, the Westphalian system, apartheid, the Afrika Korps, the free trade regime, and…states."[350] The failure to reduce is argued to stem from the nature of the system. For Wendt, the 'collective' culture is not the sum of beliefs in the people's heads or the sum of their actions. It is more institutional and historical. What he says about forms of

[348] Wendt, *Social Theory*, 218.
[349] Ibid., 157-165; 171-178. It should be noted that Wendt's understands 'collective' as distinct from 'common' culture and belief. The 'common' variety refers to every member in the whole, the 'collective' variety is more vaguely institutional in character. It doesn't depend on each individual adopting the perspective. It can be maintained systemically, and admits of multiple realizability.
[350] Ibid., 162.

'collective memory' that can exist within certain groups is illuminating on this point. "These narratives are not merely the shared beliefs held by individuals at any given moment (though they depend on those beliefs), but inherently historical phenomena which are kept alive through the generations by an on-going process of socialization and ritual enactment."[351] The collective culture of a society as a whole, then, operates at the system level, and though it does depend in a way on the individual persons, it is also a supervenient feature that does not reduce cleanly to them. Moreover, it impinges on them, which makes it causally relevant, and it is an essential influence in the development of their identities, which makes it a constitutive feature *of* them.[352]

Furthermore, although these structural features are grounded in individuals and impinge on individuals, in certain cases their causal affects may only materialize at the macro-level, which would make that level indispensible in our analysis.[353] Wendt offers 'natural selection' as an example of this macro-level causation, as well as 'collective memory' mentioned above. If he is correct, and our descriptions of what individuals believe and intend must appeal to such macro-level features of the system, then it seems that a complete reduction is impossible. Moreover, it seems that this may impact even a retrospective normative analysis of state action, since it would imply that there is a holistic element that plays a constitutive role in who the individual is and what she does, thereby disallowing a normative treatment of the individual independent of that structure. Individualistic descriptions like the one offered above about the Rwandan genocide would not legitimately capture the whole picture insofar as they do not acknowledge how the structures, systems, groups, and classes that one is a part of shape one's intentional states and so one's identity.

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[351] Ibid., 163.
[352] Perhaps to the point of being necessary for them to form concepts at all. Wendt connects 'individualism' with 'internalism' about mental states (the view that thought is logically prior to society). Ibid., 173.
[353] Ibid., 154.

Before moving on to an argument against the causal and constitutive nature of the macro-level structure, the exact issue in question here should be clarified. A few micro-macro distinctions and traditions of debate are often invoked using similar language and these different methodological, explanatory, and theoretical issues can easily be run together. This is especially true in our case given that Wendt's arguments from political *science* have been our focus even though the issues of ultimate concern for this project are normative.

Wendt's scientific purposes ultimately boil down to prediction. Obviously explanation is vital, but there are many sorts of explanations of phenomena, what matters in science is whether a given explanation enables an understanding of the mechanisms at work that will enable accurate future prediction, which itself shows the merit of that explanatory framework (or theory).[354] In other words, the scientist is often looking to make law-like claims that do not just describe the past, but also describe the future. Some scientists and philosophers of science think it necessary, or at least desirable, that such law-like claims be reducible between branches of scientific study, especially if the branches are thought to study phenomena that are ontologically related (or when the features of the elements discussed in one branch are related to the features of the elements discussed in the other). If certain law-like claims are made at the state-level, for instance, and other law-like claims are made at the level of individual psychology, then some would argue that the law-like claims about the state must be able to be captured entirely by the law-like claims about individuals' psychology. Wendt's response to such a position here would be to insist that we are unable to understand the individual's psychology without considering the entire social structure she is a part of, and one such structure is her state. This is the force of the circularity objection in social science. Another way of appreciating this is to see Wendt's project

[354] Certainly, other criteria would also be relevant to the ultimate acceptance of a particular theoretical framework. My point here may be summarized as: the true test of an explanation is its ability to predict.

as, in part, a holistic rejection of reductive *atomism*, where the reduction would entail the *theoretical reduction* of macro-level social theory down to the micro-level. That this is Wendt's target would explain his discussion of the *aggregation* of *independent* individuals into a higher-level explanation, when mounting his criticisms against individualism.[355]

As we have discussed, the sort of reduction at issue here need not rely on any sort of atomism. We are not here dealing with multiple branches of a single enterprise attempting to provide law-like explanatory principles that enable predictions. We are also not attempting to explain the individual's intentional states without any reference to conditions external to that individual's mind, or attempting to understand macro-level regularity according to a simple aggregation of independent features of individuals. Our object of study is essentially the same at both the small and medium interpersonal and group levels, as well as at the larger levels, such as the level of state action. The distinction between these branches of analysis turns on a matter of degree, not of kind. We are not here concerned with reconciling two entirely different theoretical structures, as the case might be between scientific disciplines. Still, the individualist position being defended is reductionist, and so Wendt's worry does seem to apply, albeit more indirectly than it would to the scientific debate.

Wendt's worry is in a sense our worry. The initial descriptions of the actions we are concerned with are given in state-terms. The individual persons are acting through their state-specific roles, and acting for state-specific reasons, so we want to capture the fact that they are state-specific actions, or actions done for reasons having to do with state functions. If the state-actor model is inappropriate and we are to instead embrace methodological individualism in normative IR, then we will have to show that the state-based analysis is reducible to an individual-based analysis. Yet, there is reason to doubt that such an analysis can be given

[355] Wendt, *Social Theory*, 218.

without talking about the whole. If our analysis of the individuals must appeal to the whole in order to be appropriately comprehensive, or if they really cannot be analyzed apart from the whole, then the whole is normatively essential.

In distinction to what would be referred to as the atomist/holist debate in social science, the issue above in social theory can be labeled the 'individualist/collectivist debate', at least under some descriptions.[356] This debate has to do with the question of the individual's agency in the face of structural or systemic social influences. The question is, to what degree does the individual exhibit autonomous agency in the face of systemic and structural constraints? If structural elements are thought to promote certain individual behaviors, regardless of other features of the individuals, then it seems the individuals cannot be analyzed independently of the whole, which gives us a reason to continue to rely on a macro-level approach in our analysis of agency and responsibility. Of course, this issue depends on our empirical analysis of these issues and on the theoretical structure upon which that empirical analysis relies. In this regard, our theory (explanatory framework) is quite relevant to the normative methodological questions we are asking, so, although Wendt's specific criticisms of reductionism are not always aimed directly at our questions, they are nevertheless relevant to them.

Expressed this way, the above worry relates to the discussion in Part II, where the topic was the conditioned character of one's conceptual scheme and identity. It was argued there that certain features of an individual's psychology must be treated differently for normative purposes, given their basis in enculturation or indoctrination almost from birth, together with the lack of obvious alternatives. A comprehensive holism would extend this sort of critique even further,

[356] Though I think there are other ways to parse the 'collectivist/individualist' debate in social theory, this interpretation of the terms is common. On the distinction between the holist/atomist and collectivist/individualist questions, see: Frank Jackson and Philip Pettit, "Structural Explanation in Social Theory," reprinted in *Reduction Explanation and Realism*, eds. Charles and Lennon (New York: Oxford, 1992), 97-131, particularly 126-131.

down to the very concepts the individual uses as well as the linguistic norms adopted for the use of those concepts.[357] From this position it looks as if the entirety of the individual's rational processes is structurally influenced and, therefore, that the same is true of her intentional actions. If it were the case that one's beliefs, values, and very modes of reasoning have this systemic, cultured, collective character, then this would militate strongly against reductionism.[358]

To varying degrees, this would also militate against normative individualism itself. On the weaker end of the spectrum, this criticism would imply that individuals are never fully autonomous in their actions. This position need not deny that individuals still exhibit normatively meaningful agency, but it will entail that we can only have a full picture of that agency if we consider the whole as well. This is enough to resist a full reduction, but it does not create insuperable problems for explanation at the individual level. On the stronger side, depending on how far we want to push the worry, the collectivist position can be used to challenge the whole enterprise of methodological individualism in social theory. On such an account, the structural considerations lead to questions about whether it is ever true that a given individual exhibits meaningful autonomous agency robust enough for personal responsibility. If the individual is really an inseparable product of her culture, social structure, or state (essentially forces outside of her control), then we are faced with a deep concern over whether she is really a responsible moral agent, even with respect to her own actions. Hence, in the worst-case scenario for individualism, there is no personal responsibility at all, and instead all individuals are deeply and inextricably intertwined into their communities and institutions. This view is not only a rejection

[357] Karl Marx, for example, claimed that different economic classes had different ways of thinking, and even different and incommensurable logical structures inherent to their thinking.

[358] Many adherents to such a view could be named. Anyone following in the tradition of Durkheim, for example, may be relevant here. As one example see: Louis Althusser, *Lenin and Philosophy and Other Essays*, (London: New Left Books, 1971). See also Seumas Miller's discussion of Althusser's view in *The Moral Foundations of Social Institutions*, (New York: Cambridge, 2010), 93-94.

of reductionism; it is an attempt at the complete refutation of the entire family of views labeled 'individualist'. The wholes are the only entities of interest if we take things this far. Individuals have no 'substance' or no intelligible meaning apart from the social wholes they are a part of.

It would seem then that the arguments put forward in Part II that were intended to counteract arguments for collective responsibility and liability in the state may themselves work against reductionism of the sort being suggested for state action. The whole collective (which is to say, all members) may fall short of responsibility for the same or similar reasons as to why any given individual lacks robust personal responsibility. The institutional, structural, systemic 'state' itself may be the only proper referent of our normative judgments.

§6 – RESPONSE TO THE CIRCULARITY OBJECTION

Since we are not here concerned with defending an atomist reductionism for normative analysis, to make the case for individualism it need only be shown that the whole state need not be the referent of our judgments in cases where it is agreed that the action constitutes an action of the state. Though our descriptions of such events suggest that there are entities called 'states' that act, everyone accepts the ontological reduction from these claims to persons (plus), and we must simply show in addition that the whole structure is not so intertwined with the behavior of the individuals that we cannot properly remove mention of and attribution to the whole.[359] What needs to be shown is that we can take descriptions of actions ascribed to states and reduce them (or translate them) into claims about the particular individuals involved, with mention of their interrelations if need be, but not with mention of any supposed irreducible collective or corporate intentionality. This is an individualist position, but it might be called a 'formal individualist'

[359] See Joseph Agassi, "Methodological Individualism," *Modes of Individualism and Collectivism* (Hampshire: Gregg Revivals, 1992), 185-212.

position to distinguish it from those that depend on the individual being an isolated pocket of society, or something that is intelligible independent of circumstances external to it.[360]

The main line of response to Wendt's objection is to argue that the *entire structure* or the *entire culture* or the *entire system* will not be the proper object of appeal if we mean to explain a given individual's behavior. To do so we may very well have to appeal to conditions external to the individual, but we should not conclude that 'social wholes' or the collective-concepts our terms refer to are the relevant constitutive factors that explain the intentionality behind a case of state action. A secondary line of response, which more directly addresses the extreme worry mentioned above about individual moral responsibility, is that even if we admit that pre-existing institutions and social structures provide a considerable network of constraints on individuals, this does not diminish their personal autonomous agency to the degree necessary to remove them entirely from the realm of the morally responsible, nor does it even militate against personal responsibility in a given case. To add to this point, the position defended here will deny that persons acting in the name of the state lack sufficient personal agency to be considered personally responsible for their decisions and actions made through their state-specific positions. The fact that they are operating from state-related offices and even for state-related reasons, at least in part, is insufficient to remove their personal liability.

§6.1 – Resisting Holism

To the first point, the central mistake of holism is that it tends to appeal to social wholes like 'the community' or 'the culture' or 'the structure' or 'the state' in explanations of the properties of individuals. That is really the whole point, of course. The problem with this is the scope that the whole takes in a given instance is essentially posited by the one doing the thinking

[360] I take this from Bernard Williams. For some further clarification on this important distinction see his, "Formal and Substantial Individualism," *Proceedings of the Aristotelian Society, New Series*, Vol. 85 (1984-1985), 119-132.

– the social theorist doing the interpreting. Though there may be a collective element involved in the case, which is restricted to some specific set of persons, the one conceptualizing the social interrelations may decide to view the relevant interrelations as extending to the limits of any community she prefers. The relevance of whole communities is often simply assumed (and not necessarily explicitly), or it occurs through a subtle slide in the collective referent of the claims made. An example will help clarify this point. It is common to judge that a particular person's behavior is in part a product of the culture she was raised in. This sort of cultural appeal can be used to answer many questions such as: Why does *A* eat with chopsticks? Why does *A* glorify war? Why does *A* attend mass on Sundays? The answers: because *A* is Chinese; because *A* is American (or German, or Greek); because *A* is Irish Catholic; because *A* is a product of *A*'s *culture*. The problem with these answers that they are woefully imprecise and so misleading, especially with respect to normative theory and analysis. It can easily be thought that the whole society (or community) in question is behind *A*'s characteristics because the society is the generator of the culture, and it has already been established that *A* is the product of her culture. However, *A*'s particular traits are not a product of the whole culture supposedly exhibited by her society. *A* is a product of *A*'s particular life experiences. Her beliefs, desires, and intentions are a product of her interactions with the physical world, the ideas she has been exposed to, and the specific people she has interacted with. *A*'s experiences overlap with widespread ways of living, and they occur within institutional structures, but we can account for that as we would any other interaction that *A* has with other persons. When those persons become a causal factor in *A*'s development, then we can include that fact in our description of *A*, still without admitting that the whole is somehow involved. Instead of insisting that *A*'s Chinese cultural heritage explains why she uses chopsticks, we appeal to her parents, and her other personal relations. We appeal to the

fact that the people in her life that are closest to her adopted that way of living, and passed an appreciation of its value onto her. The non-chopstick using Chinese, and the chopstick-using non-Chinese, make the practice not specifically Chinese anyway, and not specifically a part of that culture. Had *A*'s parents chosen instead to use forks, and had *A*'s other close associates done the same, we would expect *A* to use a fork. *A* does not adopt the habit from her culture; she adopts it from her specific experience and personal decisions based upon it. Similarly, if *A* glorifies war we do not illuminate this fact by explaining that *A* is an American. For one, many Americans do not glorify war. There is no cultural unity on that point, and we will find the same lack of unity on other aspects of culture that we would like to identify. We only add to our understanding of *A*'s views on war if we look at *A*'s particular history, and include details about the exposure *A* has had to certain other individuals and certain other ideas, together with *A*'s particular deliberations about these subjects. The explanation of *A*'s behavior cannot appeal to aspects of the broader social world that do not meaningfully impinge on her. And the set of factors that are specifically relevant to *A*'s current intentional states will tend to always be a proper subset of the whole that we refer to with our collective terms.

The same is true of structural properties of *A*'s community that we would like to identify as causally relevant for explaining *A*'s dispositions. For instance, we might want to look at the racism that exists in *A*'s city (or state) to explain why *A* has animosity toward people of what she perceives as another race. Perhaps one would think that *A* is racist because her hometown of city *C* is racist and *A* is a product of *C*'s culture. Our first worry should be that any identified community of a certain size, such as a city for instance, is unlikely to display a uniformity of this cultural characteristic. Yet, even if we were to imagine that there was some aspect of culture that is shared by all members, it would still not follow that *A* is a product of that whole community's

culture, unless all members of that community have influenced *A*'s development in some way. The racist retiree who never leaves her house, and who does not know *A* and does not interact in any way with *A* is not part of the complex of causation that has over time helped mold *A* into what she has become. In order to understand *A*'s racial views we will need to look at *A*'s specific history, and in this case the particular experiences with racism that *A* has lived through, and the rest of the complex of ideas and observations that might contribute to *A*'s particular beliefs. We can identify the set of persons that are relevant to *A*'s development by name, and identify it as a community of some sort, but it will not typically be identical to other sets we identify by name as social whole (e.g. cities, churches, nations, states). It is false and misleading to suggest that *A* is the product of a whole with which she has not had contact, or that contains elements that were not actually relevant to her development.

What we are seeing in these holistic ways of conceptualizing social relations is a tendency for the one doing the theorizing to specify the range (or referent) of certain concepts, as necessary for her purposes. So, while it may in some sense be true that, "*A* is a product of her community," this really depends on which community we have in mind. It is at this point that fallacious reasoning can occur. Since we will judge that it is true that *A* is a product of her community, we may be led to believe that *A* is the product of her city, her province, or her state, since these are obviously forms of community that she belongs to, according to the way these concepts are defined. Our imaginations enable us to make the connections here. We can bring within our thoughts some vague representation of our preferred whole along with *A* in it. We can imagine the ways that the structural features of the whole – the complex web of interconnecting institutions – impinge on *A*, how the whole's culture affects *A*, and how *A*'s identity is bound up in the whole. It seems obvious that the whole itself has played a significant role in shaping her.

However, that whole that we have in our mind and that we associate with *A* in our imaginings, is not what specifically molds *A*. It is not that whole structure that is constitutive of the individual. There are *parts* of that whole, *parts* of that structure, and *parts* of that collection of lifestyles and values that we call 'culture' that are relevant with respect to *A*. It is only by helping ourselves to mere conceptual connections between *A* and the communities within which we place her that we judge the latter to be constitutive of the former. That is to say, it is due to the way we insist on conceptualizing these issues in the first place, rather than to empirical facts about *A* and her life experience. It is because we are accustomed to thinking in holistic-terms, and analyzing issues that are distinguished between social wholes. It is also because we tend to be ignorant with respect to most details of any *A*'s life. Due to our ignorance of the individual's particular history in most cases, we tend to speak in generalities instead. One can gain some level of understanding about a person through an awareness of where she grew up and which social groups she was a part of. We can make sense of, and give a broad explanation of certain features of *A* this way, and this shows that some holist analyses may have their uses. However, in spite of the existence of contexts where such imprecision is acceptable, normative judgment cannot trade on such claims. They are simply too imprecise to enable sound judgment. These general points about communities apply even more forcefully with respect to the state, which is a social whole that tends to be very large and very diverse.

