

## 4

## The Value of Self-Determination

*Anna Stilz*

The idea of self-determination was popularized by Woodrow Wilson, who conceived it as an extension of the doctrine—enshrined in the US Declaration of Independence—that governments derive “their just powers from the consent of the governed.”<sup>1</sup> Since Wilson’s time, self-determination has come to play a major role in international law. Article 1 of both international human rights covenants adopted by the UN General Assembly in 1966 declares that “all peoples have the right of self-determination,” by virtue of which “they freely determine their political status and freely pursue their economic, social, and cultural development.”<sup>2</sup> Article 1(2) of the UN Charter, the 1960 General Assembly Resolution Granting Independence to Colonial Peoples, and the 1970 Declaration on Friendly Relations also give prominent place to the principle.

In the broadest sense, self-determination refers to a community’s right to govern itself independently. We can distinguish two aspects of the idea. The “internal” aspect refers to a people’s right to choose a government that reflects their values and priorities, while the “external” aspect denotes a people’s right to be free from outside interference (Cassese 1995, 5–12).<sup>3</sup> It is plausible to see the external side of self-determination as parasitic on the internal one. We have a duty not to interfere with a foreign political order because that order reflects the will of the people subject to it. Self-determination holds that the people should *choose* or *authorize* their

<sup>1</sup> Though Wilson popularized self-determination, the idea dates at least to the early nineteenth century and was articulated by Mill, among others (Mill 2008).

<sup>2</sup> See <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> and <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>> accessed August 25, 2015.

<sup>3</sup> There is an important question about the *degree* of independence required for self-determination. I deny self-determination entails an unconditional right to a sovereign state: autonomy within a larger state may be an appropriate vehicle in some circumstances.

government, and it is for this reason that outsiders are obliged not to interfere.<sup>4</sup>

While self-determination is a cardinal principle of international law, the proper interpretation of this principle is a matter of some debate. In practice, the right has been limited to overseas colonies and populations under foreign military occupation or apartheid government (Cassese 1995, 126–40). Some commentators invoke a “saltwater test,” which holds that peoples with a right of self-determination must be separated from the larger state by an ocean (Philpott 2010, 156). Though there is some movement to widen the scope of the right—by applying it to indigenous peoples or internal minorities (Anaya 2004)—this is not yet legally binding.<sup>5</sup> It is unclear whether there is any sound moral case for the “saltwater test,” since territorially contiguous populations, much like overseas groups, can be subjected to alien domination. This chapter seeks a moral account of self-determination that might help us interpret the proper contours of the legal principle. Is there a weighty moral interest in collective self-governance? If so, what is the nature of this interest? To which groups does it apply?

A moral theory of self-determination could also illuminate important political issues. Most accounts of just war hold that a state has a right to use force in defense of its people’s political independence. A theory of self-determination might explain this right of national self-defense, especially in cases of merely political wars that aim at regime change, rather than directly threatening the lives of civilians (Rodin 2014). A theory of self-determination could also aid us in thinking about humanitarian intervention. Do we have principled reasons to tolerate other states’ unjust laws when they reflect its people’s self-determining decisions? How far should this toleration extend? Finally, a theory of self-determination could help in assessing challenges to existing political boundaries, both from inside (by secessionist groups or decentralization advocates) and from outside (by foreigners). While the chapter does not directly tackle these political issues, the morality of self-determination is relevant to them.

## 1. DOES SELF-DETERMINATION MATTER?

Some support for self-determination’s moral importance is provided by our intuitive judgments about colonial rule, military occupation, and annexation.

<sup>4</sup> Though self-determination has been used by dictators to defend oppressive regimes, that justification seems dubious once we attend to the structure of the concept. A people must be able to shape their political affairs to be meaningfully self-determining.

<sup>5</sup> The UN Declaration on the Rights of Indigenous Peoples adopted by the General Assembly in 2007 attributes the right of self-determination to indigenous peoples (Art. 3), but is not a binding legal instrument.

Pre-theoretic intuitions are not sufficient evidence, since we may wish to revise them upon reflection. Still, they provide a useful starting point. Consider three cases:

*Annexation.*<sup>6</sup> In 1945, the Allies occupied Germany in a legitimate use of force. Suppose that instead of restoring the territory to the German people, the US had annexed their zone of occupation, turning it into an additional state of the union. After annexation, the US governed reasonably justly, protecting the Germans' human rights and granting them rights of democratic participation in the now-unified polity. Would the Germans have had a claim to political independence?

