



## Faculty Research Working Papers Series

### **Forcing a People to Be Free**

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## FORCING A PEOPLE TO BE FREE

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Is forcing a people to be free possible, and if so, is it ever morally permissible? The question cries out for clarification: What is it to be a *people*? What is it for a people to be *forced*? And what is it for a people to be *free*? As with so many questions in political philosophy, the hardest task here is to ask the right one, so I will spend most of my time specifying and clarifying what I am asking. When the question is well-posed, it will almost answer itself—or so I hope.

I.

The question in some form is very much on our minds, provoked by the war in Iraq and one of its stated justifications: freeing the Iraqi people from tyranny. When “Operation Iraqi Freedom,” as the war was called, began, President George W. Bush announced, “Our mission is clear: to disarm Iraq of weapons of mass destruction, to end Saddam Hussein’s support for terrorism, and to free the Iraqi people.”<sup>2</sup>

Now that it has been established beyond doubt that Iraq had no weapons of mass destruction at the time of the invasion, and now that the White House has acknowledged that there is no evidence at all of a connection between the September 11 terrorist attacks and Saddam’s regime, the freedom argument must

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<sup>2</sup> March 22, 2003 radio address.

bear all the weight of justification for both the invasion and the extended occupation that has followed. The Bush Administration's case for war initially had three legs. Can it stand on one alone? And if "to free the Iraqi people" is a good enough reason to permit the forceful occupation of Iraq, in what way does the Iraqi people have to be free before such permission runs out?

To be clear, I am not asking about the motives or intentions of the president and his advisors, but about right reasons. There are sound theoretical grounds for holding that the rightness and wrongness of actions (in contrast with the goodness and badness of actors) does not ordinarily turn on motives. But even if this is not so, the project of political ethics, in the first instance, is forward-looking and first-personal: the primary question is what should we as political actors do, and only secondarily how should we evaluate the actions of others. Insofar as we are asking the first-personal question, we are asking what reasons rightly govern our actions, not what motives cause our behavior. To put it another way: what should we who in asking this question already are moved (or want to be moved) to do what is right, do next time the opportunity to force a people to be free arises?

Nor am I asking about the means that were employed to defeat Saddam and are currently employed to occupy Iraq and suppress opposition. From the negligent failure to prevent the looting of Baghdad to the sickening abuses of detainees in Abu Ghraib prison, U.S. forces have much to answer for. The overall conduct of and any particular incident in the war and its aftermath may fail the appropriate criteria for *jus in bello*, justice in war. Though crucial to an overall moral assessment of the war in Iraq, I set them aside in this discussion. My sole concern is the claim that forcing a people to be free can, under some conditions, satisfy the criteria for *jus ad bellum*, justice of war.

To make a related but different distinction, there are first-order moral considerations that matter to the justification of any war, what might be called the substantive merits of the case: how much death, destruction and misery will be inflicted on their soldiers and ours, their civilians and ours, for what purpose

and for whose benefit, for how long and at what cost and with what prospects of success? Then there are second-order moral considerations concerning who is to decide upon the first-order judgments: is the target government morally immune from intervention in this way for these reasons by virtue of the moral legitimacy of its rule? Does this candidate intervenor or some other candidate intervenor have the legitimacy to intervene in this way for these reasons? I will focus primarily on the first of these second-order questions—the legitimacy and consequent moral immunity of targets—rather than the legitimacy and the consequent moral powers, privileges, and duties of intervenors.

So I set aside as well the important question of who, if anyone, can and may force a people to be free. There may be good reason to conclude that an ad hoc coalition of the United States, Britain and thirty-two other countries (from Italy's three thousand troops to the no doubt brave twenty-four man Moldovan fighting force) does not have legitimate authority to topple a regime and establish democracy, but some other actor—the United Nations, or a regional treaty organization—does have such authority. My students often adamantly object to military intervention on the grounds that the usual intervenors are too arrogant or too hypocritical to be entrusted with such a mission, but they soften when I propose intervention by the CSSSC—the Coalition of Small Scandinavian States and Canada. My question is whether it is possible and permissible for *any* external actor to force a people to be free, not whether the United States is such an actor.

Finally, I will not here consider whether the forced freedom under investigation currently is lawful under international law or whether it ought to be lawful under international law. Moral principles are discoveries or constructions of reason, not enactments or conventions of political bodies, and sometimes there ought to be a gap between the prescriptions of morality and the prescriptions of institutional rules. Every rule, even when properly followed, will sometimes be

either over-inclusive or under-inclusive with respect to its underlying purpose.<sup>3</sup> And, because rules are not always properly followed, the formulation of the best rule takes into account the consequences of mistaken or manipulative misuse of the rule.

This investigation, then, isolates one claim that has been made in defense of the war in Iraq. If freeing the Iraqi people indeed is the only remaining ground for the war, then establishing the possibility and permissibility of such forced freedom by some actor under some conditions is necessary to justify the war. Clearly, however, the success of this claim is not sufficient. One might be tempted to complain about the narrowness and irrelevance of this exploration in light of the larger moral and political issues that the U.S. invasion and occupation have raised, and criticize philosophical fiddling while Fallujah burns. But, following Montaigne, I make no apologies for making distinctions. “Should we not dare say of a thief that he has a fine leg? And if she is a whore, must she also necessarily have bad breath?”<sup>4</sup> If the current (mis)adventure in Iraq either is or turns out to be a moral disaster, we will not know if this is a necessary or contingent conclusion without such distinctions. The stakes are high: unwarranted generalizations about failures in Somalia played a part in the shameful neglect of Rwanda. When errors of both omission and commission might be catastrophic, we need more fine-grained distinctions, not fewer.