The above point against holism is that it sets an artificial *lower* limit on certain descriptions by insisting that certain wholes be the objects of analysis. An importantly related point against holism is that it also sets an artificial *upper* limits on how wide the range of contributing factors in *A*'s development is allowed to be. With a state-based holism, for example, we are encouraged to ignore factors that exist outside of the state, and so to refrain from

extending our analysis to larger social wholes. This is the other side of the worry about the one doing the conceiving specifying the scope of vague concepts as she wishes. The theorist can really wholly determine how far she wants to look for influencing factors. When part of the goal is to argue for something like a communitarian conclusion, it is easy to draw the line at the boundaries of the particular community that the one making the judgment wishes to specify. Given that such a claim will be vaguely true, we might accept it. However, there is no need to look to the entirety of that community to explain that individual, and there is also no need to avoid looking beyond it. In today's globalized world, *A* may be the product of many forces that exist outside the boundaries of her state, including ideas, ways of living, persons, and social structures and institutions. *A* can simply turn on her television and interact with elements of human living from all over the globe.[361]

Rather than specifying *A*'s state as the whole whose culture shapes her development, we may as well claim that *A* is the product of 'world culture'. The largest social whole we might identify would be humanity at large, and since *A* is a member of that community and interacts with it in certain ways, such as when she watches the international news, she is partly a product of its features and structures. If this conclusion seems rather silly and empty, that is because it is. It would be rather like saying that *A* is the way she is because she is a human being. Some bit of information may be offered in such a statement, but not much with respect to *A* in particular. We should consider this when we evaluate a claim about a multi-million-person *state's* culture impinging on one of its members. We should ask ourselves whether such an idea is not really just slightly less absurd than claiming that the individual is a product of the whole world.

[361] And this is not to mention the possibility that A may have lived in various places or have been raised by persons of diverse backgrounds, and so that she may be the product of many different cultural traditions.

Wendt seems to be helping himself to the scope of the community that he needs when he talks about 'collective memory'. Recalls that he says, "These narratives are not merely the shared beliefs held by individuals at any given moment (though they depend on those beliefs), but inherently historical phenomena which are kept alive through the generations by an on-going process of socialization and ritual enactment." The sentence before this reads: "Group beliefs are often inscribed in 'collective memory', the myths, narratives, and traditions that constitute who a group is and how it relates to others."[362] Taken together, we can understand Wendt as saying that members of the group carry on oral traditions (and ways of living) and socialize new members to these conventions as new generations come onto the scene. This is a quite plausible picture of how individuals carry on traditions, insofar as we are thinking about a specific web of people who share such ideas (and label that the 'community' in question). If the idea of the community extends much farther, though, the interpretation loses its fidelity.

Consider a related example Wendt provides of the Bosnian Civil War. Although he agrees with critics of the 'primordial ethnic hatred' view that "few Serbs believed that Croats and Muslims were fanatics out to deprive them of their rights," he thinks that the explanation of "opportunistic policies of a Serbian leadership bent on resisting economic reform" only gives a "proximate cause" in the case. Wendt argues "a key resource that made those policies possible was a collective memory that throughout their history Serbs had been periodically victimized, first by Ottoman Turks and then by Croatian and German fascists." Collective memory "helps explain the relative ease with which the Serbian leadership was able to mobilize its people to respond so aggressively to Croatian and Muslim actions at the start of the conflict." Such a

[362] Wendt, *Social Theory*, 163.

collective memory can be relevant "even if a majority of individuals have "forgotten" [the collective memories] at any given moment."[363]

The language used is misleading from the start, but even if we interpret it charitably, the causal story given is a simplified story applied to a diverse collection of people. The claim is not justified, and is probably false, even if given a plausible reading. Wendt talks about the 'Serbs' and the 'Croats' and the 'Muslims' and then he says the Serbian leadership mobilizes *its people*. It sounds very much like he is saying that the whole set of Serbs responded to the actions of the members of the sets 'Croats' and 'Muslims'. Of course, he cannot actually intend to be saying this, because it is obviously untrue. The problem is that the language used invites the related judgment that there was some *memory of the collective* that enabled the quick response, as if the whole contains the memory. By 'collective', Wendt does not mean the whole, as in the usage here, but the 'cognitive structures' being appealed to do extend over all members who are willing to act on 'the state's intentionality', regardless of what they personally believe. This is because "even if a majority of [Serbs] have "forgotten" [the collective memories] at any given moment" they are still a part of the collective that retains them, and we see this when that collective acts. With respect to the state, identifying that *it* acted typically does not require observing every member of the set acting in any related way. So, Wendt can say that the state acts through its collective memory, even though the fact of the matter is that *some* of those who identify as Serbian fit Wendt's description. Even if we take him to be referring to only the set of Serbs who actually aided the effort, the claim is still likely to be false. It is almost certainly also true that some members of that set acted for reasons completely unrelated to the fact that 'The Serbs' had been "periodically victimized." An individual acts from her own complex set of internal factors. A simple story about the entire group is bound to mislead. Depending on the specifics of the

[363] Ibid.

case, if we were to attempt to assign some sort of collective responsibility to the set 'Serbs', for example, we would make a grave error based on such an account of collective action through collective memory. For normative purposes, at least, this analysis seems to invite error rather than illuminate, even if such vague claims can perhaps aid a scientific endeavor.

Wendt's claim about collective memory determining "who *the group* is" and "how *it* relates to others," uses the ambiguous term 'group' and pronoun 'it'. Wendt is, of course, going to apply his general analysis of structuralist social theory to the state. The state is an example of the type of group he is talking about. Yet, what he is saying is not true of that whole structure, it is only true of the subset of that structure that will actually meet his description. That is, there are bound to be many elements in the state that do not accord with his account – who do not carry on what he identifies as the state's narrative tradition, and who do not adopt the central elements of the state's purported culture. Some people in that system do not contribute to passing along the state's narratives. In fact, some people are bound to pass along their own, micro-community-specific, *competing* narratives. It is a mistake to think there is one state-specific narrative in the first place. Wendt is certainly correct that what we perceive as state-specific regularity in certain individuals' behavior is due to the sort of socialization and enculturation he talks about. It is also correct that there is a form of collective memory amongst the set of persons that actually absorbs and passes on these belief systems. However, to assign that characteristic to the wider group or whole system, or to treat all members of the wider group as relevantly connected, is unwarranted. Strictly speaking, the collective that has the memory is the particular set of individuals that have that memory. We may want to extend this ascription also to those who are willing to act in accord with judgments made from the memory (and treat them as if they have merely "forgotten" the memory), but even on this looser use of the concept it will still tend to refer to a collective

that is not the whole. These concepts only apply to the sets that they in fact apply to, which are usually proper subsets of the state. If the subset is identical with the whole set, then there is no problem, but this is almost never the case.

Of course, Wendt may only be concerned to predict when 'the state' may respond in some way, and for his purposes this may be achieved even if he cannot identify the exact set of persons that will carry out the action. He may only care about the fact that some set will likely act in that manner, given the background conditions. If he wants to claim that a certain collective whole is likely to have some members react in certain ways because he claims the whole contains a certain 'collective memory', then this is not a problem. It needs to be specifically stated, though, that the whole, that is the whole state, is not the referent of the judgment. Some of the lack of clarity on these issues seems to stem from the varying referents of our terms. 'State', for instance, has many referents, so it is easy to begin by speaking in one way about the state acting – when the legislature or military acts, for example – and then produce a judgment about the whole state from this. In this way everyone can be responsible for the actions of a minority. It seems to also be the case that confusion occurs because writers are not clear about the meaning of their terms, even if they are used consistently.

§6.2 – Narrative Identity

Vague designation of community scope occurs frequently in holist views that might be labeled 'communitarian' views of narrative identity. For example, we see it in the work of Alasdair MacIntyre. Though MacIntyre does develop a plausible and persuasive view of the individuals "peculiar" narrative, based on her own life experiences, and for which she alone is responsible, he also insists that the individual is an inextricable part of her communities, such as the tribe, the city, and the nation. When MacIntyre turns from the individual's narrative, written

by and starring the individual as the central character, to the communal aspects of narrative, or the 'correlative aspect of narrative selfhood', he begins from an acceptable scope, but as the discussion continues he slips effortlessly into talking dubiously about large wholes. For example, he says, "I am not only accountable, I am one who can always ask others for an account, who can put others to the question. I am part of their story, as they are part of mine. The narrative of any one life is part of an interlocking set of narratives."[364] At this point, MacIntyre's view seems perfectly acceptable – perhaps even obvious. He then goes on to say, "But it is not just that different individuals live in different social circumstances; it is also that we all approach our own circumstances as bearers of a particular social identity. I am someone's son or daughter, someone else's cousin or uncle; I am a citizen of this or that city, a member of this or that guild or profession; I belong to this clan, that tribe, this nation." This may not yet cross the line for the moderate individualist who would like to resist just the strongest communitarian claims, yet, MacIntyre continues, "As such, I inherit from the past of my family, my city, my tribe, my nation a variety of debts, inheritances, rightful expectations and obligations. These constitute the given of my life, my moral starting point. This is in part what gives my life its own moral particularity."[365] MacIntyre is of course aware that he is working directly against the liberal, individualist tradition. He does this knowingly, as he wishes to reject that view. The flavor of the entire narrative view and MacIntyre's understanding of how it matches up with individualism is captured well in the paragraph following his passage immediately above.

> This thought is likely to appear alien and even suprising [sic] from the standpoint of modern individualism. From the standpoint of individualism I am what I myself choose to be. […] Such individualism is expressed by those modern Americans who deny any responsibility for the effects of slavery upon black Americans, […] the Englishman who says, '*I* never did any wrong to Ireland…' […] or the young German who believes that being born after 1945 means that what the Nazis did to the Jews has no moral relevance

[364] Alasdair MacIntyre, *After Virtue* (Notre Dame: 1984), 218.
[365] Ibid., 220.

> to his relationship to his Jewish contemporaries. […] The contrast with the narrative view of the self is clear. For the story of my life is always embedded in the story of those communities from which I derive my identity. I am born with a past; and to try to cut myself off from the past, in the individualist mode, is to deform my present relationships. The possession of an historical identity and the possession of a social identity coincide. Notice that rebellion against my identity is always one possible way of expressing it.[366]

MacIntrye's teleological view is of course more developed than the sampling provided can fully represent, but from this we can see that one who wishes to conceptualize wholes, and see the individual as a part of those wholes, can easily move from generally acceptable claims about how individual human beings interrelate and so have a formative impact on one another, to claims about the entire community doing so, even when that community extends far beyond the persons a given individual will ever come into actual contact with. Clearly, MacIntyre is comfortable even extending these communal connections far into the past as well.

MacIntyre provides a particularly nice example of the worry raised above about the social theorist doing the conceptualizing helping herself to whatever scope she needs to bolster *her* interpretation of the social facts, according to *her* conceptual scheme. This need not always be worrisome, but when one's moral responsibilities and liabilities are at issue, it matters a great deal. An account like the above starts with a seed of truth but then runs with it until it can no longer be sustained, except by appeal to the same interpretive theory that was used to create it. It is by definition – by the theorist's definition – that the individual's identity depends on the communities that she is a member of. It is taken for granted that those communities have identities as well, based on *their* histories that can extend very far into the past, and so that the community persists through time – the name carries on referring to what is thought to be the same object. Since communities have properties of their own that impinge on the individual's social experience and development, the community's properties are thought to transfer to the

[366] Ibid., 220-221. As is apparent, the passage has been edited for the sake of brevity and readability.

individuals socialized within them. When a nation, for instance, is conceptualized as a normatively relevant actor, the individual who happens to be born on land associated with that nation, to parents associated with that nation, gets wrapped up in that conception.[367] The individual need not have any causal connection to the nation's official agents, she need not even identify as a member, as long as the social theorist interprets the nation's narrative, and the individual as a part of that nation, that narrative becomes a part of the individual as well. It does not matter whether the assigned historical baggage has anything to do with her chosen identities, values, and specific actions. It does not matter whether the historical episode in question happened millennia before she was born. The moral identity the individual is born into is rather like an original sin that she must accept and try to atone for.

MacIntyre spends the pages directly preceding his discussion of community identity explaining how the individual is, in one sense at least, the author of her own identity and the responsible party with respect to the actions she *chooses*. Nevertheless, it is quickly added that the individual is necessarily connected with many other communal identities and so exists as a subject in other stories that are not autobiographical in the same way as the individual's own narrative conception of self. This second facet of MacIntyre's narrative-self view is very different from the first, and it looks to be capable of overriding the first. On this account the social theorist's conception of the identities of a subject applies even when it is in conflict with the subject's self-formed identity. The individual may want to resist the definitions supplied for her. She may be of the individualist persuasion, or perhaps an existentialist who believes she defines her own essence. Nevertheless, her identity is bound up with the communities that she belongs to on this view. The social theorist is not wrong when she identifies the nation (or state) as a constitutive element in the individual's identity; it must be the individual who in in denial.

[367] Recall Kok-Chor Tan's view of national responsibility in "Colonialism, Reparations, and Global Justice."

As MacIntyre says, "rebellion against my identity is always one possible way of expressing it." This brilliant capping clause allows MacIntyre to say that anyone who denies the identity that MacIntyre supplies for her is simply expressing one of the possible modes of that identity. If MacIntyre thinks you are an American who bears some form of responsibility for slavery in the US, then you can only claim it is untrue, and try to define yourself otherwise. You cannot actually escape that identity. As the social theorist, it is up to him to tell others what factors shape their identities, and it is up to them to find ways to reconcile the identities assigned with the identities personally formed or desired.

The overreliance on wholes in social theory is interesting and problematic in another regard. Whereas the holist will resist reductionism, of course, she will tend to also resist an expansionism. For a given individual, the communities relevant to their full narrative identity, on these holist accounts, will tend to be no bigger than her nation or her state. Included along with those identities in larger collective bodies, the individual will tend to also be a part of smaller bodies, such as cities, neighborhoods, churches, and families. What we do not typically see in such accounts is mention of the fact that the entire world is a potential level of community. If the social theorist can step back far enough to view the whole state, and the individual's place in it, she can step back even farther and take the cosmopolitan view. This is not an unpopular view, of course, but on this kind of narrative account, or according to certain sorts of holism, taking the Earth-as-Community perspective leads to problematic results. If we stay for the moment with MacIntyre's view of the groundings of persons' identities, then the cosmopolitan view would imply that the whole world's narrative would become a part of the every individual's narrative. Given that the full historical record of the human species is at every step replete with bloody battles, egregious atrocities, domination, and other unmentionable crimes, this would imply that

we saddle the individual with a considerable load of historical moral baggage. Not only that, it would also institute a sort of clearly untenable universal responsibility, where all persons are co-responsible with every other person, at present, into the past, and into the future.[368] Moreover, interestingly, that moral baggage assigned would be largely the same for each person, regardless of the other communities she is a member of. The homeless man on the streets of New York is only slightly less morally responsible than the criminal Wall Street executive who defrauds millions of people, on this view, because they both stand in a responsibility relation to the far more numerous human actions of the past.[369] And, lastly, the view seems to enable quite direct conflicts between a person's competing identities. A Jewish German citizen is supposed to have special consideration because of her institutional connection through Judaism to people who suffered during the Holocaust, but she is also supposed to give special consideration to Jews as a member of Germany and a product of its institutions. If part of America's narrative is that it aggressively invaded Iraq and is responsible for that, then a US citizen who emigrated from Iraq who was politically active against US involvement in that war, and who lost family in Iraq through US bombing, is both responsible for the war and deserving of apology and perhaps reparation, on the narrative account.

The possibility of capturing the Earth-community in our narrative account suggests a family of worries for even the state level of the narrative view. For example, we can ask: how far back in time is the social theorist allowed to go when defining the state's narrative that is

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[368] Some do actually entertain such views, at least with respect to contemporaries. Consider, Herbert Morris, *On Guilt and Innocence* (California: University of California Press, 1976); Hannah Arendt, "Organized Guilt and Universal Responsibility," *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics* (Maryland: Rowman & Littlefield, 1991). However, the sorts of responsibility discussed as universal are generally not of the sort that would ground retrospective liability of the kind we have been discussing. Often, these writers mean to argue that every individual has a responsibility to introspect and ensure that their own contribution to social circumstances is not questionable, and also that every individual has an *obligation* to do what she can to prevent other persons from committing immoral acts, especially atrocities like genocide, for example.

[369] Consider as well that both people in this case are American and so supposedly responsible or liable on that basis for the actions of 'The US' abroad. Even the more restricted state-based holisms lead to such untenable conclusions.

relevant to the moral responsibilities of the individuals in the state? The US is a rather young country, but in the case of a country like Greece there may be a very long narrative tradition that the individual would have to account for. Is an Italian or a citizen or Rome partly responsible for what the Romans did to Carthage in the Third Punic War? Is this case supposed to be different from a contemporary American's connection to slavery? How would we non-arbitrarily distinguish between historical events that are normatively relevant and those that are not? Does it matter if the group's territory changes over time, or if its name changes? Does it matter if the ethnic and cultural features of the group have changed dramatically over time through emigration and immigration, or simply cultural evolution?