*Benevolent Colonialism.* One historically influential defense of colonialism was the "civilizing mission": European rule over non-Western peoples was alleged to better guarantee liberal rights and good governance compared to indigenous regimes (Crawford 2002). Suppose that a "civilizing" empire did a reasonably good job of protecting its subjects' rights and delivering enlightened governance. Wouldn't its colonial subjects still have a morally significant complaint, on grounds that they were denied the right to rule themselves?

*Humanitarian Intervention.* Proponents of humanitarian intervention argue that it is permissible to intervene militarily in another state in cases of genocide, mass expulsions, or gross violations of basic human rights (ICISS 2002). They believe foreign rule can be legitimate, on a *pro tem* basis, in the aftermath of a justified humanitarian intervention. Yet occupiers are obliged to restore the country to independence once a decent domestic government can be established. Why do they have this responsibility?

The best way to characterize our intuitions about these cases, I believe, is to say that annexed, colonized, or occupied populations have a *pro tanto* claim to self-rule: to govern themselves independently, and to order their institutions as they choose. This claim is defeasible, and may be outweighed by competing concerns, as in a justified humanitarian intervention. But where weighty countervailing considerations are not at stake, the claim to self-rule ought to be respected. Moreover, the claim does not depend on cultural distinctiveness. If the US annexed English-speaking Canada, the annexed Canadians would have the same complaint, despite the lack of significant cultural differences. Self-determination is a *political* claim, not a cultural one (for a contrasting view, see Margalit and Raz 1990).

In accepting the claim to self-rule, we view the state's legitimate authority as having two distinct dimensions (Simmons 1999; Pettit 2012, ch. 3). Mainstream liberal theory has focused on a (reasonably just) state's role in benefiting its members. As institutional "takers," individuals have interests in protection of their rights, distributive justice, or public goods that the state provides. This "taker" dimension of evaluation focuses on familiar

<sup>6</sup> This example is drawn from Stilz (2011).

aspects of the basic structure, e.g. “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.”<sup>7</sup> It is concerned with the quality of state institutions, independent of anyone’s attitudes toward them. But on a self-determination theory, a state’s institutional quality is not all that matters. Instead, people have an additional interest in being the authors or “makers” of their political institutions. It may be as important that their political institutions reflect their priorities and values (in their role as “makers”), as that these institutions be good ones (from their perspective as “takers”). This thought represents the “intuitive core” of a self-determination theory, and I believe it can be formulated apart from cultural concerns.

In important ways, self-determination is the international analogue to the idea of popular sovereignty. Popular sovereignty holds that in addition to conforming to minimal standards of justice, a legitimate government must also reflect the shared will of its people. A fundamental challenge to popular sovereignty theory, however, has always been whether its central idea of a people sharing a will makes any sense. No citizenry of a modern state has ever contracted together to form a political community; every citizenry is riven with diversity. And since groups rarely agree on anything in politics, it is unclear how “the people” can share a will.

In what follows, I investigate three questions about the idea that a political order can, and should, reflect the shared will of its people. The first, which I call the *authorization question*, concerns the *government–people* relation—when is a government authorized by its people? How must a government relate to its people for it to serve as their agent? The second, which I call the *unification question*, concerns the *individual–people* relation. When is a population an appropriately unified people, and what makes that the case? Finally, I also take up a third question, the *value question*. For whom is it valuable that the people enjoys independent self-rule? Is that state of affairs valuable for “We the People,” as a corporate subject? Or is it instead valuable for the individuals who make up the group? To be realistic, my answer must recognize that in any territorially defined citizenry, not every individual will endorse existing political institutions. Is collective self-determination valuable for these dissenters? If so, how? If not, does that matter?

Before engaging these questions, I briefly characterize my approach to a central difficulty: how do we define the “self” in self-determination? Which

<sup>7</sup> Rawls (1999a, 6). I do not imply that Rawls neglects the “maker” dimension of evaluation; see his remarks on a “well-ordered society.” Among recent works on global justice, Rawls’s *Law of Peoples* is notable for the weight it places on self-determination (see Rawls 1999b, 31, 118).

groups count as “peoples” that enjoy self-determination rights? In my view, “peoples” are not marked out by pre-political characteristics—such as language, culture, or shared interests—that suit them for self-rule. Instead, a people is born only when members engage in institutionalized political cooperation, and come to value that cooperation. Some structure of representation is necessary to create groups with sufficient corporate agency to act as peoples. But in defining peoples, we should not merely reference existing structures. We also need to ask: do these structures realize self-determination for those they currently rule? To be self-determining, members must not only be ruled by minimally just institutions, they must appropriately see themselves as joint authors of those institutions, through participation in a cooperative enterprise they value. There is no independent criterion for delineating “peoples” beyond the fact that existing structures either succeed or fail at generating this affirmation. On my approach, the constitution of the people is *endogenous* to a theory of self-determination.