## II.

Massive, lethal force has been employed in Iraq, though accurate numbers of Iraqi combatant and noncombatant casualties are hard to come by. “We don’t do body counts,” said General Tommy Franks. Estimates of fatalities among Iraqi army regulars in the early phase of the war range from four to ten thousand. There are no good estimates on the number of combatant fatalities among Iraqi

<sup>3</sup> Frederick Schauer, *Playing by the Rules* (Oxford: Clarendon Press, 1991), pp. 31-34.

<sup>4</sup> Michel de Montaigne, “Of husbanding your will” (1585-88), in *The Complete Essays of Montaigne*, Donald M. Frame, trans. (Stanford: Stanford University Press), 1958.

insurgents. One anti-war organization, Iraq Body Count, has been listing and compiling civilian deaths due to the invasion, occupation and the insurgency that have reported by at least two news sources. By the close of 2005, its count ranged from twenty-seven thousand to thirty-one thousand.<sup>5</sup> The numbers of coalition fatalities are firmer: over twenty-three hundred military deaths through the same date. The total number of violent deaths in all categories surely surpasses thirty thousand, and may be considerably higher.

Force understood as violence, however, is not my central concern. For even if Albus Dumbledore, headmaster of the Hogwarts School of Witchcraft and Wizardry, could have waved his wand and magically replaced Saddam and the Republican Guard with Paul Bremer and an occupation force of 150,000 coalition troops without a single shot or drop of blood, our question about forced freedom would still stand. Our concern is about coercion, whether or not violence is employed. Is it possible to *coerce* a people to be free, to free a people against its will?

Of course, one of the Bush Administration's main responses to the objection that the invasion was forced upon the Iraqis is to claim that the Iraqis under the appropriate counterfactual would have welcomed the invasion, and so were not coerced. Before the invasion, Deputy Secretary of Defense Paul Wolfowitz was sure that the attack would be supported, if only there were some mechanism of showing support:

If the Iraqi people were free to demonstrate they would be on the streets in the millions now saying "why didn't you come sooner? Don't make us wait any longer." I don't think there's any question where the feelings of the Iraqi people are.<sup>6</sup>

<sup>5</sup> [www.iraqbodycount.net](http://www.iraqbodycount.net).

<sup>6</sup> BBC, Feb 19, 2003.

Posing a slightly different hypothetical, he also said, "I'm absolutely sure that if you could take a free poll among Iraqis, they would say .... Please come; please do the job, and do it quickly."<sup>7</sup>

We don't know what Iraqis would have said to pollsters before the war. Asking the question requires a careful posing of the counterfactual. We safely can guess how Iraqis would have answered an actual poll had they faced the prospect of immediate torture for answering, but that of course is not the counterfactual Wolfowitz has in mind. But, if the aim is to justify the invasion by appeal to implicit but actual consent, neither can the right counterfactual be "How would Iraqis answer a poll had they not had their political views shaped by decades of tyranny?"

Fortunately, we don't have to guess what Iraqis would have said, because we know what they *did* say after the invasion and continue to say. The one indisputably enduring contribution of Western democracy to Iraq is the public opinion poll, and, unfortunately for Wolfowitz, there *is* a question about where the feelings of the Iraqi people are. One fortuitously-timed poll was conducted in February 2004, right before the outbreak of hostilities in Fallujah and Najaf that marked the beginning of the organized insurgency, and before the Abu Ghraib revelations.<sup>8</sup> The results showed that support for the invasion and occupation was then mixed. When asked about whether the invasion by U.S.-led forces was right or wrong, 48% answered absolutely or somewhat right, and 39% answered absolutely or somewhat wrong.<sup>9</sup> When broken down by ethnicity, 87% of the Kurds viewed the invasion as right, but only 40% of the remaining Arabs. When asked about support for coalition forces, only 39% of Iraqis strongly or

<sup>7</sup> ITV London, Feb 17, 2003.

<sup>8</sup> Oxford Research International poll commissioned by ABC and BBC, conducted February 9 to 28, 2004.

<sup>9</sup> The most recent Oxford Research International figures, from a poll released in December 2005 right before the parliamentary elections, are 46% absolutely or somewhat right, and 50% absolutely or somewhat wrong.

somewhat supported, while 51% strongly or somewhat opposed.<sup>10</sup> The coalition was opposed by 72% of Sunni Arabs, 54% of Shia Arabs, and 12% of Kurds. It is fairly safe to say that, if Iraq were California, Paul Bremer would not have survived a recall vote.

Iraq, however, is not California, and Iraqis were split about whether they wanted to be like California. When asked about the political system they prefer, 49% opted for democracy, but an equal proportion wanted a non-democratic system: 28% wanted a strong leader for life and 21% wanted an Islamic state.<sup>11</sup>

The most intriguing question asked whether the invasion liberated or humiliated Iraq. Of all Iraqis polled, 42% said liberated and 41% said humiliated.<sup>12</sup> In posing this as a forced choice, the pollsters did not allow for what may be both the best answer and the answer that would have been chosen by most Iraqis: that the invasion *both* liberated *and* humiliated Iraq. One of the purposes of this paper is to explore how this might be so.<sup>13</sup>

### III.

Consider an extended passage from an 1859 magazine article that startles our contemporary sensibilities, John Stuart Mill's "A Few Words on Non-Intervention." The main thrust of the piece is to argue against intervention in the civil wars and revolutions of civilized nations, but barbarians are another matter:

<sup>10</sup> The December 2005 figures are 32% strongly or somewhat supportive, and 65% strongly or somewhat opposed.

<sup>11</sup> The December 2005 figures show an increase in support for democracy, with 57% preferring democracy, 26% a strong leader for life, and 14% an Islamic state.