As a general summary of these worries, whenever the case at hand involves issues that span over large groups of people, overlapping group memberships, and potentially many generations, an insistence on a holist perspective forces us to abstract away from the multifarious diversity that exists at the individual-level as well as many changes that may have occurred within the groups since the historical episode in question. We have to severely obscure a plethora of detail, and we have to subjectively decide which narratives are relevant, which is to say, which individuals and group identities we are concerned with and how far back in time we wish to go. We must also at times ignore the individual's direct narrative, when she had no personal involvement with anything closely related to the state's narrative or when she actively resists policy incorporated into the state's narrative. The holist social theorist – the one driving the interpretation – must make many personal decisions when constructing the full narrative. If she chooses to define the individual as part of a normatively relevant community, then it will be done; and that is precisely the problem.

Now, it should be said that different levels of social analysis are useful for different purposes, and there may be reasons to use different conceptual scopes in our propositions about social circumstances. It may also be possible to make structurally related claims and claims about communities that are both true under some interpretations and useful and informative for some purposes.[370] The point here, for the purposes of this project, is just that in our normative analysis, when we attempt to determine issues of agency and responsibility, we must take a fine-grained approach, in order to ensure that our analysis is accurate, but also so that we might avoid the very real consequences that can befall innocent persons when it is not. This second worry is a normative one itself. It is the worry that we may violate our obligation to exercise our normative judgments carefully, and so form them using theoretical support that is well justified for its ability to provide accurate judgments.

When we judge wholes like states, and so knowingly capture innocent persons within our judgments, we commit at least three errors. (1) We technically misidentify responsibility and make false judgments about the case, which is an error in itself; (2) we violate an obligation to exercise care and judiciousness in our reactive normative practices – to identify those who are sufficiently agentially related and only impose sanctions onto them; (3) we inflict harm on innocent persons, which is itself a moral failing under the circumstances. Thus, the issue of whether the *whole* is constitutive of the individual may seem minor, but it should be scrutinized for its implications. If it were true that the individual could not be understood apart from the whole, then it seems that what individuals do in and through the state can be traced back always to the whole system. The door is then open ever wider for the view that we need to understand the whole as the responsible entity. As discussed throughout this work, treating the whole in this

[370] On the compatibility of structural explanations with individualism, and the usefulness of both strategies for certain purposes, see Jackson and Pettit, "Structural Explanation in Social Theory."

way is deeply problematic. Since that conclusion is being resisted, in doing so we must resist the notion that the whole contributes to the individual in ways that make it a necessary referent in our normative judgments. The individual does not develop as an isolated monad; we can accept that social conditions impinge on her; however, we should not take from this the message that *her entire community* or *its* culture or *its* structure is a relevant explanatory factor. Instead, we should speak in specific truths, as far as possible, and avoid generalizing over entire groups of people. We should rely on the (in principle) observable volitional actions of individual agents for our judgments, allowing that such analyses may require an appeal to many other facts external to the individual. Certainly the individual's properties may themselves have the whole as their object, for instance if she believes that she is a state official and acting in the name of the whole, but we can include these in our explanations as part of our data specific to her. Our knowledge of her belief that the state is a unified collective whole that she acts for will provide much useful information for our inquiry into her agency and responsibility. However, it does not show that the whole has been a constitutive factor for her.

§6.3 – Individual Autonomy and Role-Responsibility

The second main point to make in response to Wendt's circularity objection is that the acceptance of structural realities that impinge on individuals does not work against the view that those individuals still exhibit individual, morally relevant agency through their state roles. According to certain interpretive models, the individual is shaped in significant ways through structural forces or collective factors beyond her control, to the point where her own autonomy is in question.[371] The debates surrounding this issue have covered much of the ground we might

[371] Jackson and Pettit identify at least two interpretive models that might imply this, which they call the 'subversive model' and the 'pre-emptive model'. See: "Structural Explanation in Social Theory." The subversive model links structural elements ('macrofactors') with the production of specific psychological properties that cause regularity in individual behavior. Some Marxist views are of this sort. The pre-emptive model holds that structures filter for, but

wish to cover. It need not be argued here that there is certainly room for individual choice and a level of autonomy sufficient for moral responsibility, even if we concede that structure is relevant to interpreting the person. The fact that even MacIntyre accepts a realm of personal agency and responsibility should go some distance toward establishing that only the most extreme holist or structuralist contends that individuals are in a significant way powerless against the social forces that impinge on them. Instead we should just briefly discuss some of the ways the individual state officials retain their autonomous agency even when functioning in their roles and even when acting in ways related to 'state interests' or 'state intentionality'.

First, as we have been assuming all along, the liberal individualism at the heart of this project takes for granted that individual persons are volitional, responsible agents who must answer for their self-directed actions. That is, the existence of free will has never been a question within the scope of this project. Given this, it should be added that the volitional acts of human agents are always made under constraint. Innumerable barriers to actions always exist, especially if we think of the individual's limitations in terms of what is conceivable but is otherwise beyond any human's physical or mental capability. Even if we restrict our focus to just what the individual is in principle capable of, there will still always be other physical constraints on her action, as well as constraints imposed by other persons and by her own competing values. Those competing values can be the product of her competing social roles, through which she must navigate in forming her life trajectory. This is also partly a feature of her sometimes-conflicting identities, or competing conceptions of herself. This is always true with respect to individual agency, and it is not typically regarded as an impediment to personal responsibility (or 'ordinary

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do not produce, psychological properties that explain the facts. Both of these models are rejected by Jackson and Pettit in favor of a third, 'program model', that is not as hostile to individualism.

agent autonomy').[372] We understand that individuals sometimes have to make hard choices when weighting their competing values and obligations. Nevertheless, the individual is ultimately responsible for what she chooses, and this is especially important in cases where she chooses to act wrongly, even when operating within her institution-specific roles. This applies to the prospective obligations she incurs through accepting her role, retrospective (attributable) responsibility that results from her actions done through her role (or perhaps merely from her functioning in a collective where other members act with her help), as well as her liability for being a faultless but responsible voluntary member of a collective. The ER doctor, for example, accepts her job and stands obligated to offer assistance to persons who need medical attention in her ER while she is on duty. She is also responsible if she negligently or intentionally breaches her obligations while functioning in her role as an ER doctor. This same principle applies to state officials, and has perhaps an even greater level of importance for these social roles, as compared to others, since state-specific roles often accompany such great levels of power and so enable such far-reaching and serious consequences. We can appreciate that persons in the executive branch, for instance, are often forced to make difficult choices in carrying out their jobs. We can also hold them to high standards of conduct, and leave open the possibility that certain decisions can open them up to serious personal scrutiny, and potentially serious repercussions, just as the case would be if those persons occupied any other social role.

As a quick example to clarify the point, consider a president's decision to carry out a missile strike. Such a decision may result in human deaths, but we can separate cases where this should imply normative consequences for the president (and others) from cases where it should not. For example, if the president falsified the intelligence data that supposedly justified the killing, acted without sufficient information, or if there was no immanent threat, it may even be

[372] Jackson and Pettit, "Structural Explanation in Social Theory."

wrongful to order such a strike if any innocents will knowingly be killed in the process. On the other hand, if the president is acting on what is believed to be good intelligence, and let us suppose she is acting in order to subvert an immanent threat to other innocents, it may be totally appropriate to order the strike. If some innocents die in the strike, we will understand this to be an unfortunate collateral cost of performing governing duties. This must be kept distinct from a president exercising killing power without the proper justifications. In the latter case, personal consequences must befall those individuals involved. Failure to follow through on that is a failure of normative response just like any other. State officials do not cease to be responsible individual persons simply because they hold high office and deal in matters of international intrigue, espionage, and war.

A common worry about accepting the above reasoning is that state officials are often acting 'in the name of' the state or for 'state reasons' and so what they do is in some sense an exercise of the 'state's intentionality'. This could imply that it is inappropriate to hold the official personally liable, because she was just doing her job, after all. To this worry, two responses should be given. First, with respect to voluntary employment (and so all, or very nearly all, state officials), it is important that the individual voluntarily incurred her state-role and so her specific role-responsibilities. She took the job and she should have done so with the knowledge that work in the state apparatus does not grant one impunity. The same is true of individual corporate employees, whether high or low in the hierarchy. The same is true of all roles that the individual incurs upon herself. Having a social or institutional role does not absolve one of (attributable) responsibility, and so does not absolve one of certain forms of liability. State officials make decisions and perform actions in much the same fashion as other individuals who work as part of collective and corporate organizations. State officials should not be treated differently from

everyone else and their particular social roles, except insofar as we should treat state officials with extra normative scrutiny and hold them to higher standards, due to the serious consequences that can result from the exercise of political power.

Second, as to intentionality, though the individual may act in a role-related manner and from a role-related intention, there is always personal intention behind the action. One does not lose her agency simply because she has obligations that stem from her accepted roles. Even when acting on collective, corporate, or state reasons, the individual still makes a choice, still controls herself, and still stands accountable for what she does, on that basis. To see this as a general principle that needs little support, consider our judgments in cases of soldiers 'just following orders'. The typical moral response, as well as the precedent in some legal cases, is that the individual can be personally responsible for carrying out orders if those orders are deemed illegal (in violation of public international laws of war – *jus in bello*) to the acting soldier or if they should have been so deemed.[373] Acting for reasons other than one's own, then, does not typically mean acting without personal responsibility and it does not necessarily (or even probably) provide one with an excuse. One does not gain impunity for her actions when someone else decides on the plan of action. When there is not coercion in the case, part of the buck must stop with the acting individuals. Although, we should keep in mind that this merely shows that one is answerable for her actions; whether other normative responses are appropriate is another matter.

We should recognize that the above is true of persons' actions in all sorts of social contexts. One's role-responsibilities are not the only constraint on her behavior. Basic social pressure can go a long way toward shaping one's behavior, and such considerations can mitigate

[373] This issue has been raised a number of times in international law. Famous examples include the Nuremberg Trials, the Subsequent Nuremberg Trials, and the well-discussed case of the Massacre at My Lai, where members of C Company of the US Army were brought up on criminal charges for the murders that occurred in the village of My Lai, Vietnam.

personal responsibility in certain cases, but they do not completely nullify it. An individual may beg forgiveness because she was just going along with the crowd, but this will not spare her the moral condemnation that otherwise befits her choices, just as her intention to keep up with traffic should not get her out of a legitimate speeding ticket. There may be strong pressures put on an individual from many different sources, including her personal identity and values, relationships, social roles, social standing among peers, *et cetera*. The individual retains ultimate control over her volition, regardless. These other factors are often useful in explanation, but they should not be mistaken for excuse, at least for basic (attributable) responsibility.

A failure to treat the institutionally bound agent in essentially the same manner that we treat any agent is not just a technical failure. Normative systems of rules and responses are not just theoretical. As a practical matter they must also serve a function of shaping incentives and promoting rule-following behavior. This is generally achieved first through education, but our retrospective judgments begin by identifying the relevant agency in a given case and then directing the appropriate responses toward the root of that agency so that the agents involved are reformed (or removed from society altogether) and others are informed and incentivized. For such a system to function properly, its responses must attempt the reform (or removal) of the agents actually responsible, and it must incentivize, most of all, those agents with the capacity to commit the same or similar acts as those that generated the response in question. The practical argument here is that we fail in our normative responses insofar as we fail to take the customary steps of normative response toward state officials (and other members of collectives or corporations), wherever they are located in the hierarchy. This can occur either through directing our primary responses toward the collective itself, or through specifically absolving individual members of their personal responsibility as relevant pieces of the collective effort, by an appeal

to structure, social forces, or collective or corporate intentions. Such accounts establish precedent that can encourage powerful members of the hierarchy to abuse their power. This speaks to the classic worry about who will govern the governors, and it stems, of course, from the fact that political power is so dangerous. If the leaders have reason to believe they will not personally face any consequences for their decisions and actions, then they may be more likely to push the limits of their authority, even to the point of abusing it for personal gain. This long-held concern about allowing persons with power to exist outside of the normative framework is worrisome, of course, and it should inform our normative theories, but it is well known, whereas a related effect on members lower in the hierarchy is often overlooked. A dangerous level of obedience can be encouraged in the lower levels of hierarchical institutions if the members at those levels are led to believe that they will personally not see any consequences for carrying out their orders.

As has been demonstrated quite clearly in a number of scientific studies, individuals are far more likely to act against even their deeply held moral convictions, if they can be convinced that the cause is important and that an authority (or perhaps collective entity), rather than themselves, is the responsible party who will stand liable for any consequences.[374] In giving the impression that the lowly worker, or the 'cog in the machine', should be absolved of judgment, we give license to individuals to deflect personal responsibility, and so we encourage people to compartmentalize their moral lives into (a) what they do when in their professional institutional roles and (b) their personal lives. This is a well-documented coping strategy for a rather new military phenomenon – the remote operators of weaponized drones.[375] In many cases that are

[374] The well-known Milgram experiments began an informative line of scientific testing on this subject. Stanley Milgram, "Behavioral Study of Obedience," *Journal of Abnormal and Social Psychology* (1963), 371-378.
[375] Nicola Abé, "Dreams in Infrared," (Three Part Series) in *Der Spiegel*, December 14, 2012, last accessed May 16, 2014, http://www.spiegel.de/international/world/pain-continues-after-war-for-american-drone-pilot-a-872726.html.

also well-documented such drones have been used to kill innocent people,[376] and the pilots of these drones often know this so they do their best to rationalize away their own responsibility. The people who fly these planes after they are airborne are located in places like New Mexico and Arizona. After their day of surveilling and possibly killing persons on the other side of the world they go home and spend time with their families. They are not exactly like the battle-hardened service people in the combat zones. These are people who are not even remotely close to being killers in any other sense. As Col. Kent McDonald, who co-authored a Pentagon study on drone pilots claimed, the Air Force attempts to recruit "family people" with "good values."[377] Yet, these people are willing to fire missiles at people that they cannot even identify by name, sometimes based only on the 'signature' of the persons, which is to say their general demeanor, dress, or activities such as carrying a gun. An even starker example of such a case is the infamous Nazi, Adolf Eichmann. As most of us know, Eichmann played an integral part in the Holocaust, while according to some accounts he was himself neither anti-Semitic nor inherently violent or sadistic. Hannah Arendt's famous phrase 'the banality of evil' was coined in her book *Eichmann in Jerusalem*, where she explores the ways in which institutional loyalties and moral deflection can allow people to carry out horrific acts, although they are seemingly not evil people themselves. Eichmann (again, on some accounts) is a poster child for one who thinks he is "just following orders," and so not personally responsible.

It is hard to explain why basically good people who are otherwise strongly against certain immoral behavior would continue to participate in it; that is, unless we appeal to a confused and

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[376] As just one example, see: Craig Whitlock, "Drone Strikes Killing More Civilians than U.S. Admits, Human Rights Groups Say," *The Washington Post*, October 21, 2013. Accessed May 16, 2014, http://www.washingtonpost.com/world/national-security/drone-strikes-killing-more-civilians-than-us-admits-human-rights-groups-say/2013/10/21/a99cbe78-3a81-11e3-b7ba-503fb5822c3e_story.html

[377] Rachel Martin, "Report: High Levels of 'Burnout' in U.S. Drone Pilots," *National Public Radio*, December 18, 2011. Accessed May 16, 2014, http://www.npr.org/2011/12/19/143926857/report-high-levels-of-burnout-in-u-s-drone-pilots.

inconsistent mode of thinking that the individual engages in, where she convinces herself that she is not the one doing the bad thing that occurs partly as a result of her actions. In the collective effort the individual can imagine she is acting from someone else's intention; she can be just an employee doing her job, working for the 'the firm' or her role in 'the state'. She does not have to face up to the choices or to the repercussions once she rationalizes her involvement in this way. When we fail to take seriously the moral gravity of the situation, because we would prefer to take the perspective of the state acting and the state being responsible, we enable the individual to perform that rationalization. In fact, we encourage it. Again, this not only leads to technically incorrect judgment, it also promotes just the sort of negligence, recklessness, and abuse of power at the top of the system, and just the sort of complicity lower in the system, that our normative system is supposed to work against.

§7 – RESPONSE TO MULTIPLE REALIZABILITY OBJECTION

Wendt says, "Holists generally agree that we should try to identify micro-level mechanisms. Scientists should seek out causes wherever they may be found. But macro-theory is important as an end in itself because of multiple realizability. An excessive emphasis on the micro-level is problematic for two broad reasons."[378] He then goes on to explain that irrelevant details could be included in a micro-level explanation of events, when it is the case that different combinations of micro-level states can realize the same macro-level state. For example, "The best explanation for why the window broke is that John threw a rock at it, not an analysis of the particular combinations of subatomic particles that broke it, since many other combinations would have had the same effect." Wendt's second reason is that "some causal mechanisms exist only on a macro-level, even though they depend on instantiations at the micro-level for their operation." Recall Wendt's idea of 'collective memory'. His criticism of what he calls 'micro-

[378] Wendt, *Social Theory*, 154. The following quotes are from the same [emphasis in the original].

foundationalism' is that it may "generate *disparate* explanations for events that in fact have a *common* macro-level cause. Events may appear unrelated at the micro-level and yet be caused in a macro sense by the same mechanism." We will discuss below how these worries relate to normative social theory.