The affirmation of existing structures matters because it is especially significant for individuals to be ruled by an authority that reflects, in some way, their own priorities. Of course, since individuals must share the political world, no individual’s personal priorities can be mirrored in every law and policy. Yet there is a second-order sense in which an individual’s priorities *are* often reflected in his institutions: namely, when they are shaped through his participation in a cooperative enterprise that he affirms. Because a self-determining state reflects its people’s shared will, it has a special claim not to be interfered with or removed.

Why is the constitution of the people endogenous, on this approach? Though there is no independent criterion for “peoplehood,” existing institutions sometimes fall short of guaranteeing self-determination for all or part of their constituency. When this happens, I believe that the state’s rule is only partially legitimate. In such cases, the ideal of self-determination may call on us to reconfigure political boundaries, enabling alienated groups to be governed by institutions that better reflect their shared commitments. Thus, self-determination—the importance, to the individual, of participating in a cooperative political enterprise he affirms—should play an ongoing role in the boundary-drawing process. I concede that self-determination is one value among many—it is not an absolute right—and it can sometimes be outweighed by competing claims. If an existing regime is the only means for providing decent rule, if reconfiguring it would jeopardize urgent interests, or would entail unreasonably high costs, then that regime may have permission to govern alienated constituents, on a *pro tem* basis. But regimes that do not realize self-determination are not fully legitimate, and they may be displaced if alternatives become feasible in the future. So while there is no pre-political answer to “who are the people?”,

still the ideal of self-determination gives us guidance about how to (re)negotiate political boundaries. I return to this issue in Section 5.

## 2. SELF-DETERMINATION AS COLLECTIVE AGENCY

Let me begin with the *authorization* question. When does government serve as the people's agent, ruling in their name? According to popular sovereignty theory, a government (particularly its core features, such as the constitutional principles and the regime form) serves as the people's agent when it acts on their shared will. To make sense of this, we must explain how a people might share a will, and how government might reflect their shared will. It is helpful to begin with smaller-scale examples: there is often a perfectly straightforward sense in which everyday cooperative groups fulfill this condition.

Consider a partnership undertaking a joint venture, say running a coffee shop together. Several philosophers have offered theories of the agency involved in such cases, arguing that it is undergirded by a structure of joint intentions. Michael Bratman analyzes shared cooperation in terms of interdependent intentions of each member that (1) the group act in a particular way, (2) they do so via the agency of all the members, (3) that each member carries out his role according to a set of meshing subplans, amid (4) common knowledge that conditions (1), (2), and (3) obtain (Bratman 2007, 291–3).<sup>8</sup> Roughly, I share in a structure of joint intention when I think of myself as doing something because *we* are doing something together, and I adjust my contributions accordingly, “playing my part” in the group endeavor. In making my intentional contribution, I have an awareness of the relation in which my action stands as a means to a group end, and I would not perform it otherwise.

Running a coffee shop together normally involves such intentions on the part of each partner (Bratman 2014). Their shared intention orients members' activity, leading them to take steps toward its fulfillment, e.g. inquiring about a loan, or looking into possible business sites. Each partner needs to make sure the group intention is consistent with his other plans, say, by being careful not to schedule appointments that conflict with group meetings. A partner may also extend support to the others in playing their parts, perhaps giving them time off for training. Finally, their shared venture is a *cooperative* activity, not merely a jointly intentional one, since the partners are not motivated to participate because of threats or deception.

<sup>8</sup> These conditions may seem demanding. But in my view they are best interpreted as an (artificially precise) philosophical analysis of a tacit capacity for joint action. Participants are usually not explicitly aware of satisfying these conditions.