<sup>12</sup> By faction, among Sunnis 21% said liberated and 66% humiliated; among the Shia, 43% said liberated and 37% humiliated; and among the Kurds, 82% said liberated and 11% humiliated.

<sup>13</sup> I do not yet have the Arabic wording of this question. It may be that what is translated as "humiliation" here has connotations that are different from the English senses. I am grateful to Arthur Kuflik for pressing me on this point.

To suppose that the same international customs, and the same rules of international morality, can obtain between one civilized nation and another, and between civilized nations and barbarians, is a grave error ....

In the first place, the rules of ordinary international morality imply reciprocity. But barbarians will not reciprocate. They cannot be depended on for observing any rules. Their minds are not capable of so great an effort, nor their will sufficiently under the influence of distant motives.

In the next place, nations which are still barbarous have not got beyond the period which it is likely to be for their benefit that they should be conquered and held in subjection by foreigners. Independence and nationality, so essential to the due growth and development of a people further advanced in improvement, are generally impediments to theirs. The sacred duties which civilized nations owe to the independence and nationality of each other, are not binding towards those whom nationality and independence are either a certain evil, or at best a questionable good....

To characterize any conduct whatever towards a barbarous people as a violation of the law of nations, only shows that he who so speaks has never considered the subject. A violation of great principles of morality it may easily be; but barbarians have no rights as a *nation*, except a right to such treatment as may, at the earliest possible period, fit them for becoming one. The only moral laws for the relation between a civilized and a barbarous government, are the universal rules of morality between man and man.<sup>14</sup>

<sup>14</sup> John Stuart Mill, "A Few Words on Non-Intervention" (1859), in *Collected Works of John Stuart Mill: Essays on Equality, Law, and Education*, vol. XXI, John M. Robson, ed. (Toronto: University of Toronto Press, 1984), pp. 118-19, henceforth "Non-Intervention."

Mill wrote this the very same year that he published *On Liberty*, which remains just about the most uncompromising rejection of paternalism ever written. *On Liberty* argues for toleration of Mormon polygamy in the Utah Territory, though Mill views the practice as a “direct infraction” of the principle of liberty, “a mere riveting of the chains of one half of the community,”<sup>15</sup> and a “retrograde step in civilization.”<sup>16</sup> Still, Mill holds,

I am not aware that any community has a right to force another to be civilised. So long as the sufferers by the bad law do not invoke assistance from other communities, I cannot admit that persons entirely unconnected with them ought to step in and require that a condition of things with which all who are directly interested appear to be satisfied, should be put an end to because it is a scandal to persons some thousands of miles distant, who have no part or concern in it.<sup>17</sup>

Yet in the well-known introduction to *On Liberty*, Mill limits the application of the principle of the individual’s sovereignty over body and mind to “human beings in the maturity of their faculties,” to the exclusion of children and backward states of society, which he likens to children:

We may leave out of consideration those backward states of society in which the race itself may be considered in its nonage. The early difficulties in the way of spontaneous progress are so great, that there is seldom any choice of the means for overcoming them; and a ruler full of the spirit of improvement is warranted in the use of any expedients that will attain an end, perhaps otherwise unattainable. Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justified by actually effecting

<sup>15</sup> John Stuart Mill, *On Liberty* (1859), David Spitz, ed. (New York: W.W. Norton, 1975), ch. 4, p. 85.

<sup>16</sup> *On Liberty*, p. 86.

<sup>17</sup> *On Liberty*, pp. 86.

that end.... But as soon as mankind have attained the capacity of being guided to their own improvement by conviction or persuasion (a period long since reached in all nations with whom we need here concern ourselves) compulsion ... is no longer admissible as a means to their own good ....<sup>18</sup>

How are we to reconcile these three passages? Barbarous nations have no right to independence; yet one community may not force another to be civilized; but barbarians may be ruled by despots full of the spirit of improvement.

There is a ready, uncharitable way to explain these texts: in two of them, Mill is flacking for the East India Company. His family and his country had no financial stake in Salt Lake City. But explanations such as this explain away the need to take a writer's thought seriously. Our concern, as with the Bush Administration, is with reasons, not motives.

There are several ways to reconcile the three passages, though none is entirely satisfactory. The two *On Liberty* texts are consistent with a principle of non-intervention: outsiders may not force the Mormons to be civilized, but an enlightened Mormon despot may. But this does not square with the interventionist text. Perhaps, to permit intervention, Mill requires proximity to "barbarous neighbors,"<sup>19</sup> so that the justified intervenor *does* have "a part or concern" in the uncivilized community. This is how he sets up the Indian case: the native Indian states that bordered the East India Company possessions are the primary illustrations of barbarous nations in "A Few Words on Non-Intervention" (though what the British were doing in the neighborhood of India to begin with is left unexamined). Or, perhaps what permits intervention is the call for assistance from those who suffer from barbarism, a call that is absent in the Mormon case. Rescue of the oppressed, however, does not appear as a reason in the interventionist text. Most likely, Mill simply doesn't consider the

<sup>18</sup> *On Liberty*, p. 11-12.

<sup>19</sup> "Non-Intervention," p. 119.

Mormons sufficiently barbarous, despite their uncivilized practice of polygamy. They have “attained the capacity of being guided to their own improvement by conviction or persuasion,” which immunizes them from coercive interference.

I offer the passages from *On Liberty* to caution that Mill’s considered view on the matter of intervention in the internal affairs of barbarous nations isn’t entirely transparent. Our main interest, however, is in the text of “A Few Words on Non-Intervention” that is so jarring to our ears. What, precisely, is Mill’s mistake?