Let us begin with the second worry first. What should we think about the claim that certain social processes only occur at the macro-level? Can such a fact, even if true, be used to reject a reduction of state-level claims into individual-level claims for the purpose of normative evaluation? To make this issue normatively relevant, consider the case of the group 'post-bellum white Southerners'.[379] Is it true that 'knowledge structures' and 'collective memories' that exist only at the group-level helped perpetuate the racist 'culture' amongst post-bellum white Southerners? If this were true, then the group would seem open to normative evaluation for its blameworthy property that endures through time.

It does seem as if there is something to the claim that the racist culture that could be observed in the community of post-bellum white Southerners existed at a macro-level. It is not the case that each individual in that set actively held or expressed racist beliefs or acted intentionally so as to perpetuate a racist culture. It is also not the case that racist sentiments were just individually arrived at by those who held them. Certainly, a racist white Southerner of the time would have been influenced by some of her contemporaries. These considerations suggest that there is a structural, systemic factor that explains the regularity of racism in that community. Could this be enough to demonstrate a group-specific (outcome) responsibility for racism?

In spite of the initial plausibility of such a view, it cannot ground an irreducible level of responsibility in this case (or those like it), and so it does not work against the possibility of a

[379] Joel Feinberg uses this example in, "Collective Responsibility," *Doing and Deserving* (1970), and David Miller discusses it in, *National Responsibility* (2007).

reduction of the racism ascribed to 'post-bellum white Southerners'. This is again a context in which lack of clarity concerning the referents of the social wholes named has the potential to seriously misguide normative evaluation, in spite of whatever else might be said for the acceptability of such vague generalizations in non-normative social theory. The *causation* to be identified in a case of socialization is not to be found at the macro-level. Again, the social theorist simply preferences the macro-level in such a case, and in doing so ignores vital normative detail at the individual level.

It is certainly true that persons socialize and influence other persons, including passing down beliefs, conceptual schemes, values, and identities. This can be understood as a collective process, when we have in our mental representation only those individuals who are engaged in it. We must accept, though, that the *collection* of persons that instantiate the requisite properties will not tend to be identical to the set of persons picked out by our common collective concepts and names. That is, such systemic socialization does not strictly speaking occur in social wholes like 'post-bellum white Southerners', or in states. To ignore the non-conforming or dissenting minority, or those who do not overlap significantly in ways of living or identification with the wholes that we conceptualize, is to knowingly obfuscate the issue. It is to privilege our relaxed modes of thinking rather than to strive for an accurate account of the facts. The relevant causation in a case of intergenerational collective beliefs, knowledge, or 'memory' that leads to collective action or cultural properties like racism only involves those individuals who actually share the beliefs in question and those who actually perform intentionally related actions that support that element of the structure.

Back to the state for a moment, if it looks as if state *S* continues to sustain property *X*, even though not every individual acts so as to sustain *X*, this does not show that *X* is a 'relatively

autonomous' social process belonging to *S*. It shows only that the social theorist has chosen to conceptualize *X* as a property of a whole even though it results from a combination of the properties of only a subset of that whole. When appreciated as the result of a subset of the whole, *S* no longer looks autonomous with respect to *X* because we now have in view a set of individuals who all hold a relevant relationship to *X* and it is clear that *X* is dependent on this subset of the whole. This is more apparent in certain cases. For instance, it is common to hear talk of US 'gun culture'. And we might speak as if this element of US culture is sustained through macro-level processes, narrative identities, and the like explain why there is regularity in pro-gun attitudes and behavior. But, of course, there is no universality with respect to views on guns in the US. Conditions do not even nearly approximate unanimity on that subject and many US citizens are adamantly against gun ownership and even the right to own guns. Thus, if we wish to identify a collective element to the perpetuation of 'gun culture' in the US, we must obviously look to the specific set of individuals who in fact maintain that part of 'US culture'. What this actually suggests is that we should avoid talking about *US* gun culture altogether, since it is clearly only a rather small subset of the US that satisfies the description. And even when we discuss the causal regularities within this subset, we should recognize that the maintenance of a pro-gun way of living amongst this set of persons is carried out in each participating individual's case, according to her particular experiences, exposures, and thoughts.

It may be objected that certain structural and cultural characteristics are more ubiquitous than the example above. For instance, we could appeal to conditions of collective knowledge, memories, and identities within a state that explain why so many individuals within it will be willing to go to war under certain conditions. A belief in the US and US history, for example, is far more common than the valuing of guns. It might be argued that this sort of collective

structure does operate causally at the macro-level, since the individuals change over time but the belief system and the expected regularity in individual behavior persist. However, again, there is a worry here about which collective we wish to identify that is supposed to display this collective belief and where the causation that sustains its existence amongst the population occurs. When Wendt discusses the Serbs he talks about the ways in which "*Serbs* had been periodically victimized" [my emphasis] over many generations, and how this collective memory explains why so many were willing to mobilize. We might do much the same for the US citizens after the bombing of Pearl Harbor. Structural features of the US, such as its collective memory and patriotic culture, might be used to explain the response of Americans after that event.

Again, it is true that the behavior of the many people who enlisted in the armed forces and who aided the war effort can be explained in part by their similar beliefs, values, and shared elements of culture. However, 'The US' as a whole does not exhibit these characteristics. The 'Japanese-Americans' of that time, for example, do not fit the description. And it is also not the case that the normatively relevant causation that explains the phenomenon of mass enlistment in the armed forces occurs at the macro-level. Each individual did what he or she did for personal reasons, beliefs, and motivations. The social scientist may want to predict when such mass state-specific actions may occur, and for this purpose she might suggest that a general (non-universal) property of the US is likely to result in certain responses to an attack on 'the homeland', but if we are to analyze this situation in order to distribute responsibility and liability, such a treatment will not do. For example, if it were immoral to join the armed forces, for whatever reason, it would not be proper to assign responsibility at the group, system, or state-level. Each individual case would have to be evaluated, and each person's unique circumstances would have to be taken into account. The causation involved in each individual case would have to be the focus, and it

must be the case that a reduction from claims about 'The US' can be made, at least in principle, to claims about the proper subset of individuals in the US who display the traits in question. With respect to the causal story of US involvement in that war, we should not lose sight of the small facts, as it were. Individual *A* joined the army and fights for 'The US' because he came from a family with a military history; individual *B* joined because he had no other work and needed to support himself and his family; individual *C* joined because he wanted to avoid jail time, *et cetera*. We can talk vaguely and imprecisely about American patriotism as a macro causal factor, but the micro facts on the ground will tend to not comport. For some purposes, we might ignore this mismatch, but normative analysis is not one of those purposes.

Let us keep in mind that the form of reductionism defended here is not one that demands that all macro-level references be done away with entirely. Multiple possible scopes from which we conduct social theory can have their own uses.[380] The thesis in question here is just that a given case of state action will necessarily involve individuals acting for their own reasons, and each with her own causal history that is specific to her. Each has interacted with some set of people that is a proper subset of the whole state. Each has been exposed to the ideas that she has been exposed to and through which she has formed the beliefs and values that she holds. These elements of the individual are the causal elements relevant to her actions, even when her actions contribute to some collective result. As long as a reduction from claims about why a state did such-and-such to claims about why individuals did such-and-such are allowed for the purposes of normative evaluation, the view defended need take no issue with macro-level explanatory and predictive claims about what the group does and will do because of its 'collective' properties (i.e. those that not everyone shares).

[380] Again, see Jackson and Pettit on this point, "Structural Explanation in Social Theory."

As to Wendt's first complaint above, there are two issues to be addressed here: (a) his charge that a micro-level explanation may include irrelevant detail, and (b) multiple realizability itself. With respect to (a), it depends on what kind of social explanation one is looking for; that is, what their purpose is in analyzing the case. Wendt's first example is fitting. For normative purposes, he is right that, "The best explanation for why the window broke is that John threw a rock at it." It would not help our determination of agency and responsibility in this case to give an explanation in terms of subatomic particles. However, if John were a representative of a state and acting in an official capacity, it would also not serve our purposes to explain the case as the state acting so as to break the window. To the extent that we are trying to understand social action according to intentionality and agency, and so determine responsibility and liability, a reduction to an explanation about persons (or at least agents) is always necessary. Some details at the individual level will be irrelevant and should therefore be omitted from our explanation, but taking an action ascribed to a state and re-describing it as an action of a particular set of persons, each participating for her own complicated reasons, never gives us irrelevant details for normative analysis. On the contrary, the more related information we have at that level, the more precise our judgments can be.

Since we are not committed to any sort of atomism, there need be no worry about that individual-level explanation lacking required detail. Reference to the individual's conception of her state as a unified group or system – one that she acts for and in representation of – is permissible in the individualist explanation. Physical, psychological, and institutional relations between acting members can be a vital part of an analysis of intention and action. What is impermissible is treating the whole as the acting agent and thereby ignoring the mass of individuals in that whole who play no substantive role in the action. Now, again, there are times

when wholes can be identified in agency and responsibility terms, but it is important that the correct sets be identified. The state is practically never the correct set, insofar as we wish to remain consistent with an analysis of agency at the individual level.

Instead of worrying that the individual level will include irrelevant and misleading detail, we should be worried about giving an explanation at the collective-level that knowingly obscures relevant intentional and agential details. We really get a rather vague and uninformative account of matters when it is put in state-terms. For the purposes of normative analysis, a redescription of state action as the intentional action of individuals can only add further clarificatory detail to our understanding of the case, and so aid in accurate judgment. The reductionism defended here only requires that such an individualist account be possible, in principle, and that the claims made at the state-level be consistent with what we know to be true at the individual level.

The check of consistency provided by the requirement of reduction (in principle) is crucial. To clarify, consider a case like Wendt's where a window has been broken, but where John claims that he is not responsible for it. Suppose he admits to holding the rock, but not to throwing it. Instead, he insists that the rock spontaneously accelerated out of his hand and through the window. Now, we need not insist that an explanation of such a case must actually be reduced to an explanation in terms of the movement of atoms (let alone sub-atomic particles). The 'higher-level' explanation in this case, at the level of John and the rock, is certainly better for understanding the normatively relevant circumstances. However, it is the case that the explanation offered at that level must remain consistent with a lower-level explanation of the same case. According to John's side of things in the example above, the laws of physics have been broken. Rocks do not spontaneously accelerate out of one's hand and smash through windows. We know that the story as told about John's must be revised, because it is not

consistent with what we know to be true of the physical matter involved. Similarly, if one is to give an account of international relations in terms of states acting, there may be reasons to keep the explanation at the state-level. But for certain purposes, we must ensure that the state-level description remains consistent with what we know to be true of persons, and when the two levels conflict, our state-level descriptions must be amended to comport with the individual level, as it is foundational. We do not simply privilege the individual-level when we insist that the conflict here must be resolved by making adjustments at the state-level. The individual-level is the observable level. It is the level built upon a solid, empirically verifiable basis that is consistent with commitments to materialism. It is the level at which we can be most certain, and so it is the level that serves as a check on descriptions at higher levels, which demonstrates an important function of reduction, as well as its necessity as an in-principle possibility.

As for (b) and multiple realizability itself, it should first be said that this worry is often motivated by the social theorist who has already entrenched herself in a particular mode of conceptualizing the facts. Some general fact is *conceived*[381] amongst some group, maybe a property is identified that all or at least most members have, and the social theorist latches onto the collective concept that describes that property. Cultural judgments are often of this sort. In such cases the social theorist may then notice that the posited macro-level property can be realized through many different micro-level circumstances. From this the existence of a collective entity may be posited to act as referent for ascriptions of that collective property, and the collective itself may be thought of in structural terms, which abstract away from individual members. It need not be argued that such an approach is never acceptable in any discipline, but it should be mentioned that an important factor underlying the macro-level regularity is that the

[381] I say 'conceived' because such a condition can usually not be *perceived*. Not only is the social theorist not able to observe these large-scale features of groups, the features also tend not to be universal.

social theorist has defined her terms in such a way that this must be the case. In short, it is due to the imprecision in the concepts used that a diversity of features at the individual-level are interpreted as group-level regularity in the first place.

For example, the social theorist may define the US as a capitalist system, and she may notice that over time, and over changes in the composition of the US it continues to be capitalist. From this she may conclude that capitalism is a structural, macro-level feature that is irreducible to individual properties because it is multiply realizable. The problem is that she begins by helping herself to a plausible, if general, account of the social facts, but then uses it to squeeze relevant individuals out of the picture. Let us imagine that some individuals in the US do not really partake in a capitalist mode of living.[382] Imagine they live in a commune and reject the institutions of private property. Does it matter to our social theorist that these people in the US are counterexamples to her claim about US capitalism? What about the fact that markets in the US are heavily regulated? Does this make the US not capitalistic? No it does not, because our social theorist can just insist on the 'collective' element of capitalism in the US system, which does not itself require that everyone adhere to it or believe anything with respect to it, or that the laws in the state really exhibit capitalist tendencies. It just matters that enough people behave in accord with what the social theorist has labeled 'capitalism' in this case.[383] In this way, the social theorist can have it any way she likes, even to the point of distinguishing the US as capitalist and Sweden, say, as 'socialist'. Given the particularities of these economic systems, the difference between them is a matter of degree, not kind. In both, the individual is allowed to pursue business in a market setting and hold private property, and in both the government heavily regulates all markets and the individual is taxed to provide for social programs. The major

[382] This happens to be true.
[383] Gilbert's, Searle's, and Wendt's views all share this feature.

difference is that Sweden has a higher tax rate and provides a more robust system of social services. There is no clear line between the one and the other that should enable us to call the one 'capitalist' and the other 'socialist'. It is not even disputed that both countries have a 'mixed' economy. Yet the holist social theorist can distinguish between the two, in spite of micro-level considerations that work against a categorical division. She can do this because she allows herself a certain margin for error when she concerns herself only with the macro-level features, which tend to be non-universal generalizations. But this is just the point. Because she is interested in generalities at the macro-level, she has set up her theoretical scheme so that it favors that level. A single term is applied to what is a complex and multifaceted interrelation of factors that is constantly changing at the lower-levels. And since the same term is used to describe the system, regardless of significant ways in which it changes over time, it then appears that the vague regularity observed (or described) really happens at the macro-level, because the individual level is always in flux and yet the macro level seems stable. From this it appears to the social theorist as if reductionism is actually the view with the problems because the processes she describes are actually realizable from many different micro-level conditions, due to their generality that was presupposed in the first place.

Wendt's idea of 'collective memory' works similarly. Because it is only 'mostly true' that a particular state has such a collective memory, the state can be said to sustain that memory even over wholesale changes in its composition, and even when the different sets of individuals understand the state's history is dramatically different ways. If all that matters is that there is some category of state behavior (the behavior of many persons in the state, or the behavior of persons in official state positions) that is instantiated somewhat regularly through time, then of course we will see that same sort of behavior exhibited regardless of changes at the micro-level

of persons. However, this is more established by definition than observation, and it does not show that there is a normatively relevant macro-level that cannot be reduced. Perhaps at time t_1 state *S* goes to war with state *B*, because *B* enacts an embargo against *S*. Then, many generations later at time t_2, *S* may again commit acts of war against *B* due to the enactment of another embargo. Due to the fact that the composition of *S* at t_2 is entirely different from t_1, we may think that the regularity displayed by *S* is irreducible and that *S* itself is displaying the tendency to go to war when impact by a trade embargo. If this happens a number of times it seems that the persons involved do not really matter. It might seem that *S* will go to war against *B* anytime *B* enacts an embargo against *S*. The problem with this line of thinking is that our description of the case depends on using the same name, *S*, for different sets of persons in each case, and treating two unique acts of warring, involving unique sets of persons, as of the same action type, which encourages us to think that the same entity has engaged in the same behavior in both cases. In reality, different sets of persons have responded in unique, although similar, ways to unique, although similar, circumstances. In short, *S*'s tendency to go to war against *B* under those circumstances is multiply realizable because we insist on *labeling* all acts done by officials of *S* as the actions of *S* itself.

Recall that Wendt also says, "Yet, we normally think of states as persisting through time despite generational turnover, in part because their properties seem quite stable: boundaries, symbols, national interests, foreign policies, and so on." And, "Had Bob Dole won the 1996 election, even though the US government would have changed the US state would have remained the same." "Individuals are the "leading-edge" of state action, so to speak, but insofar as macro-level regularities are multiply realized by their behavior, we have a situation in which state action cannot be reduced to action by governments."

In response to this it should be noted first that how we "normally think" about states is not necessarily a good basis from which to decide how we should theorize about them. Beyond this, it is worth considering why it seems to so many of us that the state persists through time, in spite of wholesale changes in its membership. Wendt is correct that boundaries and symbols stay very much the same. But this is due to the legal nature of those aspects of the state. Rather than show that an enduring entity retains those properties, we can just as well accept that rules have been established that are enforceable in certain ways, due to the beliefs of state officials who enforce them, and that aspects of the state remain in place because they are intentionally sustained by those persons who take on roles responsible for such maintenance. The official borders are codified in law and certain members of the state patrol them and maintain them. Symbols remain because they too are often codified in law. Some members of the state in the past designated an official flag and perhaps a state animal and flower. Currency with national symbols on it is invented and distributed. Given that the boundaries have been set and enforced and the symbols have been pushed onto people, it is no wonder that they endure. Altering these features of a social structure like a state's requires political and legal power that very few have. But rather than show the existence of some enduring *object* or *agent*, this institutional continuity over time just shows that a *system* of rules has been put into place, and a name designated for it, as well as that some individuals continue to coerce other individuals into conformance. The state is not an entity so much as an abstract representation of general (though not universal) regularity in individual behavior. Perhaps this is all that Wendt would like to establish for scientific purposes. We need take no issue here with this. But if we wish to offer normative evaluation, it matters a great deal whether it is deemed appropriate to talk about a system like this as a responsible entity that endures through time, or as a *real thing* at all, rather than an 'as if'

representation. When we take the latter view, multiple realizability is no concern, since it is admitted that any particular action of the state is in fact the action of persons.