As they cooperate over time, this group will likely develop some shared commitments about how their enterprise should run. This does not mean that the partners will converge in all their judgments. More probably, they will divide on some issues, such as whether or not to stay open on Sundays or how much vacation time to take. Even when they do not converge, partners are often able to generate shared commitments—not reducible to their own judgments—about how their joint venture should go. Indeed, if we lacked this ability, everyday cooperation would be impossible for us.<sup>9</sup>

Say that Amy thinks it best that the coffee shop stay open Sundays for the extra business. But after hearing the views of her partners and noting the importance they place on a day off, she decides to go along with a Sunday closure policy. Amy can freely accept her group's policy, though it differs from her first-order judgments. She values her participation in this venture, so she is happy to license the policy, though she does not personally favor this action. Often shared commitments emerge as compromises in the face of disagreement or bargaining about how a group should structure their enterprise. Once shared commitments have developed, the partners will feel entitled to expect one another to act on them. If Amy is managing the shop, her partners may expect her to stay closed on Sunday, though she would prefer to open the business that day.

A group's shared commitments can be articulated at higher or lower levels of abstraction. Eventually, the group may develop policies of granting weight to certain considerations in all decisions of a certain kind. They may commit to always giving vacation time priority over higher wages, or to favoring a business space that is comfortable and clean over one that is large and modern. Because a group can arrive at shared commitments, they can develop a group standpoint. This standpoint consists of a set of core values and priorities—perhaps articulated at a high level of abstraction—about how to organize more specific plans of action. While the group standpoint will likely be responsive to some degree to the judgments of individual members, it will not correspond to any particular person's first-order views about what to value. Still, a member can accept the group's standpoint and share in it, as long as he intends to participate in the joint venture.

Finally, if they value their enterprise, members may feel slighted when their group's standpoint is not respected by others. While I often disagree with my colleagues about whom to hire, I prefer that we make our own hiring decisions together, even though that means accepting some decisions

<sup>9</sup> An alternative perspective sees groups as corporate agents. I do not deny the value of this perspective. But group agency usually supervenes on the joint intentions of individuals that they together accept certain procedures, in order to form a group agent. See List and Pettit (2011, 33–5). It is this “undergirding” structure of joint intentionality that interests me here.

with which I disagree. Indeed, I would consider myself disrespected if the dean overruled our collective decision, even when the result was to impose my preferred candidate. Other things being equal, I value outsiders' respect for our group standpoint, though sometimes it differs from my own.

I believe there is a straightforward sense in which we can speak of this small-scale partnership as sharing a will. Their shared will is to cooperate together in running their coffee shop, and to license the values and priorities that make up their group standpoint. A shared will is nothing more than an interlocking structure of cooperative "we-intentions" on the part of each participant, amid common knowledge that those intentions obtain. It does not reference any further fact beyond this.

While coffee-shop partners can share a will, many people would object that the citizens of a modern state cannot. The worry is that the model doesn't scale up. However, sustaining the state seems to have features in common with the joint intentional activity of smaller-scale groups. Of course, states exhibit formal governance institutions, such as the legislative, executive and judicial branches, the police, and the bureaucracy. These formal institutions typically direct citizens' activity. But it is the everyday contributions of ordinary citizens—their intentions to "play their parts"—that make formal institutions effective and stable.

Ordinary citizens of well-functioning states coordinate their behavior in many ways that help support their government's rule. They cooperate with officials, judges, and the police, and they generally comply with the law. They respect one another's legal rights: what it means for something to be my property, for example, is that my possession of it is generally recognized by my fellow citizens. By paying taxes, the people contribute to the institutions that enforce their laws and policies. Finally, when their state affords them political representation, citizens offer input into the shape of their political activity, voicing opinions about how their enterprise should go. So it does not seem wrong to interpret political activity as jointly intentional—on a grand scale—among the citizenry. Though they do not know each other personally, citizens still participate in a shared activity together: they uphold, reproduce, and sometimes direct, a common scheme of law. Indeed, many civic acts—such as voting, or paying taxes—would make little sense if we did not expect our fellow-citizens to play their parts alongside us (Kutz 2000; Stilz 2009, ch. 7).

Still, there are differences between the citizenry of a modern state and partners in a coffee shop. One might object that these differences are so great as to undercut any assertion that the people's shared activity is *cooperative*. Consider:

- (1) A modern state is *hierarchical*—it is made up of leaders who direct and followers who comply.



- (2) A modern state is *coercive*—it can punish people who refuse to “play their parts”.
- (3) A modern state is *impersonal*—no member can know or interact with all the other members.
- (4) A modern state is *involuntary*—while the coffee shop partners freely joined their association, most citizens are born into theirs.

These four features do differentiate modern states from small-scale partnerships. Still, I do not think they show that shared cooperative activity is an inappropriate model. Indeed, I think many modern states are at least partially cooperative enterprises, despite the four features listed above. Let me begin by discussing the first two on the list: hierarchy and coercion.