Instead of *ad hominem* dismissal, let us engage in perhaps overly-charitable reconstruction, and, for every appearance of the quaint (and insulting) term “barbarous,” substitute “tyrannized,” and similarly substitute “democratic” for “civilized.” Now the view (which I confess may no longer be Mill’s) is much less startling: don’t think that the law of nations that applies between democracies also applies between democracies and tyrannies. Tyrannies have no rights as nations, and so no state or government interposes in our moral relations with the persons who live under tyranny. Our duties towards them are direct, governed by “the universal rules of morality between man and man.”

What resists this easy translation are the references to “barbarians.” In places, we can substitute “tyrants,” and the meaning is clear enough. But in places Mill is referring to the individuals who populate a barbarous nation, not its leaders, and to substitute “tyrannized persons” simply won’t do. Does a tyrannized person have a mind that is distinctively defective in the way that Mill supposes the barbarian’s mind is? Here is Mill’s unsalvageable mistake: he thinks that barbarous nations are barbarous because they are composed of barbarians, and barbarians are individuals whose minds are incapable of the great effort of reciprocity and whose wills are insufficiently governed by distant motives. Now, Mill is not claiming genetic inferiority here. Barbarism in Mill is a product of culture, not nature, but the ill effects of barbarous cultures operate through the shaping of the mind of the barbarian. Mill’s account, even after our politically-correct updating, remains insulting, because it supposes that persons who live under tyrants have tyrannized minds and wills that lack the capacity to think the

thoughts and will the ends that persons who live in democracies think and will. This is a sweeping factual claim that needs to be backed up by evidence, not an analytic truth that follows from the meaning of tyranny. It may, for some persons in some tyrannies, be true, but it is not a conclusion Mill or we get for free.

Here, then, is the point of our Millian digression: Mill believes that we may paternalize barbarous nations because we may paternalize barbarians. To force a people to be free is to paternalize a people. Does paternalizing a people entail paternalizing the persons who are members of that people? If so, then justifying the paternalizing of a people depends on justifying the paternalizing of the persons who are members of that people. But the criteria for the justified paternalism of persons are stringent. If those persons are not proper targets of paternalism, then neither is their people. But if it is possible to paternalize a people without paternalizing its constituent members, then the argument for paternalizing a people does not need to meet the objection of individual persons that they are not proper targets of paternalism. It is humiliating to be paternalized (even, as I will soon argue, when the paternalism is justified). But if we can drive a wedge between paternalizing a people and paternalizing persons, perhaps feelings of humiliation are, in one respect, unfounded.

IV.

Consider three ways in which it might be *impossible* to force a people to be free.

**1. Forcing a People to be Free.** The claim is that forcing a people to be free is a conceptual impossibility because if a people is forced, it cannot be free; if free, it cannot be forced. Now, this is true synchronically, unless we entertain the spooky understanding of forced freedom that is often attributed to Rousseau. Rousseau infamously writes “whoever refuses to obey the general will shall be constrained to do so by the entire body; which means only that he will be forced

to be free.”<sup>20</sup> There is some textual evidence in the *Geneva Manuscript* that suggests Rousseau meant nothing quite as frightening as this sounds,<sup>21</sup> but in any case, I have no use here for accounts of higher freedom. What I mean by freedom is a fairly low-to-the-ground external freedom: the absence of coercion, an adequate capacity for choosing ends, and an adequate opportunity set.<sup>22</sup> A people, on this view, is free if, roughly, it is capable of moral agency and has the wherewithal to exercise such agency. But there is nothing incoherent about forced freedom understood diachronically. It is not impossible to force a people in time  $t$  so that it is a free people in time  $t + 1$ , unless one holds to a pedigreed conception of freedom under which any force in the history of a people renders it incapable of freedom in the future. On such a view, there are no free people, because, with the possible exception of Plymouth Plantation in the period immediately following the signing of the “Mayflower Compact,” there has never been a political society of any consequence that was freely constituted.

**2. Forcing a People to be Free.** The second claim of impossibility is empirical, not conceptual: there is no known causal mechanism of regime change that has force as one of its inputs and a free people as an output. Attempts to force a people to be free are futile. When Mill writes about civilized as opposed to barbarian peoples, this is the view that he endorses:

The only test possessing any real value, of a people’s having become fit for popular institutions, is that they, or a sufficient portion of them to prevail in the contest, are willing to brave labour and danger for their liberation.

<sup>20</sup> Jean-Jacques Rousseau, *On The Social Contract* (1762), 1:7, in *On The Social Contract with Geneva Manuscript and Political Economy*, Roger D. Masters, ed. and Judith R. Bush, trans. (New York: St. Martin’s Press, 1978), p. 55.

<sup>21</sup> See Masters & Bush edition, *Social Contract* 1:7, note 37 (p. 138), and *Geneva Manuscript* I:3 (p. 164).

<sup>22</sup> See Arthur Ripstein, “Authority and Coercion,” *Philosophy & Public Affairs* 32:1 (2004), pp. 2-35.

I know all that may be said. I know it may be urged that the virtues of freemen cannot be learnt in the school of slavery, and that if a people are not fit for freedom, to have any chance of becoming so they must first be free. And this would be conclusive, if the intervention recommended would really give them freedom.

But the evil is, that if they have not sufficient love of liberty to be able to wrest it from merely domestic oppressors, the liberty which is bestowed on them by other hands than their own, will have nothing real, nothing permanent. No people ever was and remained free, but because it was determined to be so; because neither its rulers nor any other party in the nation could compel it to be otherwise....