As for 'national interests' and foreign policy, Wendt is appealing to far less stable features of states. Other than the general proclaimed interests of all states, such as security from outside invasion, the interests that can be legitimately ascribed to the group have a tendency to change. At time t_1, with population P_1, the state, *S*, may have an interest in maintaining trade relations with some other state, *B*.[384] Generations later at time t_2, with a completely non-identical population P_2, *S* may have an interest in invading *B*. Did *S*'s interests just change, or did *S* change? If the story we must tell to explain this involves the old generations of *S* dying off and new generations of *S* having a different perspective on how relations with *B* should function, then clearly there is an individual component that is essential to understanding the case. We could say that *S* had a change of heart, but it is more accurate to say that *S* is in a sense a different state at t_2 than at t_1. We use the same name to identify the two sets, largely because of convention, but though there is institutional continuity, there is a fundamental change in the composition of the group and in the beliefs of its members insofar as the members at t_2 hold very different views from the members at t_1. A single *thing* has not changed *its* mind or reconsidered *its* interests. Two different sets of persons that we conventionally refer to by the same name simply have different beliefs.[385] It is an interesting fact that we overlook this when we insist on

[384] To be clear, I do not wish to endorse the meaningfulness of a claim about a state's purported interests. I merely wish to point out that these do change along with changes in membership, leadership, and external conditions, and we assign these different properties to the same entity largely due to the fact that the same name is used.

[385] To think otherwise is reminiscent of sports statistics that are offered as a guide for what to expect in a particular game. For example, it is common to list the historical record of two teams. The director of the broadcast may display a figure that shows that team *A* has a 28-3 record against team *B*. From this we might think it is likely that *A* will win the current matchup, but if the two teams are now composed of entirely different players and coaches than they were in the previous meetings the historical statistics on their own really tell us nothing about who is likely to win. The names 'A' and 'B' do not pick out enduring entities. They name systems the composition of which changes over time, and so the properties of which change over time, in ways that make the different referents of the names over time actually distinct groups altogether. A historian might wish to document the record attached to the name, and so

referring to some systems by the same name, even though they have experienced significant changes in form and function, and yet we often think that a new entity has been created when a group changes its name and its symbols, though its membership may not substantially change. This seems to be because the use of the same name over time encourages us to think that the *referent* of that name has continuity, even though it can be, and is, a quite different referent over time, and it is really the name and the idea that remain static.

Arguments from multiple realizability are generally used against types of reductionism that insist on there being a reduction in laws between some branch of study at a higher level and one at a lower level. For example, one might wish for the laws of biology to be reducible to the laws of physics. In order to do so we would need 'bridge laws' that enable a translation from one discipline to the other.[386] In social theory some reductionists want law-like claims at the macro-level of entire communities or societies to be reducible to law-like claims at the micro-level of persons (or even down to the psychological level). Wendt is correct that such a reduction is likely untenable. *If* we are able to make reliable law-like claims at the state-level, it is doubtful that these could ever be translated through bridge laws into law-like claims about how individuals in states must be acting. As the argument goes, the problem is that multiple individual-level circumstances could produce the state-level circumstances we describe. But the normative reductionism under consideration makes no attempt at such a reduction of laws – only of explanation of cases. That is, a reduction from claims about state action must be translatable, in principle, to a set of claims about individual persons in the state performing individual actions. State action is not possible without this being the case, and proper normative analysis cannot

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she might not care that teams of different composition have compiled those statistics. However, if we were to talk about who is *responsible* for that record, we would have to identify particular membership for the particular years teams were put together under that name. The case is much the same in the state.

[386] Wendt, *Social Theory*, 153. See also, May Broadbeck, "Methodological Individualisms: Definition and Reduction," *Philosophy of Science*, Vol. 25, No.1 (1958), 1-22.

proceed without considering the individual level, where real agents perform individual actions, in isolation or in connection with others, for individual reasons (even if those reasons relate to the whole in certain ways).

Normative methodological individualism can accept that different sets of individuals, individual beliefs, and individual actions can produce the same conceived macro-level effects. It can accept this because those macro-level effects are always the product of *some* individuals' intentionality and agency. For normative purpose, at least, this is absolutely vital. Though there may be no way to provide bridge laws or universal principles of translation from macro-level descriptions to micro-level descriptions, we can say with certainty that individual choice and volition is always at the root of collective and corporate action. Our normative analyses can then proceed accordingly, regardless of what sort of collective or corporate action is in question, because no such cases can emerge where an individualist analysis is impossible in principle.

§8 – CONCLUSION

For normative purposes, we care more about why a state action occurred, as in, for what reasons, than the political scientist who is more interested in understanding the bare causal mechanisms behind it, or the patterns of regularity that can be described in law-like terms. If states tend to go to war when conditions *X*, *Y*, and *Z* are present, then the political scientist may not care about which particular individuals in the state were the real drivers of the policy of war. Their explanation need not concern itself with those questions if some other factors seem consistently related to the one in question. Our normative analysis, on the other hand, must identify the agential ancestry of the action, lest we simply accept what ought to be an unacceptable level of imprecision into our judgment. Given a commitment to an individualist analysis, it would be worrisome if the many objections leveled against other forms of reductive

individualism were to prove insurmountable for normative methodological individualism as well. Using Alexander Wendt's two prominent discussions of reductionism, five objections in total were considered and responded to. These included objections from multiple realizability, the possible circularity of individualism, the possibility of irreducible group intentions, the fact that groups are capable of more than individuals (even aggregated), and the worry that one can only intend what one can control and individuals cannot usually control the group. Though some of these objections do provide significant hurdles for versions of reductionism in social science, they do not apply as forcefully to normative social theory. This does not mean, though, that the objections do not apply to the normative realm. As we discussed, normative analysis also depends on description, which itself necessitates a conceptual or theoretical scheme from which to be created. Decisions must be made about what is to be included in our ontology, and what sorts of factors are going to be relevant for the purposes of the normative evaluation. As such, it is important to be clear about these issues and accept the individual-level as vital to normative theory and to normative analysis.

We have to this point looked at a number of bottom-up and top-down approaches to justifying the state-actor model in normative IR theory and concluded that they do not meet the demands of liberal individualism. In this chapter it was argued that a normative reductive individualism is possible with respect to state actions, and in fact even necessary according to the accepted purposes of normative analysis. What has not been discussed yet is what an individualist normative analysis of state action would look like in more detail. At least a few comments should be offered about how the methodological foundation of basic interpersonal normative theory is to be applied to the large and complex cases of state action. In the following chapter we can look at a few more specifics of some of the most well developed individualist

accounts of social action, and discuss the ways in which they seem capable, or perhaps incapable, of addressing state action. We can also briefly explore some further conclusions that are suggested by the previous discussion throughout this work.

Part IV: Methodological Individualism
Chapter 2: Conclusions

§1 – SYNOPSIS

In this last chapter we can look a bit more closely at the sort of individualism that would serve in place of a collectivist (or holist) methodology for state action in particular. In doing so we can also tie together a few of the related strands of the previous nine chapters and form some overall conclusions. Although a full account of an individualist theory of state action would be the next logical step, that goal would serve for another project entirely. Here, though, we can at least look at a few of the lessons learned over the previous discussions, and so at least try to set a path forward for the full development of such a theory. Before moving on to that, we should quickly survey the ground that has already been covered.

We began in Part I, Chapter 2 by disambiguating the term ‘state’. For the purposes of this project we were concerned with a treatment of that term as the whole country. Although there are reasons for and against using the term in other ways, with respect to normative issues whole states are commonly identified as the actors in international affairs, and normative responses impact all inhabitants, at least in an indirect way, such as in a case where reparations debt is established for a state. As a further example, in a case like war the state itself will tend to be considered the relevant actor, which seems to suggest quite directly that *it* should be the bearer of responsibility for that, and so the liability party for payment of reparations. Given that this is generally the practical consequence of our common normative practices in IR, treating the whole state as a single entity spanning over the landmass of the state, its people, institutions, and so forth, best captured these practices.

The actions of this *whole* body are not ever really actions of all of it, but there are cases where we may judge that the subset of the state that acts does so 'in the name of' the whole of the people within the state, even into the far off future. Though no argument was made against other uses of the word 'state', one conclusion that would follow from the previous discussion herein is that we should not really talk about 'the state' acting, unless it is a case where the actions of the persons involved in the case really do represent and transfer liability (at least) to the whole collective. If we merely wish to identify an action of state officials, or the state's military, then it would be more accurate to identify the particular sub-organization in the state that is relevant. This is especially important when we are engaging in normative analysis, since the ascriptions of action to the state itself may have the tendency to encourage the jump in judgment that the whole state is (attributable) responsible or liable, even when this is not justified at the individual level.

The remainder of Part I, Chapter 2 was devoted to disambiguating 'responsibility'. In order to accommodate the widest possible scope of cases of state responsibility that might entail the responsibility of all individuals in the state, or at least justify imposing costs on all individuals in the state, a version of 'normative liability' was explicated. This would be the property of standing in the relation of accountability for state action, where that accountability could take a number of forms, including reactive attitudes, character judgments, (attributable) responsibility, moral responsibility as blameworthiness regardless of (attributable) responsibility, moral liability understood as a retrospective notion of remedial responsibility that is directly tied into one's special relationship to the act in question, as well as legal liability to criminal or civil sanctions. The only restrictions of note on this broad notion of liability are the minimal liberal restrictions that the individual must have acted in some sufficient manner in order to put herself

in the position to be so liable. That is, although liability, as defined, is quite a broad concept, it is not so broad that it attaches randomly or capriciously. Liberal individualism is not compatible with normative liability that 'falls from the sky'.

Thus, in order to justify the state-actor model on this broad understanding of normative liability, it would just have to be shown that (a) all individuals in the state who stand to be bear the costs of a state-based normative judgment are properly affected because they all personally stand in a proper liability relation with respect to state actions, or (b) the state is itself an agent and so rightly held (attributable) responsible and liable, itself. The first of these approaches to proving the issue is a 'bottom-up' approach, where the state's liability is a function of the universal individual liability within the state, and the second is a 'top-down' approach where the state is the liable entity and the individuals are either rightly affected because they are the state, so *its* responsibility is their responsibility, or they are permissibly affected, even if they are not really personally liable, because the state is a real moral agent and so it is appropriate to exact sanctions against *it.* In this latter case, it could be admitted that the effects on innocent persons are regrettable, but still argued that collateral damage is sometimes an unavoidable consequence of exacting justice on responsible agents.

In Part II we looked more closely at the common bottom-up approaches to state responsibility, beginning with those that would imply the strongest sorts of responsibility, and continuing along the spectrum to views that would imply weaker forms of responsibility and liability. Beginning with (attributable) responsibility, and using Howard McGary's view as a guide to the discussion, we looked into whether state membership can work like other group membership, where one need not engage directly in some group action in order to be responsible for it. Responsibility as attributability proved a very difficult case to make for the state, even in

the case that, although citizens are not directly responsible, they still should have organized to change their state. Virginia Held's view was considered to make this case, but it also looks implausible with respect to the state, in spite of what appeal it may have at a smaller level.

A slightly weaker sort of bottom-up moral responsibility for the state has to make the case that the citizens are all responsible, minimally, due to their membership and its normative implications. Amy Sepinwall develops an account of collective moral responsibility in the state based on the assumptions of a citizen's state-specific commitment, which implies a sort of requirement of fidelity, much like a business partnership or marriage relation. The problem with this approach is that it overlooks the unique character of state membership, and its important ramifications for normative judgments on the liberal individualistic model. Through the discussion of Sepinwall's view it was argued that simple social relations that we are able to devise while acting as social theorists interpreting the world, do not, in and of themselves, imply anything of normative significance. Relations like 'citizen' and even 'brother' are not sufficient to ground retrospective responsibilities. If we have tended to think otherwise, this may be because almost all cases we wish to discuss implicitly involve the responsible persons putting themselves into a special relationship that generates special relations of responsibility. Although the state may seem analogous to social groups where membership is sufficient for liability, it again lacks the voluntary character necessary to extend responsibility across it.

We next looked at a view of 'political guilt' developed by Karl Jaspers. Jaspers's work seems to speak to a common view – the view that the citizens of a typical state are not really morally responsible, as in blameworthy, for certain things their state does, but that they are still politically responsible, which means liable to suffer certain consequences of their citizenship, such as reparations debt. The problem with such an account is that it really has no basis other

than in historical convention and common ways of thinking. Beyond an appeal to the way things are, it looks to be empty of justification for holding citizens liable. Though it has been common to, for example, apply sanctions to entire states, and let these debts be paid through general taxation, this does not work in favor of the justifiability of such a practice. And though we might think that some group of people has to account for the damage resulting from state actions, especially because the damage is often so great, this too does not justify ignoring details at the individual level in order to charge the state itself with political guilt. Finally, a desire for repair, considered as a prospective obligation, should be distinguished from the identification of retrospective (outcome) liability.

David Miller's view of national responsibility was looked at next. His 'like-minded group' and 'cooperative-practice' models of collective outcome responsibility were evaluated in reference to liberal individualist commitments. Miller is perhaps not squarely in the liberal tradition in any strong sense, but he is not working against it either, and he does intend his view to be consonant with the liberal commitments of this project. However, upon closer study, it does not look as if Miller's view can satisfactorily link all individuals to their nation. Like the state, the unique nature of national membership makes an attempt at extending other models of social interaction to the nation as a collective ultimately unsatisfactory. By extension, the case for the state is even worse on Miller's terms.

In Part III top-down approaches of corporate responsibility became the focus. Margaret Gilbert's 'plural subject' view was discussed in Chapter 1. Though Gilbert has developed an interesting account of group action based in joint commitment, it seems far better suited for smaller and more intimate groups than for large and impersonal ones. Her view is extended to political communities, but in order to do so she is forced to weaken the notions of 'commitment'

and ‘obligation’ beyond the point that they could serve as a legitimate basis for judgments of responsibility or liability. For these reasons her view was also rejected as a possible justification of the state-actor model.

We next looked at Alexander Wendt’s proposal that the state could be a sort of organism or superorganism in Part III, Chapter 2. Although there are some interesting similarities between the state and an intergenerational superorganism like a beehive, they are ultimately too weak to ground the notion of state responsibility. The possibility of dissidents again serves here as a strong reason against. Part of the superorganism account of the state argues that the state exhibits the organizational characteristics necessary to treat the whole system as an entity. The central reason to deny such analysis is that the state fails to demonstrate the sort of complete integration of all parts that we find in superorganisms. Put simply, the state does not run very much like a beehive or anthill at all. The second half of Part III, Chapter 2 evaluated a narrative view of the state’s intergenerational identity, from Erik Ringmar. Due to the lack of universalizability, the narrative view of state was found insufficient to ground responsibility in a way that would satisfy liberal commitments at the individual level.

Wendt’s more plausible view is developed in his book *Social Theory of International Politics*. Therein he defends a view of the state as a rational, intentional actor, and though he does not wish to give a normative analysis of state action, his view does have normative implications. A discussion of it in Part III, Chapter 3 rounded out the discussion of top-down, corporate responsibility. Developed through the ideas of Peter French and others, Wendt argues that the state has a self-identity and internal decision-making structure that makes it a sort of emergent intentional entity in its own right. However, with a lack of anything like a collective belief system encompassing everyone, or group-level intentionality that can really be traced to

the input of all individuals, the state does not look like it is the sort of entity that can *really* function as an addition to our moral ontology and normative system – despite the frequency with which it is treated as such. It is also dubious to suppose that a state system may be capable of exhibiting its own intentionality because its decision-making process generates an output that no individual really intends. Though we should take seriously the possibility that collective decision-making processes can produce this sort of effect, the individuals who are a party to the decision process, and the eventual process of carrying out the policy, exhibit personal agency all the while. And, at bottom, persons – policy makers, ultimately – always direct state action. Certain decision-procedures are followed in the state, of course, but the intentionality of state officials never gets completely overshadowed by the institutional systems that enable the cooperative effort. We do not want to oversimplify cases of state action, but we must represent them accurately as what they are: the product of the state-related intentionality and agency of many individuals over time, but not all individuals and not in ways irreducible, in principle.

In addition to an argument against state agency, Part III, Chapter 3 also argues that normative responses directed at the state are both incorrect and counterproductive. That is, not only do they misidentify the responsible parties, the reactive responses also tend to be almost entirely practically ineffectual, because the persons who bear the brunt of the liability for such charges against the state happen to be the people who are least politically powerful and furthest removed from the knowledge and control that would be necessary to redirect state policy and so state action. Moreover, the persons most directly responsible for state policy, and so most able to change it, tend to be shielded from the personal responsibility that they bear for their decisions in their roles as state officials. Thus, they tend to lack personal incentive to change, and common practice tends to establish and maintain a precedent that signals to future state officials that they

too will be largely exempt from personal responsibility while serving in certain high offices, for a great deal of what would otherwise be immoral and illegal behavior if they were in any other social context.