While all states are reproduced through their citizens’ shared activity, that activity is not always a form of free cooperation. While the citizens of North Korea intentionally support their government’s rule, they likely do so because they would suffer grave harms if they did not. Yet sometimes I believe that official coercion serves to stabilize citizens’ free cooperation—facilitating the achievement of their shared aims—rather than imposing a project on them from outside. Here governing officials are a tool for a self-organizing citizenry to more effectively carry out their joint purposes. In this case, the state *is* a genuinely cooperative institution that reflects its people’s shared will.

Since one may doubt that hierarchy and coercion can be so lightly dismissed, let me explain how our coffee shop could evolve hierarchy and coercion, while still remaining a cooperative enterprise (for a similar attempt to “scale up” from small-scale groups, see Shapiro 2011, 156–70). Suppose the partners get busier. Due to their business’s increased complexity, it is now harder to figure out who should do which tasks at what time. So the partners decide to appoint a manager. He begins making most of the decisions day-to-day, and he may even be issuing directives to the partners, about how to divide the labor, or what prices to set. The fact that the partners have introduced hierarchy into their enterprise does not necessarily mean they are dominated by the manager. Even if he is largely running the show, it is possible that the manager furthers the shared aims of the partners.

How would we know? One criterion is *procedural*: the partners hired him and if they become dissatisfied enough with his performance, they could fire him. On a “minimalist” interpretation, the manager’s acts reflect the shared aims of the partners so long as they haven’t dismissed him yet. (One worry is that the manager, once installed, might be able to manipulate the partners to prevent his own dismissal, e.g. by hiding relevant information to keep them from firing him).

We should therefore add a *substantive* criterion: what the manager does must be a reasonable pursuit of the joint venture’s aims, as these were

worked out among the participants themselves. The manager has certain “constitutional” purposes to pursue: these are defined by the commitments that constitute the group standpoint. As I said, these commitments may be abstract, and they may conflict in concrete cases. Part of the manager’s role is to fill them out with more specific plans. But to meet our substantive criterion, these specific plans must be “reasonable” elaborations of the group standpoint. And there will be some acts the manager could undertake that could not be plausibly interpreted that way. A manager who embezzled the coffee shop’s funds would not count as pursuing the purposes of the partners, under any reasonable description of those purposes. Even if he successfully hid the evidence, or blackmailed the partners and prevented himself from being fired, we would not want to say that he furthers the partnership’s aims (Pettit 2005, 2012, ch. 5).

Now let me add in coercion: in addition to the organizational problems, suppose some partners are concerned that members are shirking their duties. Perhaps they have added new partners, so the group has become larger. It is becoming hard to rely on everyone showing up for scheduled shifts. This threatens to create a culture of “slacking”: since Amy knows that Bob is often late, she feels she can be late too. Still, the partners value their enterprise, and they don’t want to see it unravel. So they devise a solution: from now on, the manager will now have the power to fine anyone who does not show up for work on time. This will give everyone incentive to comply, and return the partnership to a culture of efficiency.

Even though the coffee shop now features both hierarchy and coercion, I submit that the partners are still *self-governing* through their manager. They can be self-governing despite hierarchy so long as the manager’s decisions qualify as reasonable elaborations of the group standpoint, and so long as there is some way of dismissing him if he begins to abuse his powers. And they can be self-governing despite coercion so long as they see independent reason—apart from the manager’s threat to fine—for playing their part in the shared plan that he now coordinates. I believe the partners do see such an independent reason. Because they value their venture, they have reason to show up for work, so long as the others do, and the manager’s coercion assures everyone that this will occur, stabilizing their enterprise. Under these conditions, the partnership is self-governing through the manager.

What about the last two features of the modern state—the fact that it is both *impersonal* and *involuntary*? Do they undermine the possibility of genuine political cooperation? I doubt it. Even when an institution is too large for all its members to know one another, it can still feature significant levels of cooperation. Though I do not know most of the other students and employees at my university, still I “play my part” in it willingly. Many large groups—think of megachurches, or trade unions—do not exhibit close

personal ties among the participants, yet their activity nonetheless counts as shared cooperation.