When a people has had the misfortune to be ruled by a government under which the feelings and the virtues needful for maintaining freedom could not develop themselves, it is during an arduous struggle to become free by their own efforts that these feelings and virtues have the best chance of springing up.<sup>23</sup>

There is not much to be said for this view, as it stands. First, note that Mill conflates establishing a free people through force and maintaining a free people through force. It may be historically accurate that no people ever remained free, “but because it was determined to be so,” but it does not follow that no people ever remained free that had its freedom “bestowed upon them by other hands than their own.”

Mill is not simply saying that if you aren't willing to die for freedom then you are not fit for it. If that were the claim, then once a people has shown that they are “willing to brave labour and danger for their liberation,” why require that they brave it alone? Rather, Mill makes the further claim that if you aren't sufficiently willing and skillful to *kill* for your freedom, then you are not fit for it.

<sup>23</sup> “Non-Intervention,” pp. 122-3.

But it is just a contingent matter of good luck that people who are actually capable of living free lives in peace also have the strength and expertise and resources to be able to overthrow various kinds of tyranny and oppression. That such instruments of power are intimately connected with a deep desire for freedom and the capacity to carry forward with freedom just seems to be empirically false. What does operating a printing press have to do with operating a rocket-propelled grenade launcher?

The view also has the implausible implication that, despite the bumper sticker that is on every other Volvo in Cambridge, "Free Tibet" is not possible, for a pacifist society that on principled grounds will not use violence to gain its freedom is incapable of remaining free, should it find itself so. Now, it may be the case that a pacifist society is extremely vulnerable to attack from the outside, but why should we suppose that a free society of principled pacifists is fatally vulnerable from the inside? Mill turns the martial virtues into the preeminent political virtue. I see no reason to accept Mill's (and, later, Arendt's and Walzer's) tendency to identify the violent struggle of revolution and civil war with real political voice. Rather, internal violence, though too often enough morally permitted or even required, is the utter failure of politics. The sound of gunfire is never the voice of the people.

But the strongest retort to the objection that forced freedom necessarily is doomed to failure is that there have been two spectacular successes: Germany and Japan. Many keys have been stroked arguing that the background political culture of Iraq was radically different from those of the pre-war Axis powers, rendering the prospects for success at forcing freedom in Iraq very different. I don't deny the point. My claim is much more modest: the fact of two successes somewhere under some conditions shows that forced freedom is not impossible somewhere else. It must be said as well that differences in prior political culture are not the only moving explanatory parts. I will refrain from saying much about comparing the effort, skill, and commitment brought to bear in Germany and Japan with the current situation in Iraq, except to point out the difference in preparation. The war in Europe was over in April 1945. April was the month

that General George Marshall appointed General John Hilldring to begin training the thousands of military administrators who would govern occupied Germany—but the year was 1943.

Since we know that forcing a people to be free is possible at least under some conditions, we must address the permissibility question. But first, one last try at rendering forced freedom impossible.

**3. Forcing a People to be Free.** On this view, one cannot force *a people* to be free because an unfree people is a contradiction: if a people, it already is free; if forced, it cannot have been a people.

Now, this view seems to employ an extravagantly demanding conception of a people. It implies that an occupied population ceases to be a people, so that there was no French people in occupied France in World War II. For that matter, it implies that there was no French people under Louis XIV, because the French people under an absolute monarchy hardly was free.

Though extravagant, there is something to the claim, which I will soon explore. But for a moment, simply suppose the claim is correct. If we are then to make sense of our original question, it must be recast as a question about *forcing individual persons to become a free people*. Now, even if it turns out that a people can be unfree without contradiction, this formulation of the question is independently interesting, and has the advantage of being answerable. Surely it is conceptually possible to force individuals to become a free people, so we can ask under what conditions is it morally permissible to do so.

What we thought was one question is actually several:

When can and may we force a people to be a free people?

When can and may we force individuals to become a free people?

When can and may we force an individual to be a free person?

The answers will depend, in part, on the correct account of the practice Mill was so opposed to, at least among the civilized: paternalism.

V.

On the standard textbook account of the concept, A paternalizes B when A restricts B's liberty for B's own good. Paternalism is a presumptive moral wrong because the paternalist interferes with an agent's freedom to set and pursue her own ends. If A does not claim that B has an impaired will, but merely that B is mistaken about her ends, then A denies the importance of B's moral agency simply, and so disrespects B. If A claims that B's will is impaired, but is mistaken about this, B has been insulted, and is entitled to be indignant, our characteristic response to being paternalized. It is worth examining exactly why indignation is fitting. By claiming that B is insufficiently capable of choosing or pursuing ends for herself, A is treating B as something less than a full moral agent, a creature with a less dignified status. Unjustified paternalism warrants indignation because it takes a swipe at one's dignity.

But now suppose that A is not mistaken, and B knows that A is not mistaken. A precocious and relatively reflective twelve year old girl wants to pierce her tongue just like all her friends, but her parents say no. In a moment of clarity, she acknowledges to herself that she is not a fully mature and competent agent yet, and acknowledges that she still needs her parents to make decisions for her. This recognition is, in a way, humiliating, because the girl now correctly sees that she is a creature of lower moral status than she had thought. This of course is not to say that she counts for less. Considered as a moral patient, she is no less valuable and her claims on others are no weaker. But considered as a moral agent, she is not fully an end-in-herself, because others do not always have a reason to respect her ends merely because they are hers. Indignation is not called for, since her parents are not failing to recognize her moral status, and have not done anything to lower her status. But the recognition of the truth of her lesser agency nonetheless carries with it a bit of self-inflicted shame. She is, after all, a little less dignified than she thought.

If A paternalizes B when A restricts B's freedom for B's own good, and if the presumptive wrong in paternalism is that A fails to respect B's capacity for choosing ends, then A's paternalistic action is most likely to be justified when the following criteria are met:

- B's freedom already is impaired;
- The good of B at stake is B's future freedom;
- B's retrospective endorsement is likely.