In Part IV, Chapter 1 reductionism was discussed and different strands of debate around the topic of reductionism were distinguished and clarified. The liberal individualist position that serves as the basis for this work was argued to be a workable view, in spite of the structural, systemic, collective, and corporate character of the state, and of individuals' lives within it. That is, although we must admit that persons are, in large part, a product of their environment, including the institutional structures of their communities, which help shape the very concepts that they use to navigate in their social world, there is still room to hold them personally responsible for their personal volition. Methodological individualism in normative theory does not have to be any sort of atomism, where individuals are treated as isolable units and collective facts about them must be mere aggregates of individual properties. Individualism can account for the complex nature of social life, and the various relations that exist between people, without thereby committing itself to the impossibility of understanding something like 'state action' in terms of individual actions and intentionality. A reduction from state-based normative talk to individual-based normative talk is not only possible; it was argued to be necessary for proper normative evaluation and reactive response.

§2 – INDIVIDUALIST THEORIES OF COLLECTIVE ACTION

It still remains to be seen what an individualist methodology for state action would look like. In the previous chapter we discussed Michael Bratman's work as a contrasting account to the non-reductive collective and corporate accounts of social action. The point of that discussion was not to argue in favor of Bratman's position as the correct account for the analysis of state

action, it was simply to show that individualism does not have to be, and in fact often does not claim to be, atomism. Below we can look at a few considerations that may guide our decision about a specific individualist account of state action and so responsibility and liability.

Let us begin by recalling some of the normatively salient features of state action. As the discussion in Part I, Chapter 2 made clear, state actions are generally the direct actions of only a subset of the state's population. These subsets tends to be comprised of state officials of different sorts, such as in a case of aggressive war, where certain legislators and policy-makers may collectively decide on a war policy and then direct their subordinates to carry it out. This then involves officials in the armed forces participating in a complex corporately organized process, coordinating the actions of thousands of people, in order to conduct the activity called 'war'. This process could take place over years, and the many sub-actions underlying an endeavor like war may involve the entrance and exit of many persons over that time. This includes not only members of the armed forces, but also members of government who may inherit the war from a previous government. War might be a case at one far end of the spectrum, but it is a common sort of state action that we need to normatively evaluate, and it is also not that different from many other state actions that take place over time and involve the institutional coordination of many people who are not personally familiar with each other.

How would Bratman's analysis accommodate such a case? Recall that Bratman's necessary and sufficient conditions for shared intention are the following.

4. (a) I intend that we *J* and (b) you intend that we *J*.
5. I intend that we *J* in accordance with and because of 1a, 1b, and meshing subplans of 1a and 1b; you intend that we *J* in accordance with and because of 1a, 1b, and meshing subplans of 1a and 1b.
6. 1 and 2 are common knowledge between us.[387]

[387] Michael Bratman, *Faces of Intention* (New York: Cambridge, 1999), 121.

For Bratman's analysis to apply we have to identify that such intentionality exists on the part of the individuals performing the action. We could imagine the case as if everyone involved in such a large-scale process intended that they engage in that war together. That is, we can imagine that all those individuals had we-intentions to war. However, this is not a plausible description of any actual case, given the nature of an activity like war. As they are stated, Bratman's conditions do not appear to be satisfied by even a majority of those who may be involved in a war. This is because of the symmetric relation built into the we-intention on his account. For the first person, her intention to *J* is formed in part *because* the second person also has an intention to *J*; and the second person has the intention to *J* in part *because* the first has that intention. Taken strictly, it could be the case that only some portion of the persons in the armed forces satisfies these conditions. The directly *joint* nature of shared intention on this view makes it seem ill-suited for a case like war, where many individuals would end up working as a part of an extensive collective effort over time, but without necessarily intending as a result of the intentions of all others. It seems that we would want to widen our scope here to include individuals that participate even if they do not do so *because* others have the intention of participating as well. Further, if we wish to give an action-theoretic analysis of the whole web of large-scale and long-term individual intentions and actions that together realize the end of something like war, we will need to capture other individuals in our judgment who aid the war effort more indirectly, and perhaps without specific intention at all. If such people are still relevant pieces of the overall process of war, then we will want to include them as well. Consider, for instance, the legislators or policy-makers in the government who decided on the war policy, or who engaged in a deliberative process that resulted in a policy of aggressive war. We would want to include these individuals in our judgments, even though they do not engage jointly in war, on Bratman's terms.

Seumas Miller challenges Bratman's account along these lines.[388] He argues that his own view is superior because it is not developed in such a way that the individuals involved must have the intentions that they do *because* the others have that intention. In this way Miller's view is capable of applying to cases that are less directly organized, or where the actors do not have neatly interrelated intentions. For example, there may be cases where *A* intends to perform her action, knowing that *B* will perform some other action necessary to the achievement of *A*'s ends, but where *A* does not care at all whether *B* shares that same end. *A*'s concern is not that *B* perform her contributory action *because* she shares some we-intention with *A*. *A* just wants to achieve the result, and needs *B* to help. In such a case the two people may still carry out some action jointly, even if not reciprocally intentionally.

Miller argues that his view is also to be preferred because it does not entail that one individual must intend that another individual perform some action, which seems to result in a contentious account of intention. Miller says, "on [Bratman's] account I *intend* that you paint the bedroom and do so in virtue of my joint intention that you and I paint the house."[389] Bratman is aware of the weirdness of such a view, and he does have arguments in response to the worry. However, we are still left in the end with an account that must accept that *A* can intend that *B* perform action *X*. This is awkward and undesirable, at least.

What does Miller's account look like? Like many other writers, Miller builds up his account of complex social action from an analysis of basic interpersonal action, or joint action. From that basic level he is able to extend his analysis to cases of complex, institutional action, such as the action of organizations. His account of joint action, which he calls the 'Collective End Theory', is based on the following conditions.

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[388] Seumas Miller, *Social Action* (New York: Cambridge, 2001), 74-81.
[389] Ibid., 76 [his emphasis].

> [A] joint action simply consists of at least two individual actions directed to the realization of a collective end. Accordingly, individual actions *x* and *y*, performed by agents *A* and *B* (respectively) in situation *s*, constitute a joint action if and only if:
>
> (1) *A* intentionally performs *x* in *s* (and *B* intentionally performs *y* in *s*);
> (2) *A* *x*s in *s* if and only if (he believes) *B* has *y*ed, is *y*ing or will *y* in *s* (and *B* *y*s in *s* if and only if (he believes) *A* *x*s or is *x*ing or will *x* in *s*);
> (3) *A* has end, *e*, and *A* *x*s in *s* in order to realize *e* (and *B* has *e*, and *B* *y*s in *s* in order to realize *e*);
> (4) *A* and *B* each mutually truly believes that *A* has performed, is performing or will perform *x* in *s* and that *B* has performed, is performing or will perform *y* in *s*.
> (5) Each agent mutually truly believes that (2) and (3).[390]

Although there is definite similarity between the two accounts, we can see some contrasts that are important. Miller does away with the idea of a 'we-intention' and instead talks about 'ends'. In this way he is able to treat intentions as always a strictly individualistic mental state, and connect the intentionality of the multiple agents by an appeal to a shared end amongst them. Importantly, although the end is shared, it need not be shared *because* of the relations between the persons. On this view multiple people could just happen to have the same end, and act jointly so as to achieve it. They need not have any conception of themselves working as a group. With his emphasis on ends Miller distinguishes himself from both the corporatist side (which includes Searle, French, Gilbert, Isaacs, and others), and the individualist side that analyzes joint action in terms of intentions and beliefs (such as Bratman and Tuomela).[391] In contrast to these other individualists, Miller's account can be understood as breaking down joint actions into *ends*, *intentions*, and *beliefs*. And we might at this point be able to see how it could better account for a complex action like war. Individual *A* need not intend to *X because* she knows that *B* also intends to *X* (and for the symmetric reason); it just needs to be the case that *A* believes *B* (and whoever else) will act in ways that contribute to the realization of *X*. They all have *X* as an end, and they all truly believe that the others will act in their specific ways to work toward that end. The

[390] Ibid., 57 [His 'realisation' and 'realise' have been changed to 'realization' and 'realize'].
[391] Ibid., 59.

individual soldier does what she does partly because she has winning the war as one of her ends, but also because she knows that other soldiers are also doing their parts to work toward that end. If soldier *A* did not believe other soldiers would also work toward the end of winning the war, then *A* would not do so either. In this way, what *A* and the others are doing is *joint*, due to the common end, even if it is not strongly we-specific.

Miller's account shows a greater level of flexibility and a wider scope for its concept of joint action. For these reasons it looks promising as a reductive individualist analytical method for state action. Miller's account of joint action on its own, though, will not suffice to address issues like war. It might enable an analysis of pieces of a war, such as a particular battle, for example, but the entire process, which happens on a massive scale and over long amounts of time, cannot properly be analyzed in terms of joint actions. Even Miller's concept of a 'joint enterprise' is not capable on its own of capturing all of the individuals and all of the processes involved in something as institutionally complex and drawn-out as war.[392] To account for the normatively relevant features of state actions like war, we will have to look at Miller's view of organizations and corporate action.

Let us first note that Miller is squarely in the individualist camp, and when he talks about organizations acting, it is always understood to be a manner of speaking only. As he says in his introduction to his arguments concerning organizations, "My central concern in this chapter is to argue that 'actions' of organizations are reducible to the actions of individual human persons. I do not accept that macro-entities, such as nation states and corporations, have beliefs and intentions, and consequently are either rational or moral agents. Properly speaking, all social

[392] The complexities alluded to here may explain why there is a strong tendency in practice to ascribe such a process to the state itself. An actual individualistic analysis of such a huge and complex process would be a daunting undertaking. Nevertheless, as has been argued, such an analysis is essential to proper normative judgment, so developing a theoretical account that can accommodate drawn-out institutionalized action is important.

actions are performed by individuals, not social entities."[393] It sounds very much like he is developing an individualist account that would work quite well for the state, but state actions are not his primary concern. So, to see if state action in particular is well accounted for in Miller's view, we just need to look a bit more closely at the details.

In response to French's view of corporate intentions and actions, Miller employs the notions of a 'joint mechanism' and 'institutional mechanism' to account for the institutionally structured, role-related actions of persons within organizations[394] (such as corporations and armies), and he does so in such a way that his account "involves no essential recourse to supra-individual minds, intentions, or beliefs."[395] By offering an account of the *layered structure of joint actions* in organizations, which are often carried out through joint and institutional mechanisms, he is able to account for the complex institutionalized nature of corporate actions.

Miller distinguishes first between two layers of action. One the first layer we have the individual actions. On the second layer we could have the joint actions that those individual actions amounted to. Those joint actions can then be further understood as constitutive of some further joint action. Miller's example of an army fighting a battle is illuminating.

> The individual members of the mortar squad jointly operate the mortar in the service of the collective end of reducing the ranks of the enemy soldiers. The set of tanks jointly move forward firing in the service of the collective end of destroying the enemy's gun emplacements. Finally, the set of foot soldiers jointly position themselves to realize the collective end of holding the ground vacated by the retreating enemy force. The actions of each of the individual foot soldiers, mortar squad members, and individual members of the tank team are level one actions. Moreover, the actions of the individual foot soldiers taken together constitute a level one joint action; as do the actions of the individual members of the tank crews. However, the infantry and the cavalry (the tanks) and the mortar squad jointly act to realize the collective end of defeating the enemy. So each of these actions constitutes a higher level "individual" action performed to realize a further

[393] Ibid., 160 [again, 'z' has been used in place of 's' in 'organization' – the Americanized spelling will be given for all subsequent quotes from Miller].
[394] An organization is a group of people that have characteristic formal structures and group-specific and interrelated roles. Organizations that have a normative dimension Miller terms *social institutions*. Ibid., 28-29.
[395] Ibid., 171.

> collective end, namely defeat of the enemy. Each of these actions is a level two action. Moreover, the set of level two actions, taken in conjunction with the collective end to which they are directed, constitutes a level two joint action.[396]

The above helps evaluate a complex collective action like a battle, but we need to also capture the positions of other persons in the institutional structure that play an important role in forming policy and delegating tasks. Beyond the above sort of layered joint action, Miller also explicates 'joint mechanisms', which enable 'corporate action', which is not necessarily reducible to joint actions alone. A joint mechanism is the application of a procedure in order to perform a collective end. A procedure can be many things, but obvious examples that Miller mentions are decision procedures, such as tossing a coin to decide a dispute. "Joint mechanisms consist of (a) a complex of differentiated but interlocking actions; and (b) the result of the performance of those actions."[397] A joint mechanism involves multiple people acting to produce a collective end, but through a compartmentalized structure and from rules, which together coordinate the result. Miller uses the example of an election to illustrate this. In an election some persons put themselves forward as candidates and others vote for them, but persons in both sets act that way because they expect other people to do so as well. All persons involved engage in a joint procedure, according to its particular rules, and this generates a result that specifies a winner of some office. The act of electing that person to office can be ascribed to the *set* of persons who engaged in that joint mechanism.

With the addition of joint mechanisms into the picture we can analyze the actions of sets of persons that are institutionally connected by authority structures and where collective decision procedures decide policy, which then specifies that other persons must perform layered joint actions to achieve some final result. We are getting closer to representing something like war,

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[396] Ibid., 173-174.
[397] Ibid., 175.

but the account is still a bit narrow for that purpose. Although it looks complex at this stage, it needs a few additions to broaden its scope, given that it still relies on the idea of a collective end. We should not want to rely on all agentially related individuals sharing a certain end. If an individual voluntarily participates in an aggressive war, by whatever means and for whatever end, we should be able to identify her contribution and judge her accordingly. Miller's position is expanded somewhat by his introduction of the idea of a 'quasi-joint action', which involves individuals who have a collective end that is dependent on each individual having her own individual end. In such a case the set of people act jointly to achieve the collective end, but that end is unsustainable without the satisfaction of the individual ends. With this included, Miller's account could capture those who engage in, or help enable, the aggressive war, even when they only do so to further some other private end of their own. The army sergeant, for instance, who is responsible for managing the shipping of bombs to military bases near the warzone may only want to realize the state of affairs which is describable as 'performing her duties for the war effort' because of her end, 'paying for college', but insofar as her actions are part of a larger joint end of engaging in aggressive war, she must be subsumed within the responsibility judgment.

Miller has this to say about how his theory of organizational action can inform our judgments of moral responsibility.

> [T]he upshot of our discussion is that agents involved in complex cooperative enterprises can, at least in principle, be ascribed collective or joint natural responsibility for the outcomes aimed at by those enterprises, and in cases of morally significant enterprises, they can be ascribed collective or joint moral responsibility for those outcomes. This conclusion depends on the possibility of analyzing these enterprises in terms of layered structures of joint action.[398]

The upshot of this, for our discussion, is that many forms of collective and corporate action can be analyzed in such a way that the large-scale products of these many-person efforts can be given

[398] Ibid., 250. By 'natural responsibility' Miller means (attributable) responsibility.

due appreciation in our evaluations, and also in such a way that individual agency is accounted for. We are able to include only those who were involved as a direct participant or at least a contributing member of the organization doing the acting.

Miller's view looks well suited for many cases of joint and quasi-joint actions, but we may still be worried that such an account will not identify the full scope of people involved in a case like war. For example, during the deliberative process preceding a war some set of the populace might agitate for war and so encourage members of the legislature to vote in favor of the policy. When there is such a relationship between the actions of citizens and the actions of the legislature, which then culminates in the joint enterprise of aggressive war, we should want to include those citizens within our judgment. This is especially true if it were the case that the war would not have taken place were it not for their agitation in its favor. In this case it would seem those citizens are (attributable) responsible, in part, for that war. Yet, it is not clear that Miller's view would imply this.[399] We should be concerned by the potential existence of other freely and intentionally acting members of the state that contribute to the state action and yet escape our judgment. An overemphasis on interrelated intentions or shared ends looks to be too restrictive. The state's actions must be able to be analyzed along individualist lines but in such a way that all relevant individual agency can be connected to the final result. It must be the case that the story we tell about the collective intentionality can be complex, long (in steps and time), and involve participants that are relatively quite unknown and unrelated to each other, and who

[399] Or if Miller's view does imply this it could be because he judges that the whole state bears certain responsibilities because of the teleological nature of its institutional structure. Miller develops his own account of collective responsibility to accompany his account of collective and corporate action, and when discussing that view he does mention the obligations of the state (p. 250-251). However, he does not discuss retrospective responsibility and it is not clear what the substance of his claims about 'state responsibility' amounts to at the individual level. Since his teleological normative framework looks to be in tension with the strict liberal individualist framework underlying this work, the specifics of his normative view will not be addressed here.

have fairly different ideas about what they are doing and what they would like to ultimately achieve collectively.

Perhaps the most general individualist account of collective action – one with the broadest scope – is the view of Christopher Kutz. He argues for what he calls a *minimalist conception* of joint action.[400] The only requirement for a minimalist approach to collective action is that the group members act intentionally and with some overlap in their conception of the collective end. This does not have to involve the separate individuals having any strong beliefs or expectations about the intentions of others or about what is rationally required given what others are doing. Furthermore, acting members of the group need not even intend that the group succeed in some ultimate end. The benefit of this way of connecting people to the results of large-scale collective or corporate action is that it avoids the specific, intimate, and more concrete character of the analyses offered by Bratman and Miller. In this way it may be more suitable for the complex workings of the state, where you can have many different levels and huge numbers of people coordinating very loosely and informally in some respects and very directly and formally in others, and where some contributors may act almost entirely of their own accord but still with the intention to realize an overlapping end.