Finally, what about the fact that the state is *involuntary*? This is the most compelling of the disanalogies between the state and the coffee shop. Most citizens were born into their state, and that they may have no reasonable opportunity to leave. Still, I doubt that involuntariness undermines the state's claim to be a form of shared cooperation. Some theorists have argued that our respect for the self-determination of a group cannot rest on respect for the aims of its members, unless individuals have consented to membership (Beitz 1979, 78). I reject that view. In the social contract tradition, consent was valued as a way of ensuring that political institutions reflected individuals' priorities. But consent is a red herring here. For a group to reflect the priorities of its members, its aims must be *freely shared* by constituents, but membership need not be consensual for this to be the case. We do not consent to our families, but not having chosen one's family does not mean that one's family is an alien constraint on one's life. In good families, children have a valuable relationship with their parents, which they care about and endorse. In this situation, though members did not join the family, it *reflects their goals and purposes much as if they had*. Many other social groups—such as workplace and school associations—are only quasi-voluntary, since our options to join and leave them are highly constrained. Still, these groups can (and often do) instantiate members' shared aims. So the fact that a relationship is not consented to does not show that it is uncooperative.

Of course, in our coffee shop case, the partners' shared intentions *pre-exist* the establishment of authority structures. Generally, however, citizens' shared intentions will not pre-exist the establishment of the state. Instead, the state attempts to *create* shared intentions by facilitating institutionalized joint activity among its constituents. Yet I do not think it matters, morally speaking, whether authority structures or shared intentions come first, so long as a group exhibits cooperative attitudes. We might imagine that after a long period, our coffee shop partnership completely changes membership: all the founding partners leave and new ones join. The current members have never known a "managerless" enterprise. Yet as long as the partners willingly play their roles, share commitments, and can revoke their manager's authorization, they will remain self-governing. Much the same can be said of the state. Authority structures such as territorial jurisdiction mark out individuals as potential members of a political community. However, there are further "success conditions"—beyond conventional structures—for the achievement of collective self-determination. One further condition, which I elaborate in Section 4, is that members must *reasonably affirm* their participation. Another is that the community must share an understanding

of their constitutional purposes, and must be able to control their government to pursue these purposes. If these conditions are met, I believe a political people can be self-determining, despite the fact that their shared intentions were in part brought into being by authority structures.

### 3. INSTITUTIONAL CONDITIONS

By analogy to the coffee shop case, a government will reflect the will of its people when: (a) the people willingly cooperate together to support their government's rule; (b) the laws and policies imposed by that government reflect the people's shared commitments, as these are worked out by the members; and (c) there is some mechanism for the people to revoke authorization of their government if it oversteps its bounds.

I should note here that a people's shared commitments need not—and in modern societies, usually will not—rest on commonly held substantive values or self-understandings. In that sense, my view contrasts with nationalist approaches to self-determination, which hold that a self-determining group must share “a common public culture, a set of understandings about how their collective life should be led” (Miller 2008, 124; Margalit and Raz, 443). Instead, I believe a shared *procedural* commitment to a joint venture is all that is required. Political unity need not be grounded on shared first-order values, but can rest on a second-order attitude of valuing a *process* of political cooperation undertaken in concert with others.

What institutional arrangements might afford us reasonable confidence that a particular government reflects the will of its people? This is a tricky question (for useful discussion of these complexities, see Beitz 2009). We should not assume that popular sovereignty requires modern democratic institutions such as the right to vote for representatives, to associate in political parties, and to compete for office. Historically, the meaning of popular sovereignty was more minimal: it held that there must be some channel by which the people could set constitutional limits to their government, and potentially revoke their authorization of it. Locke argued that while a sovereign people could establish a democratic legislature, they could also authorize an oligarchy or even a monarchy (Locke 1980, ch. 10). While Rousseau stressed that the people must retain the power to “determine the constitution of the state by sanctioning a body of laws,” he too allowed that the people could institute a “monarchical” or “hereditary” government (Rousseau 1997, III. 8). In that case, “monarchy itself is a republic,” though this is simply a “provisional form it gives the administration, until the populace is pleased to order it otherwise” (Rousseau 1997, II. 6; III. 18).

In a small-scale setting, everyone might simply agree that a particular individual is wise, virtuous, and shares the community priorities, and defer to her judgments day-to-day. If that sounds far-fetched, consider that exactly this often happens in everyday joint ventures. “Which business site should we purchase?” “Amy used to be a real estate agent, so I’m sure she knows best.” “Well, let’s do whatever she says.” In a small tribe, collective self-rule might function much like this: indeed, such groups often feature informal decision-making by elders.