The strongest case for paternalism is when the liberty of someone who has an impaired or immature will is restricted in order to develop in her the capacity to have a competent and mature will, and from that competent and mature perspective she will endorse the prior restrictions. I've just described the condition of childhood and the practice of parenting.<sup>24</sup> If we may not paternalize children, whom may we paternalize? Still, as we have seen, even justified paternalism humiliates. So perhaps the Iraqi people were both liberated and humiliated.

## VI.

Is it then possible to paternalize a people without paternalizing the individual persons that are members of that people? Recall Mill's mistake about the barbarians. Mill held that uncivilized political societies are uncivilized because they are made up of uncivilized persons, persons who have barbarous minds incapable of enlightened thought. These societies can be paternalized because individual persons within them can be paternalized. Perhaps these societies cannot be forced to be free, since they are incapable of freedom; but they may be ruled by force, taken under the protection of a civilized society, until the individuals reach political maturity. Can we avoid Mill's mistake and recognize that individual adult Iraqis are perfectly mature, competent moral agents, but still make the case that the Iraqi *people* lacks the capacity to exercise competent moral agency?

<sup>24</sup> See Tamar Schapiro, "What is a Child?" *Ethics* 109:4 (1999), pp. 715-38.

Let us return to the extravagant claim that there cannot be unfree peoples. Surely this is false if by “people” we mean the social fact of common sentiments, shared language, culture, and religion that lead individuals to form bonds of solidarity and identify as members of a people. As a matter of social science, it is plausible to think that when it comes to peoplehood, collective thinking makes it so. On what I’ll call the *anthropological sense* of peoplehood, of course the French under German occupation and under the reign of Louis XIV are a people.

But peoplehood can also be understood as a normative concept. On the normative view, the anthropological markers of common sentiment and shared cultural material are neither necessary nor sufficient. Rather, what makes for normative peoplehood is the capacity for shared agency. A people in the *normative sense* must be capable of willing as a people.

Now, I want nothing to do with spooky accounts of the general will here. A group agent is not a metaphysical entity. But neither is it a simple aggregation of the preferences of individuals. To be fully capable of shared agency, individuals have to be properly constituted, incorporated, represented, or personated. A natural individual is capable of agency, of willing ends, when there is a unity of the self, the capacity for reflecting on desires and for endorsing some and not others. Without such a capacity, one is what Harry Frankfurt calls a wanton, not a person—a creature that simply follows the vector of his desires.<sup>25</sup> When a collection of individuals has this unity of will and capacity for second-order reflection, it is capable of group action and what comes along with action: the group itself is a proper proximate subject for attribution of responsibility and moral evaluation. (The conditions under which such attribution and evaluation properly distributes to the individual constituent actors is a further question.) Without a shared will, there are only the individual wills of individual persons, which may show statistical regularities, may be coordinated in various ways, and

<sup>25</sup> Harry G. Frankfurt, “Freedom of the Will and the Concept of a Person” (1971), in *The Importance of What We Care About* (Cambridge: Cambridge University Press, 1988), pp. 11-25.

which always result in some vector that is the consequence of individual actions, but none of this makes for shared agency. To use Christine Korsgaard's image, a bag filled with mice will move, but it will not act. This is the difference between the results of a public opinion poll and the results of an election: a public opinion poll is a mere aggregation of individual preferences. An election (when the conditions for its legitimacy are met) is a performative, the action of a shared agent.

A natural individual can fail to be a moral agent in degree, hence the notion of an impaired or incompetent person. Children and those who are demented, mentally ill, or mentally retarded are still persons. Similarly, shared agency can fail in degree. I don't need to deny that the French under German occupation were a normative people. But, understood as a group agent, occupied France was impaired, incapable of effective willing. This can be so, of course, even if every single individual Frenchman had a mature and competent will. Here, I side with Hobbes and Kant against Locke: there can be no legitimate political society prior to legitimate political institutions.

So, here is the truth in the extravagant claim: An aggregation of individuals that does not meet even minimal threshold conditions does not count as a shared agent at all, and so does not count as a normative people at all. Since the conditions for normative peoplehood and anthropological peoplehood may be different, a people in the anthropological sense may fail completely to count as a normative people. The extravagant claim remains extravagant, however, because it does not admit that an aggregation of individuals can meet the minimal threshold conditions for shared agency and so for normative peoplehood, but fail to meet the more demanding conditions for competent and effective shared agency. So not all normative peoples are already free peoples.

## VII.

So far, I have said very little about what these conditions for shared agency are. We need a conception of shared agency to plug in here, but we may disagree about the correct conception, and so disagree about the correct criteria. Here, I

will simply sketch, without argument, the rough beginnings of such a conception. If you don't like it, plug in your own. Only two claims are essential to my overall view: that we cannot do without *some* conception of normative peoplehood, and that, under every morally plausible conception, Iraqis under Saddam Hussein's rule either were incapable of shared agency at all, or else were profoundly impaired as a shared agent. Either there was no Iraqi people, in the normative sense, or the Iraqi people were as compromised as a normative people can be and still have the name.

How does an aggregation of individual "I"s somehow go *POOF!* and become "We," a unified moral agent capable of competent shared action and the proper proximate subject of moral appraisal? Two sorts of answers are needed. One answer should be sufficiently general so that, when we look at aggregations as diverse as marriages, string ensembles, baseball teams, street demonstrations, universities, hospitals, business enterprises, professions, organized crime families, governments, ethnic groups, and political societies, we are able to say which have the capacity for shared agency and which do not. Then we need an answer that is sufficiently specific to the kind of aggregation in question, so that we can specify the necessary and sufficient conditions for success as a shared agent of that kind. Conditions for succeeding at "playing the Mendelssohn octet" may be different than conditions for succeeding at "amending the Constitution."