Kutz describes something that sounds reminiscent of state action when he says,

> Ethically complex cases of joint action rarely involve perfect common knowledge, wholly shared conceptions of the joint act, or highly responsive strategic interaction. Indeed, the genius of organized criminality lies precisely in obscuring the interrelations of participants by removing the need for frequent interaction. And the enterprises responsible for significant unintended harms are likewise typically distinguished by the dispersion of task responsibility. Conspirators, for example, often compartmentalize knowledge of individual tasks and identities; corporate officers and engineers may understand themselves to pursue very different goals; and executive officials may shield themselves from specific knowledge of the acts or omissions of subordinates.[401]

[400] Christopher Kutz, *Complicity* (New York: Cambridge, 2000), 90.
[401] Ibid.

If this more inclusive account that Kutz offers can accommodate the sorts of conditions he describes above, then his view looks promising for state action as well. A lot seems to ride on his understanding of *overlap* in the conception of a collective end, though. We need to look more closely at that.

Kutz uses the idea of a 'participatory intention' in place of a specific we-intention, shared intention (collective intention), or shared end, because an individual's intentional contribution need not be aimed at some group-specific result and the overall contribution can be negligible. Kutz's idea of a participatory intention just relies on 'extensional overlap', which is the condition that the agents are intentionally participating in the same joint enterprise. There must simply be overlap in the "states of affairs that satisfy the intentions of each." "To be precise, agents' intentions overlap…when the collective end component of their participatory intentions refers to the same activity or outcome and when there is a nonempty intersection of the sets of states of affairs satisfying those collective ends."[402] For any group action or activity to be jointly intentional, in even the most minimal sense, there will have to be some commonality between the individuals' intentions, and this will always occur to a greater or lesser extent in such cases, rather than act as an all-or-nothing property.

It should be noted that Kutz's full view of collective responsibility (as accountability)[403] does not depend on the individual contributing in any significant way toward the final outcome. Quite in line with the sort of responsibility we have been dealing with all along, Kutz identifies the will of the agent as the basis of responsibility, not the difference the agent makes. We are

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[402] Ibid., 94.

[403] Kutz's idea of *accountability* is essentially equivalent to the notion of *liability* that has been used throughout, though the basis of Kutz's idea is a bit different insofar as it relies heavily on a victim's moral perspective. Still, his view is also grounded in agency and his conception of accountability is a retrospective relational one, which is given in distinction to an actor's capacity as 'a responsible agent', and so something that can bear accountability. This idea is very much like general normative liability as used here, which can also stem from (attributable) responsibility or simply one's relations to others. As such, both terms will be used interchangeably in this chapter. Ibid., 18.

asking questions about intentions that can be answered by providing reasons. We evaluate the agents teleologically, according to their purposes, and this can mean that one is responsible for some collective outcome, due to her *intention to participate* in a collective endeavor, even if she did not intend for any collective result to occur and even if the outcome was overdetermined and she was one of the marginal contributors. Kutz calls this kind of responsibility *inclusive accountability*, which stems from *complicitous participation*.[404] Using these ideas he is able to argue that one can be inclusively accountable even if she has narrow intentions, in the sense that she compartmentalizes her role in the collective endeavor and does not share a specific collective end. This helps account for cases where an individual might think she has an excuse because she was 'just doing her job'. A case like Adolf Eichmann, then, might be a good example of a case of complicitous participation (at least) and inclusive (as well as exclusive) accountability. His intentions may have been narrow, insofar as he just had a zeal for excelling at his job, but he knew or should have known about the greater project he was a willing participant in, and his participation should be captured in our normative assessment of that collective enterprise.

Kutz's *Complicity Principle* is expressed thusly:

> (Basis) I am accountable for what others do when I intentionally participate in the wrong they do or harm they cause. (Object) I am accountable for the harm or wrong we do together, independently of the actual difference I make.[405]

Here we can see as well how members of the state who are even further removed from the direct actions attributed to the state can still be brought within the scope of an analysis of those actions and so within the scope of a responsibility judgment based on that analysis. In our case of war, for example, a citizen who supports a candidate for office who herself runs on a platform of waging aggressive war against a neighboring state could be brought within the scope

[404] Ibid., 146. He also refers to 'complicitous accountability'.
[405] Ibid., 122.

of the joint action of war. The voter's participatory action is her intentional act of voting for a pro-war candidate. She acts to contribute intentionally to a state-oriented end of war, along with the candidate and the rest of those in the state that act in some participatory way from a suitably overlapping intention, and for whatever reasons. A quite large set of people in the state could meet such conditions, which should allay the worry that few individuals could be responsible for state action on an individualist account.

Though Kutz's minimalist account is capable of capturing the less direct intentions related to a collective action, we should look at how far such an account will extend. The goal is to employ a normative theory that enables the interpretation of collective human action so that normative analysis can identify and enable responses to *all and only* those individuals who are sufficiently agentially related to the case. If we use a principle that is too broad in scope, we run the risk of again subsuming innocents within our judgments, and some of Kutz's claims seem to suggest that his view could be overly inclusive.

When explaining collective intention, Kutz says, "I argue that intentions may be attributed to groups in virtue of individuals' intentions to participate in forming a collective intention, when their intentions overlap adequately and when their participation is recognized, formally or informally, as legitimately contributing to the collective endeavor." As for institutional groups, Kutz says, "the action of each [member] and the actions of all [members] are the actions of the collective." And, "I am an inclusive author of the actions of the group in which I participate – inclusive because I am one among those who can truly say *we* did it." "We are properly held accountable for the actions of groups (and of individual group members) in which we participate, because these actions represent our own conception of our agency and our

projects."[406] Even unintended collective consequences can be encapsulated within this theory, given that it is based only in overlapping participatory intentions. If A intentionally participates in a collective action, for whatever reason, she may be accountable for consequences of that action that she did not intend or even foresee.

The worry is that on this sort of account it looks like any individual in the state who at some point intentionally participates in certain state institutions can be brought within the analysis of the state's collective actions, and so its responsibility, regardless of how far removed the individual's participatory intention is from the other state actions and outcomes. Kutz does make some other comments, though, that allay these worries a bit. For instance, he does mention that inclusive accountability in a corporate context would apply to the marginal worker who conceives of her action as a means to a collective end, "so long as the decision to work with the company is voluntary, and information about the company's activities is available."[407] On the other hand, he extends his analysis to cases involving *symbolic unity* and *quasi-participatory intentions*, which again suggests that the entire state may be subsumed within an account of collective action and intentionality on this view. In his discussion of the practical aspects of responses of accountability he says, "If we can look to and cultivate the groupings in which agents actually do find themselves to be participants, then perhaps there is material for generating a sense of accountability. One plausible route to eliciting this sense of accountability and collective identity lies in returning to the victim's observation that the agents of their suffering share an objectively determinate and highly interdependent way of life." "I claim that if collective harms can be ascribed to social and economic structures, then those harms can also be traced to individual motivations. And it is to these individual motivations that we can appeal in

[406] Ibid., 104; 107; 139 [his emphasis]; 140-141.
[407] Ibid., 157.

constructing a motivating sense of accountability."[408] Kutz then invokes the idea of a *common venture* and links it to the other basis of accountability, which is *symbolic* (or character-based) accountability.[409] At this point it sounds like we are getting close to something like the state, as one type of social group that functions in this way.

Kutz's discussion here seems to echo MacIntyre's somewhat, and it does seem as if the state could potentially be the sort of institutionalized social group that one engages with through 'quasi-participatory' intentions, and through which the individual may derive elements of her identity and character. On Kutz's account it could be that the individual US citizen should acknowledge some personal accountability as one who stands in certain relations to the actions of others in that organization. However, he does say that the symbolic demands placed upon a person through mere membership, or through some benefit received through relations with those who directly act, are not moral demands, strictly speaking. He actually compares them to Karl Jaspers's idea of *metaphysical guilt*. Metaphysical guilt is a sort of responsibility to self-evaluate and reflect on one's identity and associations. Larry May calls such a view a *social existentialist* account of community-based responsibility.[410] Kutz, while laying out his view in an earlier discussion, says, "Because of my identification with a group, whether voluntarily or involuntary, I bear a special reparative relationship to a harm committed by a member of that group, though I do not imagine myself to be a wrongdoer or feel disgraced by the wrong."[411] Directly after this he discusses the idea of *counterfactual wrongdoing*, where one does not commit wrong, but she associates herself with the wrongdoers and feels that it could have just as well been her under other circumstances. Kutz then mentions benefits of membership and says, "The problem of the

[408] Ibid., 187-188.
[409] Ibid., 190.
[410] Larry May, "Metaphysical Guilt and Moral Taint," *Collective Responsibility*, ed. (Maryland: Rowman & Littlefield, 1991, 239-254), 239.
[411] Kutz, *Complicity*, 44.

origins of benefits, for example, provides a commonplace example of counterfactual wrongdoing. Benefit accountability is at issue when someone accepts or receives a benefit with whose origins a wrongdoing is associated."[412]

So, does Kutz's full view imply that all members of the state could meet conditions of accountability, in which case it would be appropriate to assign liability or a moral or legal kind to the state? Although it looks this way at times, taken as a whole Kutz's view does not seem to imply this. This is, first of all, because the kind of metaphysical responsibility that Jaspers is talking about is different from the sort of retrospective responsibility or liability that is at issue here. We are looking more specifically at accounts of responsibility built from agency, and so warranting sanctions of one form or another. Responsibilities to introspect, take initiative within one's community, or repair some harm done are not of the retrospective kind. Second, Kutz also at times says things that seem to put him clearly in line with the liberal individualism at the heart of this project. For example, he says, "Accepting a benefit from a tainted source manifests a certain trait: *willingness* to be associated with moral compromises. Or, put slightly differently, *acceptance* transforms the agent's identity by creating an affiliation with the harm."[413] His example is of someone taking a fellowship that she is aware comes from an immoral source. In such a case the agent clearly makes a choice to receive such a benefit, so it is not analogous to a case of state-specific benefits (however we wish to understand those). A case of choice and acceptance looks unproblematic, but forced benefit is another issue. Kutz does not address it, but it does not appear that his view would imply collective accountability for unavoidable benefits incurred through involuntary membership. And he does say that he doubts whether any plausible moral view could demand 'outcome-independent self-sacrifice'. That is, he questions whether

[412] Ibid., 45.
[413] Ibid., 45-46 [my emphasis].

one who does not contribute to an outcome (even just through bare overlap in participatory intentionality) could legitimately be held liable for it. Though Kutz recognizes that individuals may put community-based responsibility on themselves, it is not a sort of moral accountability that would imply attributability, blameworthiness, or liability. In short, it does not appear that Kutz's view would entail that a citizen is liable, unless other conditions are satisfied.

§3 – PARTICIPATORY INTENTIONALITY IN THE STATE

It looks, then, that as Kutz has developed his view it would specify a basis upon which complex institutional action can be understood on an individualist framework that enables the predication of the collective result to minimally intentionally participating members, but that avoids extending the scope of this judgment to all members. Still, there are a few cases that call this view into question when applied to the state. Consideration of these possibilities should lead us to restrict the notion of *overlap* in intentionality for involuntary and highly stratified groups. Though it is beyond the scope of this project to specify the exact limits of the overlap in intentionality required for inclusion in collective accountability for state actions, we can at least discuss some general features of the notion. We need to account for the origin of the individual's membership in the group and of the scope of relevant organizations and institutions in a given state action, as these affect the individual's positional roles in the state, her specific intentions, and so ultimately her participatory liability.

§3.1 – The Ignorant Voter

Consider the case of *the ignorant voter*. Imagine that voter *V* votes for a candidate *C* who works to direct state policy toward aggressive war and is a candidate who must be elected if party *P* is going to have enough votes to enact war policy. Add to this, though, that *V* does not know that *C* favors war, nor should (or could) she know. We might imagine that *C* has run on a

peace platform and that *V* has every reason to believe *C* is honest (other than the fact that *C* is a politician). Now, it is certainly the case that *V* intentionally participated in a state process that decides who collectively decides state policy. And it is true that *V*'s contribution was directed at electing *C*, who was then part of a collective action to enact war policy, and so part of the collective that carried out the war. *V* seems to be a part of that collective action as well, on Kutz's account, but the question is whether *V* can be held accountable in such a case. In one sense, *V* acted intentionally to produce the end of *C* winning the election, and so *V* shares an end with other people who voted for *C*, and she also shares an end with *C* who wanted to be elected so that she could bring the state to war. *V*'s ends overlap with the rest of the set of persons who contribute to the end of war and there is a 'nonempty intersection' of the sets of circumstances that would satisfy these various ends. Yet, *V* is in a unique position as a voter in the state. She did not elect to join the state and so her act of voting, although participation in the state, could just as well be her exercise of her small political power in order to do what little she can to prevent some worse outcome if some other candidate is elected. If *V*'s purpose in voting is to minimize harm, and yet her action of voting puts her in a position of *thin* intentional participation, then she may be included in the collective responsible for that war, which suggests that Kutz's principle is too inclusive with respect to involuntary groups like the state.

As developed, Kutz's principle is better suited for voluntary social groups that one might choose to become a part of or align herself with, because abstention from the group altogether is a real possibility. If an individual joins a union and intentionally participates in a voting process, then we have adequate grounds to relate her intentional participation with the eventual outcome of the decision of the vote. She decided to join the union and be bound by its dictates. Her participation in the vote, or her particular vote, does not matter with respect to her inclusion in a

collective judgment because she exhibits participatory intentionality. Yet, when one finds herself the involuntary subject of the dictates of others with political power, the act of voting may have a different character entirely. Under such conditions, the act of voting, although participatory and intentional, should be considered too weak to ground liability if the voter did not intend for her vote to contribute to some further outcome that is objectionable, and especially if the voter participated in order to prevent that outcome. The sort of bare participatory intentions that Kutz appeals to may inadvertently lump in participants who could not disassociate and who may have even attempted to discharge a supposed positive duty to attempt to prevent wrongdoing. With cases of voluntary membership in a structured group the substance of the vote does not matter at the level of liability because we are not making a moral judgment of the individual's character or will, and we can at least appeal to an act of joining or staying a member to ground the liability. However, with respect to involuntary groups the substance of the vote matters a great deal, since simple membership is not enough to ground liability, and mere participation in the vote does not show anything of normative significance that goes beyond membership.

§3.2 – The Far-Removed Bureaucrat

In addition to the involuntary nature of membership in the state, we should also give consideration to the size, scope, and institutional complexity of the modern state. It looks to be quite possible that one could take a position somewhere within the state's apparatus, but never really align her will with a host of other state functions performed by other state agents or offices. There will tend to be many agencies, departments, or bureaus within the state that are far-removed from international actions of the state that might garner normative liability. Yet, insofar as the individuals occupy roles in the official state apparatus, and do so on the basis of participatory intentions, they appear to satisfy Kutz's complicity principle.

The case of the less significant, or marginal, state official looks quite similar in this regard to the case of the low-level worker in the firm, or like Kutz's example of an engineer and a shipping clerk that both work for a company that manufactures landmines.[414] The engineer has reason to believe, but does not know, that the control modules he helps produce are used by his employer to make landmines (the use of which is presumably immoral). The engineer performs acts related to the achievement of a collective end and displays intentional participation. Under some description this is obviously true, such as if we say, "The engineer intends to do his part to produce control modules." Under other descriptions his intention is not directly related to the end result, but his accountability can be determined according to the overlap. If we instead describe his intention (and end) as, "The engineer intends to do his part to produce and sell landmines," then this claim will be false. Still, the engineer's accountability, on Kutz's view, is determined by how he conceives of his action. "The engineer need not know of or intend [the sale of landmines], much less the inevitably resulting civilian casualties. But since he may be regarded as a collective actor just so long as he conceives his actions as a means, his is inclusively accountable for the consequences of the collective act to which he in fact contributes."[415]

Immediately following this discussion Kutz talks about varying shares or strengths of accountability, and he makes logical space for a gradation based on one's positional role and contributory effect. He then contrasts the engineer's accountability with a shipping clerk who works for the same company.

> The engineer's functional role is significant, not just in the thin, metaphysical sense of providing a necessary contribution to the collective end, but as involving considerable thought, reflection, and adjustment in its execution. The engineer's will pervades the collective act, for in order to explain the (collective) development and production of the mines, we must cite at many points his exercise of skill and judgment. Contrast the engineer with a shipping clerk, indiscriminately sending out blenders to Singapore and

[414] Kutz, *Complicity*, 156-157. The discussion directly below closely follows Kutz's.
[415] Ibid., 157.

> landmines to Cambodia; he may also play a necessary role in the collective act. The shipping clerk's participatory role indeed will ground some form of consequential accountability, but it would be mindless to treat him in the same way as someone whose contributions inhabit the collective act more deeply.[416]

Kutz uses two examples of people causally fairly directly connected to the creation and distribution of landmines, but he would be just as comfortable including people who work in the business office, such as a secretary, or even the custodial staff. There are many people in the firm who help facilitate collective ends, one of which, in this particular firm, is producing and selling landmines. So, it is not so much one's causal contribution to that collective end that is important (although that can be enough) but also one's understanding of one's own role in the group. The shipping clerk, the janitor, and the receptionist still intentionally participate in their roles, and see themselves as part of the collective that is referred to by the name of the company. Kutz distinguishes between these employee's *subsidiary intentions* to do their jobs for the company, and the *executive intentions* of those in the collective who direct collective policy.[417] The vice president in Kutz's example of the landmine sales, who knows about the company's activities and facilitates them directly, certainly deserves a greater share of accountability than the engineer, shipping clerk, and secretary. In the terminology we have been using here, we might say that the vice president shares in the (attributable) responsibility for the landmine sales, given that this activity is a product of his direct intentionality, whereas the others are only liable for certain repercussions for being a party to that final result.