In any large and complex society, however, institutional controls will need to be more robust. Centralized coercion is particularly worrisome here. Where citizens’ joint activity is carried on solely out of fear, it carries no moral weight. It is possible to freely cooperate with others only where one is not unduly vulnerable with respect to one’s essential needs and interests. Otherwise one may be “going along” to satisfy urgent requirements. Some scheme of guarantees for personal independence—including security, liberty, and subsistence—is thus a necessary condition for any cooperative political venture (Rawls 1999b, 65). One can debate about precisely which guarantees are appropriate—when does one dispose of sufficient options to prove reasonably invulnerable to others’ domination? But, at least under modern conditions, a minimal scheme of rights is a precondition of a cooperative community.

Second, a self-determining people must have mechanisms by which to express *public opinion*. Citizens must be able to discuss the shared priorities that make up their group standpoint, and provide orientation to their government. This means they must be free to form their own views, to declare them, and to listen to the views of others. Though the group’s commitments need not reflect each member’s personal priorities, in order to appropriately see herself as a “coauthor,” each member must have the opportunity to contribute her own views to the collective process. Without a “voice” in the group, one is not a “maker” of the group’s institutions. There must also be some institutional channel by which governing officials are required to take notice of public opinion, and respond to it. If the people suspect that government is not acting on their shared purposes, then they should be able to challenge its policies, and require it to provide justification.

Finally, there must be means for the people to revoke authorization of their government if it oversteps its bounds. One can imagine a range of mechanisms that could serve this purpose. Lockean popular rebellion seems antiquated and unreliable, but it might be sufficient in a society where the power of leaders depends heavily on the cooperation of the people, and technologies of social control are undeveloped. Mass protests and non-cooperation movements are a modern version of the same idea. Still, these methods are insufficient in states that possess armies and secret police.

Democratic rights provide robust institutional guarantees that citizens authorize their regime. But even under contemporary conditions, I believe it is possible for citizens to authorize a government that is not democratic—say, a constitutional monarchy—if there is some institutional mechanism by which they could initiate a process of constitutional reform (Altman and Wellman 2009, 27–9).

What this discussion suggests is that the institutional forms that safeguard collective self-determination can vary significantly depending on the context (Rawls 1999b, 62–78; Cohen 2010). In particular, one should be wary of dismissing non-Western forms of government in favor of electoral democracy. Of course, it will be more difficult to *know* in a non-democratic context whether the citizenry *does* authorize its government, and in disputed cases, this may tell in favor of conducting supervised plebiscites to allow people to express views about whether to continue with a monarchy, say, or a tribal regime. But while electoral democracy is one way of realizing collective self-determination, it may not be appropriate in all times and places.

#### 4. WHY IS SELF-DETERMINATION VALUABLE?

So far I have argued that rule by the people is a *collective* phenomenon. It obtains when “the people” rule their government. Many will be skeptical of this approach from the beginning, on the basis that groups are not normatively fundamental. Most philosophers believe that the well-being or autonomy of individuals matters at the most basic level. So why should one care about a *group’s freedom* to choose its own government and institutions?<sup>10</sup>

The basic answer is that one should care about the self-determination of a group insofar as it is important for the group’s members. Even non-consensual groups are often cooperative enterprises, in which members value their participation and freely endorse shared purposes. But in a non-consensual context, where individuals cannot join or leave, it is often difficult to tell to what extent this condition is fulfilled. We need therefore to reference some connection between the individual and the group that makes it appropriate for her to see herself—and for others to treat her—as a partner in a shared enterprise (Dworkin 1996, 23; Cohen 2010, 360). To specify this connection, I turn to the *individual–people* relation: under what conditions does the individual relate to a non-consensual group such as the

<sup>10</sup> A worry about Pettit’s account in *On the People’s Terms* is that he largely ignores this question. Yet if an individual rejects the people’s shared aims, then he will not enjoy freedom-as-non-domination when he is governed by that people.

people in such a way that its self-determination is valuable for her? I believe such a connection exists when a citizen *reasonably affirms* her participation in the group.

What is it to *reasonably affirm* one's participation? A citizen *affirms* participation when, upon reflection, she endorses her intention to "play her part" in some joint enterprise (Sciaraffa 2009). To "play one's part" is to carry out specific tasks associated with one's role: in the political case, obeying the law, paying taxes, voting, cooperating with officials, and contributing to the formation of public opinion. It is important that a citizen's affirmation be the product of her own reflective judgments, and not simply of coercion or manipulation by external agents. This requires some appreciation of the purpose behind the joint venture, and an awareness of how one's own contributions further its achievement. Though the group's commitments need not track one's personal priorities, it is not appropriate to see oneself as a coauthor unless one has some voice in the group's conduct. There must be some channel—in the form of basic liberties of conscience, speech, and association—by which one's opinions can be expressed and taken notice of by other members. Finally, for a citizen to *reasonably* affirm her participation, the shared venture must be genuinely valuable. A shared political project must be at least minimally just if it is to be reasonably affirmed.