The kind of shared agency that is of greatest interest to us, of course, is political agency. Political action has profound effects on the freedom and interests of those subject to it because it nearly always involves coercion, often employs force and violence, and seeks to change the normative status of its subjects by imposing duties or liabilities. Because of these high moral stakes, the conditions for successfully constituting a political "We" from a multitude of "I"s are going to have more moral content than what it takes to constitute a string ensemble. For how can a people be *my* people unless, in some way, whoever speaks and acts for the people speaks and acts for me, representing in a morally adequate

way both my will and my basic interests? Not surprisingly, an account of shared political agency is going to look a lot like an account of political legitimacy.

On the conception of political legitimacy that I believe is correct, the test of legitimate government is two-pronged. There needs to be an adequate connection between the governors and the governed, and there needs to be adequate protection of at least basic human rights. At a minimum, legitimacy requires at least those political freedoms and basic protections that are constitutive of or instrumentally necessary for the individual moral agency of the members. *A necessary condition for a free (enough) people is that it be made up of free (enough) persons.* We don't have to get too precise about the thresholds here. Perhaps something less than democracy will satisfy the political freedom prong, and perhaps something less than the full complement of liberal rights will satisfy the human rights prong. But on no plausible normative account of group agency and, therefore, of legitimacy, did Saddam Hussein's regime personify the Iraqi people.

This is not to say that the Iraqi regime was not capable of group agency on its own behalf. The Ba'ath party may have met the necessary and sufficient conditions for constituting a shared agent of its kind, an organized crime family, and so was capable of unified action that made its individual members responsible authors of the regime's actions. But the regime did not personify the Iraqi people.

If Saddam didn't personify the Iraqi people, however, there was no other candidate. If Saddam didn't speak for the Iraqi people, then the Iraqi people was mute, and incapable of competent, unified moral agency—incapable of competent willing. If Paul Wolfowitz were sufficiently determined, he could have conducted his poll, but a poll merely aggregates, it cannot unify. Poll results no more speak for the will of a people than a listing of a person's desires speaks for the will of a person.

So Mill almost has it about right about barbarous peoples. He's just wrong about the barbarians. A people that isn't capable of shared agency is simply an aggregation of individuals who exist in a state of nature with each other and with other peoples. So, he is right that "the only moral laws for those relations are the universal rules of morality between man and man." But, without further argument, such men are presumed to be competent moral agents.

We now can answer the question about the permissibility of paternalizing the Iraqi people. Insofar as the Iraqi people before the war counted as a normative people at all, it was a seriously impaired people, incapable of competent and effective shared agency and self-governance. Insofar as the Iraqi people has a will that was subject to force by the invasion, it was a will whose freedom was not very valuable, and a will that was overborne for the sake of its own future freedom. So, if there was an Iraqi people, in the normative sense, it was a justified object of paternalism. And if there was no Iraqi people in the normative sense, the complaint of a paternalized people does not arise. The invaders were subject only to the "universal rules of morality," standing in relation to each Iraqi as one stands to individuals in a state of nature.

#### VIII.

Individual Iraqis could concede that the Iraqi people has no grounds to complain about being paternalized, but this hardly robs individual Iraqis of moral complaint. They were subject to death and destruction during the war, continue to face grave risks to their personal safety, and are subject to serious restrictions on personal freedom—not, to be sure, worse restrictions than they faced under Saddam, but ordinarily it is no defense against the charge of wrongdoing that one has replaced a worse wrongdoer.

Each can complain that as a mature, competent individual agent it is up to each to decide whether to accept the risks of violence, destruction and upheaval that the invasion, occupation, insurgency and counter-insurgency have brought. The conditions for justified paternalism are by and large not met in the individual

case. We still have not established that it is morally permissible to force individual Iraqis to become a free people.

The best response is to deny that the reason individual Iraqis are forced is for each's own sake, and so deny that the invasion paternalized individual Iraqis. True, each is being forced to constitute a free people, but this is being done for the sake of one's neighbors, or one's children, or one's neighbors' children. To see what would justify this, we turn to Kant.

Unlike his social contract predecessors, who saw leaving the state of nature as the rational or prudent thing to do, Kant held that it was also a duty to do so. Once we interact in a way that might lead to disputes about our rights, we each have a duty to enter into a civil condition, so that we are not judges in our own case. "When you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition."<sup>26</sup> Only in that way do we treat each other with the respect that we are owed. Furthermore, "each may impel the other by force to leave this state and enter into a rightful condition."<sup>27</sup> To secure my rights and yours, I may, and perhaps must, coerce you into meeting the conditions for shared agency. Kant admittedly is silent on whether we can force distant others who don't have a duty to enter into a civil relation with us to enter into one with each other, but it is precisely this extension of the view that would have to be made in order to justify forcing natural persons to constitute a free people. If this extension can be made, then the reply to the Iraqi who complains about being paternalistically forced to constitute a free people is that, though indeed forced, he is not paternalized. Rather, he is being forced to comply with his natural duty to his fellow Iraqis.

<sup>26</sup> Immanuel Kant, *The Doctrine of Right*, sect. 42 (Ak. 307), in *The Metaphysics of Morals*, Mary Gregor, ed. (Cambridge: Cambridge University Press, 1991), p. 121.

<sup>27</sup> *The Doctrine of Right*, sect. 44 (Ak. 312), p. 124.

IX.