Consider, though, the case of *the far-removed bureaucrat*. We might take a postal worker or a national park ranger to be an analogous case to a worker in the firm. This would seem to be so because these persons also intentionally participate in the state apparatus, even if they do not intend to contribute to state actions like war. However, these cases actually diverge in important

[416] Ibid., 157-158.
[417] Ibid., 160.

ways from the engineer, the shipping clerk, and even the secretary, and this must be taken into account. First, let us note that, again, much depends on how we describe these cases, which collectives we ascribe actions to, and what intentions we attribute to which agents. On Kutz's view, if we think of an action like war as being the state's action, then anyone who intentionally participates in that 'the state' apparatus would be complicitous. But this would be a mistake. Even when 'the state' refers only to official institutions and organizations of the state, and not to the entire society as well, it is still inaccurate to ascribe an action like war to that whole system. The state is not like a business corporation in certain crucial respects, including the fact that 'it' does not have a single overarching end, such as profit or the company's mission statement. Apple and Google (and many other large transnational corporations) make for good examples of a diversified collective engaged in many different projects. It is certainly the case that two people working for Google could be (are) contributing to very different projects for the company, and yet we could still hold them both accountable as a part of some immoral action committed by members of some other department in Google. This is because Google, as a whole, functions around a core set of ends that all persons working for Google align themselves with when they join the company. And this is true regardless of their reasons for joining or their particular function in the company.[418] We must contrast the overall unification of Google's ends with the case of the state as an organization. The person who volunteers to carry the mail intentionally joins the bureaucracy, but she does not align herself to some further purposes of the state in the same manner as one who takes a job with a manufacturer of landmines. The park ranger intends to act as steward over a piece of the parks system, not to more generally help further some other ends of the state. Neither of these individuals conceived of themselves as taking a job with 'the state' (we may suppose), they intended to take a job with the postal service and the parks

[418] One's share in accountability will depend on these other facts, but not one's complicitous participation itself.

department, respectively. And even if they did see themselves as joining with 'the state', their intentions look to be at least limited to the domestic sphere. They are acting as public servants, and focusing their functions on domestic issues. It is a stretch to link them thereby to the actions of other agencies of government that deal with foreign policy.

It might be responded that the engineer only took his job in order to design electronic systems and make a living, the shipping clerk to ship packages and collect a paycheck, and the secretary to perform her duties to earn her pay as well, so narrow intention is no excuse. However, the connection between working for, say, the postal service and so contributing to the state is quite different from working for the shipping department of a corporation. In the latter case, the individual must understand her function as contributing to the larger efforts of the corporation. Her function in the corporate apparatus clearly contributes to the overall functioning of the whole system. Whether she designs electronics for the company or manages the distribution of packages, she helps carry out the company's ends. The postal worker's function is not of this sort with respect to the state. The postal worker is not a contributor to the whole state apparatus and a necessary component of its systemic functioning.[419] Managing a physical mail system has no essential connection to war, for example, which is another end that might be pursued through the state. Now, it is true that physical delivery of mail within a corporation is also arguably not essentially connected to higher aims of the business, such as selling landmines, but in the corporation the employee must identify as a part of *that* corporate structure. The postal worker, on the other hand, need not identify as furthering the ends of the state in particular. The postal worker must only understand herself to be furthering the ends of the state's postal system.

[419] This is particularly true in the case of physical mail delivery given modern developments in electronic communication, but contingencies should not affect this point. The general position defended is that certain subsets of larger wholes do not even stand in a *teleological* relationship to one another, in addition to them being causally unrelated. In such cases we infer too much when we link people in unrelated subsets to the actions of others.

She may be accountable along with others in the postal system if some wrong results from the usual workings of that system itself, but to go further and connect all postal workers to all other actions ascribed to the state is to go too far. That is, the conditions for participatory intentionality have to be limited so as to avoid this result.

Another reason to draw this conclusion is that the actionable ends of 'the state' change rather frequently, as compared with certain corporate structures. Whereas a car manufacturer, for instance, will always direct specific policy around the general policy of 'making and selling cars', each new administration in the state may have an impact on the policies that are enacted in the state and so on the actions the state commits. A bureaucrat might take her job during an administration that is committed to peace but stay on during the next administration that is bent on aggressive war. If her function all the while has been delivering the mail, managing the national education system, or planning and budgeting for the national interstate highway system, then her accountability should not depend on the changing views of the person with political power, nor on the actions that other state agencies commit. It might be objected that the state has overarching ends as well, as stated for instance in its constitution, but those ends are not very informative to the individual citizen because they are not very stable with respect to what any particular set of legislators or executives will decide to do in response to contingencies. A prospective worker for Ford Motor Company, can be pretty sure she will be involved in the production and sale of cars, whether directly or indirectly. The average bureaucrat cannot know this with respect to the state as a whole. She can only know this to some degree with respect to the agency, department, or bureau she specifically joins.

A more analogous corporate case to the postal worker case would be one where an individual works for a subsidiary of some larger corporation. Though a subsidiary might have

financial obligations in relation to the obligations of its parent company, it would generally not be correct to hold members of the subsidiary accountable in the same way as members of the parent company for the wrongs of the parent company that are not closely associated with the functioning of the subsidiary. Imagine an engineer who works for company *A*, which manufactures generic control modules. Consider whether that engineer is accountable in the same way that Kutz's engineer is accountable if *A* is owned by company *B*, which uses these modules to produce landmines and sells them for use in developing countries. Suppose that the engineer does not know how the control modules are used, or even that *B* owns *A*, and that she cannot reasonably be expected to know this. Can we bring this engineer and the rest of the employees at *A* within the scope of our analysis of the collective action of *B* and so within the scope of *B*'s collective accountability? The answer must be no. There will certainly be higher-level managers and executives in *A* who will know enough and be in control of enough to be properly included in the wrongs of *B*, but the majority of employees at *A* have a narrow intention to participate in the narrow ends of company *A*, which can be described as 'producing and selling control modules'. What happens beyond company *A* is not their business, and they cannot stand normatively liable simply on the basis of intentional participation in *A* (again, assuming they do not and should not know about the eventual results).

The central reason such an inclusive account of liability must be rejected is that it would imply untenable conclusions, such as that almost anyone doing almost anything could be linked to some wrong that occurs much farther down the causal and institutional chain, as long as we allow the case to be described in terms that identify all of the accountable persons as part of some collective and some collective process with some collective end. On the loose basis that low-level workers at subsidiary *A* are connected to the actions of persons at parent company *B*,

we could describe many other tenuous accountability connections between persons holding all sorts of thin relations, which would essentially destroy the legitimacy of the normative system altogether. Participating in some collective at an early and far-removed stage in a long and complex causal process could implicate one in a share of the accountability for the final results of that product, even if the actions leading directly to the results happen to be committed by a set of people wholly unknown to the actors at the beginning of the chain. One could buy a product from a manufacturer that does business with another manufacturer that commits some wrong, for example, and she would be accountable, in part, for that wrong because of her 'participation'. This would effectively institute a kind of universal liability, which is unacceptable, especially on the teleological grounds that these individualist views are based on.

Rather than take that route we should look at each individual's understanding of her role and of the collective in which she is a part, and consider what she can reasonably be expected to know about the quite indirect consequences of her participation. When she is not associated directly with the primary offenders, her specific intentions (not just her participatory intentions) and her conception of her own actions become essential to our judgment. And if we still insist that some form of responsibility befall such a person, because she is after all still somewhat causally connected, we can also insist that an individual in the position of a worker in company *A* should remove herself from that company if she becomes aware that her involvement can be traced to some wrongful outcome. To say that members of *A* are responsible to remove themselves from *A* if they become aware of what they are indirectly involved in is not the same as assigning retrospective accountability for the results of *B*'s actions. Although, this obligation to disassociate also implies retrospective liability when it is not upheld, so if a worker in

company *A* comes to realize that *A*'s business is integral to *B*'s business, which is itself integral to the immoral use of landmines, and she does not disassociate, then she may be liable.

With regard to the postal worker and the park ranger, *et cetera*, we should treat them similarly to the subsidiary worker. They elect to join what is effectively a subsidiary of 'the state', but they do not thereby necessarily join that larger enterprise, and they do not necessarily thereby have to identify with its other functions and stand accountable for the rest of what it does. It might be objected that the individual bureaucrat should know when taking her position that she is employed by the state, paid by taxpayer money, and that the actions of that organization very well might include war. This might be thought to imply that she has aligned herself with these consequences just as if she had taken a job with a company that might not do wrong immediately but eventually does. However, it is a mistake to consider this person a participant in 'the state' at all. The state, as an abstraction, is simply defined to encompass all of the various branches of the one whole structure or system that we wish to distinguish from other such systems. The state will of course always encapsulate all of its various agencies. With respect to individual complicitous accountability, though, we must focus instead on the particular agencies, departments, and bureaus, including those that are most directly involved in the commission of whatever acts are in question, as well as those that support them. The analysis must be done at the sub-state level in the state so as to not bring innocents into the judgment. Again, as has been the theme throughout, the unique nature of the state forces us to rethink principles that are otherwise plausible with respect to other social groups.

§4 – LESSONS FOR STATE ANALYSIS

In cases where collective participation is indirect – that is, when the individual participates in a collective that is at least one step removed from the workings of some other

collective that acts in certain ways – much will depend on that individual's conception of who she is associating with, as well as what we can expect her to know about the larger ramifications of her contributions within the collectives she is immediately associated. The dense interconnectivity between much human action makes being a mere piece of some *describable* causal chain leading to some outcome insufficient to ground accountability. Much depends on the other agency that affects that causal chain along the way, especially when that other agency affects the chain more directly, more forcefully, or at a stage in the chain very close to the final result.[420] Much also depends on which groups one is associated with, and what one can be expected to know about consequences that are quite far-removed from her specific functions.

The above considerations are informative with respect to analyzing state action. In cases where membership in the group that the action is assigned to is involuntary, as well as when participatory intentions that link one with some subset of the group are not clearly a link to the behavior of the whole, we will have to consider individual beliefs and intentionality more closely. The state is an especially significant case of this type. The expansive (mind-bogglingly expansive) extent of state functions, conducted through various agencies, departments, and bureaus, covers a vast array of ends. Some of these ends are closely connected, and some are almost entirely unconnected, expect through their sharing space on the list of the functions of state agencies. When we are reviewing some purported action of the state, we should first determine which agencies of the state are most directly relevant to that action. This means potentially going far down into the institutional complex to identify the smallest collective unit first, consisting of those who intentionally participated in carrying out the end itself or some part of that end that would knowingly contribute to the final result. This will tend to be those who are

[420] Such considerations are vital in determining criminal liability. See for example, H.L.A. Hart and A.M. Honoré, *Causation in the Law* (Oxford: Clarendon Press, 1985), in particular, 68-83.

most closely causally connected to the result in question. From here the broad measure of complicitous accountability can be extended to others who intentionally participate in relevant collectives, those who encourage or enable the overall result in certain ways, and those who hold positions of authority that entail vicarious liability for those who directly committed the acts producing the result.[421]

Let us look again at the case of war to help clarify. The primary responsible parties for a war will be those persons in the legislative and executive branches that decided on war policy and the members of the military that carried it out. Beyond them, we can attribute the end of carrying out the war also to certain collectives involved, as Kutz's view would imply. So, for example, the entire legislature and the executive branch as a whole can be accountable because all members agreed to join, agreed to abide by the collective decision procedure, and many will have intentionally contributed to enacting the war policy. Even if only certain army brigades or companies carry out the war, all members of the army will be accountable. We may even be able to extend accountability to the entire military, insofar as all members intentionally participate in the institutions of war-making. There is a direct teleological link to the organizations they join and the result of armed conflict. This should be contrasted with a postal worker, who becomes part of the state bureaucracy, but who does not join a part of it that has any relation to the function of war. It should also be contrasted with the case of a National Guard member in the US. The teleology of the National Guard in the US is, for the most part, to protect the domestic territory in a defensive manner. This is a war-like purpose, but not one that can be outwardly aggressive. If one signs up for the National Guard, it seems that this is insufficient to align her with the ends of waging war internationally. Intentionally participating as a part of a defensive

[421] On authority responsibility see: Seumas Miller, *Social Action*, 240-241.

collective, much like intentionally participating to deliver the mail, does not imply that one is complicitous for the war-making of others.[422]

Members of other agencies related to the end of war may be accountable as well. For instance, members of 'intelligence' agencies are integral to global politics, espionage, surveillance, government subversion, and sometimes assassination. Furthermore, the individuals who join these agencies are (or should be) aware of what kind of activities they engage in, and so they should stand accountable when members of those agencies act in wrongful ways, or when members of related agencies act in wrongful ways. Other supporting agencies are complicitous as well; for example, persons who work for the state's other war-related offices, such as persons who staff the Pentagon in the US. Other war-related government contractors, logistical contractors, surveillance contractors, analytical contractors, *et cetera* are also complicitous for their part in the war. We can identify the companies that fill these roles and then implicate all members of those companies who are aware (or should be aware) that the organizations they work for facilitate war (particularly aggressive war). An individual who joins a company unaware that it will later be contracted to carry out some function in an aggressive war may only be responsible to disassociate from that company once she knows this, but only when failure to disassociate occurs should she be liable.

Lastly, as in the first case of the voter mentioned above, individual citizens in the state can also share in the liability for a state action like war. This will not be due to their simple membership in the state collective, or in the collective 'society' that underlies the state, because

[422] The fact that National Guard members were sent to Iraq during the most recent invasion provides a tricky case. On the one hand these individuals did not intend to align themselves with aggressive war. On the other hand, some of them engaged in it directly insofar as they were made to carry out war operations there. It seems that such a case requires that we allow that persons who were forced (because to refuse could result in a court-martial and potentially jail) to participate in that war have an excuse if they did not personally contribute to more direct wrongdoing. These individuals are more like draftees than voluntary soldiers. There is an almost complete lack of meaningful participatory intention when the individual thinks that she is participating in something else entirely.

that membership tends to be involuntary.[423] This will be because they intentionally participate in certain activities, other relevant collectives, or because they attempt to carry out or help facilitate the war. A voter who votes for a candidate for office who is knowingly hawkish intentionally contributes to a pro-war policy in the state. This is especially true if the voter has the war as an end herself and intentionally votes so as to help make it happen, as well as if the candidate runs for office on a pro-war platform and the citizen should known about this when voting. A citizen who writes her congressperson to demand war, a pro-war protestor, and members of the state who express pro-war attitudes in their daily lives may also be included. Public opinion may not always play a vital role in shaping state policy, but some minimal level of public support is always necessary for the state policy to be enacted and carried through, so it is of relevance to what the state does.[424] Thus, when an individual aligns herself publicly with some state policy she contributes to the public discourse on that issue and has an affect on others' views in the process.[425] This can be considered an intentionally participatory act, and she can be properly included in the set of those liable for the war because of it.

We should keep the cases above separate from other cases of citizen involvement that do not include intentions that might align the individual with the collective end. The voter who is excusably or justifiably unaware of what the candidate will do when in office, or the voter who votes for the candidate who runs on an anti-war policy only to find out the candidate was lying, stands in a wholly different sort of position to the war than the voter who votes with the intention of producing it. Other members who strongly identify as a part of the 'we' of the state, and who

[423] And even when it is voluntary in the sense that an individual immigrates to that state, it is still a decision made from a quite limited range of options, and a range lacking the option of no state affiliation at all.
[424] The final end to the Vietnam War seems to be an example of this. Public support for that war was always low, but it reached levels that made it completely unsustainable at some point and was finally brought to a close, albeit far too late.
[425] David Miller and Joel Feinberg may say she contributes to the 'climate of opinion'.

have emotional attachments to their conceptions of their country might express a strong form of solidarity with other members, but their accountability should be based on their intentional actions, and insofar as we presume they have not acted so as to encourage, support, facilitate, or perpetrate the war, they are not accountable. As argued in Part II, Chapters 1 and 3, much of the individual's psychology must remain off limits for the normative assessment of group-specific (rather than agency-specific) accountability, when it is the product of life-long conditioning and the lack of obvious or rationally compelling alternatives. The kind of solidarity that one feels with her country of origin is of this kind. Since it does not relate to the individual's will or real choice, it does not serve as a defensible grounding for complicitous accountability without contributory action.

With respect to statements of accountability much depends on statements of intentionality. And with statements of intentionality, much depends on how we describe the circumstances.[426] There are many cases where a state member may exhibit what could be described as intentional participation on Kutz's account, but where the participation is too thin to be a plausible justification for accountability, even on a broad account of bare intentionality. In Kutz's cases the relevant factor in complicitous accountability is not that the agent participated in any way with some collective that commits some wrong. It is not as if a delivery boy who brings sandwiches to the company that produces landmines is intentionally participating in that collective because he exhibits bare intentionality related to continuing the work of that company when he delivers them food. The point is that the individuals who are complicitous joined onto that collective and participated as *part of it*. In the same way, the citizen who engages with some state institutions, and even one who joins the ranks of the state apparatus as an employee in some branch, agency, department, or bureau, has not yet satisfied the level or type of intentionality

[426] French, *Collective and Corporate Responsibility*, 39-40; Kutz, *Complicity*, 95, 157.

required for inclusive collective accountability in an involuntary and highly stratified group. Under such conditions, those that are rightly subsumed in the collective judgment are those that have acted intentionally in relation to the specific wrongful end in question.

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