I have said a lot about the criteria for entrance, but nothing about the criteria for exit. How free does a people have to be before the intervenor must withdraw? An obvious worry about a claim that the coalition may or must stay in Iraq until it has a well-functioning democracy is that there are precious few well-functioning democracies around the globe. Does the argument for democratic institution-building in Iraq underwrite a frighteningly broad permission to engage in never-ending democratic jihad wherever there are defects in collective will formation?

The worry is misplaced, and would be misplaced even if it turned out that *no* country in the world meets the test of legitimacy. This is because even if there are no governments that are morally immune from intervention by virtue of respect accorded to them in light of the respect due to the subjects they represent, first-order moral considerations will ordinarily forbid intervention, because intervention will do more harm than good, destroy more than build, and inflict misery and danger on innocents that cannot be justified to them.

There are second-order considerations that tell against democratic jihad as well. An advantage of the view presented here is that there is an important asymmetry between conditions for entrance and conditions for exit.

Suppose that, in neighboring Iran, the conditions of normative peoplehood and political legitimacy, though far from ideal, surpass the threshold that immunizes Iran from outside intervention.<sup>28</sup> Or suppose that, in distant Singapore, a benevolent strongman meets the threshold of immunity. And suppose that constituting the Iraqi people along the lines of an Iranian theocracy or along the lines of a Singaporean autocracy is the preferred option in Iraqi public opinion polls, and would also be both quicker and less costly in Iraqi and American blood and treasure to bring about.

<sup>28</sup> There are two separate thresholds at play: minimal normative peoplehood and minimal political legitimacy. A collectivity can count as an impaired normative people but fail to have political legitimacy.

Though preferred by most Iraqis, the coalition need not, and perhaps must not, aim at an Islamic theocracy or a benevolent dictatorship. By assumption, Iran's theocracy is immune from intervention because it adequately constitutes and speaks for the Iranian people, and Singapore's autocratic rule adequately constitutes and speaks for the Singaporean people. But until the Iraqi people is adequately constituted, there is no competent Iraqi will that is owed respect in the way that there is an Iranian will or a Singaporean will that is owed respect. The fact that most Iraqis want a theocracy or a benevolent dictatorship is simply that—a social scientific fact that by itself has no legitimate authority at all. Strange as it may sound to ears that conflate cultural sensitivity with political respect, until the Iraqis are constituted in the normative sense as a free people, nothing is owed to the Iraqi people in the anthropological sense *qua* people.

Much, of course, is owed to individual Iraqis. There are limits to how much each can be asked to sacrifice for the freedom of his neighbor. Just as first-order moral considerations and the probabilities of success may tell against intervention in the first place, first-order moral considerations and the probabilities of success may tell against a more ambitious plan for regime change. Though the anthropological facts have no intrinsic normative force, they of course matter instrumentally. Though Mill is wrong about impossibility, surely he is right to worry that free institutions externally imposed are less likely to take root. So the changer of regimes must take into account blood, treasure, and odds. And surely there is a diverse set of political institutions to choose from that are free enough and just enough. Over that range, respect for individual self-governance would trump the intervenor's views about ideal collective self-governance—though how disagreement among individuals is to be resolved necessarily is underspecified in the absence of legitimate decision rules for resolving disagreements. But these all are what I have called first-order moral considerations. Until properly constituted, Iraqis are simply individuals owed respect as individuals. Therefore—here is the crucial point—this range of free enough and just enough political arrangements is likely to be narrower and more demanding than the range of constitutions and institutions that, once in

place, are morally immune from intervention. Hence the asymmetry of criteria for going in and getting out.

The implication is striking: an occupying force may, and perhaps must, prevent the formation of some forms of government that it would not have been permitted to overthrow, had they existed. So we have reached the surprising result that the coalition may and perhaps must prevent the formation of a minimally legitimate government in Iraq in order to hold out for more extensive political freedoms and human rights protections, even if that is not what most Iraqis presently want. Though only the hardhearted can fail to be moved by the purple-fingered voters who braved political violence to participate in peaceful elections in Iraq, it is too early to say whether the constitutional referendum of January 2005 and the parliamentary election of December 2005 together establish a minimally legitimate government. It is too early to say because a government is legitimate only when it can and does act to secure and protect a minimally adequate list of rights and freedoms on behalf of its free (enough) constituent individuals. Although protection of the basic rights and freedoms of Iraqis is of the utmost moral urgency, if my argument about the asymmetry of entry and exit is correct, the provision of this protection by a minimally legitimate Iraqi government may be considerably less urgent. The onset of legitimate government is not an unalloyed good, for one should not be indifferent between the establishment of a minimally legitimate government and a just and democratic government. These are, I hasten to add, theoretical considerations. I make no claims about the actual capacity of this occupation force to bring about any positive political change under the present circumstances.

All foundings are forced. If we, collectively, are free, it is because we too have been forced to be free. In a state of nature, there are no legitimate procedures that can bootstrap us into legitimate government, though rhetoric that makes believe that there is such a procedure is a useful lubricant for achieving legitimate government. When some of us force others of us be free, the victors look back with pride, the defeated beget political orphans, and so the next generation can tell a just-so story about freedom's origins that is often useful,

largely harmless, and nearly always false. But when they, the foreigners, force us to be free, shame replaces pride, and the just-so story is harder to tell. This is why the just-so stories about home-grown freedom aren't entirely harmless—they set up founding expectations elsewhere that are normatively too demanding.

The ugliness and stupidity of American foreign policy was never more apparent than when a commanding officer in Vietnam explained how he had to destroy a village in order to save it. Nothing that I have said necessarily immunizes America's current efforts in Iraq from stupefying ugliness either. I say necessarily. For it may be the case that, without unsightliness or contradiction, we indeed did have to humiliate a people in order to free it.