Some may wonder whether reasonable affirmation is a type of consent. It is not. Consent's role is to transform the rights and obligations between people. To do this, consent requires communicative expression: it is not just a state of mind. Coercion or lack of decent alternatives also invalidate consent (see Eyal 2011; Kleinig 2010). Yet reasonable affirmation need not satisfy these conditions: it does not transform rights and obligations, it can be purely internal, and it can occur against a coercive background where alternatives are lacking. Like consent, affirmation is concerned with an individual's attitudes: there is to that extent a similarity between the concepts. But affirmation is a weaker condition than consent. It also matters whether affirmation is *reasonable*. Unlike consent, which can make a moral difference even when it is unreasonably given, affirmation lacks normative significance when it is unreasonable. If it is inappropriate for the individual to see herself as a participant in a shared enterprise, her affirmation may show only that she is thoroughly dominated or manipulated.

Imagine a scenario where all citizens reasonably affirm their cooperation together: I call this the *ideal case*. In the ideal case, the purposes of the people count as the citizens' own purposes, to a significant degree. (I recognize that no state is an *ideal case*. I discuss problems posed by more realistic cases in Section 5. I start with the ideal case, however, because it sharply illustrates how collective self-determination can be valuable for individuals).

The basic thought is this: in the ideal case, the group's self-determination is valuable for individuals because cooperation together *as* a people is a shared project of those individuals. But why is it important that political cooperation count as the citizens' *own* project? Why isn't it instead sufficient that individuals be *brought* to sustain a reasonably just state, regardless of whether they endorse that common purpose? I discuss three individual interests served when citizens endorse their politically cooperative project: an interest in stability, in well-being, and in political freedom.

The interest in stability is the least controversial, so let me consider it first. Widespread affirmation on the part of citizens is often essential to stabilizing just institutions. As I noted above, as institutional "takers," individuals have interests in *benefiting* from a reasonably just state's rule, through protection of their rights, and the provision of distributive justice and public goods. Yet it is difficult to stabilize even substantively just institutions when most participants reject their participation in them. The importance of political stability thus provides us *instrumental* reason for valuing citizen affirmation, since everyone's "taker" interests are better served when most citizens willingly cooperate to sustain the state. Even dissenters benefit from the lower levels of insecurity, mistrust, and repression that widespread affirmation often brings. Citizens' shared will is valuable, then, in part because it is instrumental to justice.

While important, these instrumental considerations are not, in my view, our key reasons for caring about affirmation. I also want to point to two more intrinsic interests. First, when individuals affirm their participation together, the collective project comes to *matter* to them, in a way that connects the success of the joint enterprise to their personal well-being. And second, when people participate together in a *coercive* institution, their relationship to that institution is different when they affirm their participation in it than when they do not. Citizens who reasonably affirm their participation together experience political freedom under coercive institutions.

How does affirming one's participation render a collective venture important for one's personal well-being? As a number of theorists have argued, personal well-being depends substantially on the projects and relationships we adopt (Dworkin 2000; Raz 1986; Scanlon 1998). Once certain basic physical, economic, and security needs are met, well-being is largely constituted by our success in leading a meaningful life (Wolf 2010, 26). The endeavors to which a person is committed play an important role in determining what counts as a meaningful life for him.

Meaning involves both a subjective and an objective component (Wolf 2010, 9). On the one hand, our actual attitudes play an important role in determining what is meaningful for us. If we are involved in



objectively valuable projects, yet find ourselves persistently alienated from them, they lack meaning. Think of two bored teenagers, dragged to the Met by their parents on a Sunday afternoon. An afternoon at the Met might be a valuable thing, objectively speaking. Yet it does not contribute value to the lives of these teenagers, since they lack the appropriate subjective attitudes to appreciate it. Compare the case of someone who has a loving family, but is persistently alienated from them. His heart isn't in it anymore: he finds himself constantly longing to pursue goals his family does not share. Perhaps he ought to be more engaged with his family. Still, if he is persistently alienated, much of the value of the relationship is lost to him (and perhaps to his family) in an irretrievable way.

Note that the attitude of affirmation or "engagement" required to find meaning in one's pursuits is not a sense of pleasure or desire-fulfillment. It is instead a *cognitive* attitude: a judgment that a particular endeavor is valuable and worthwhile. I can be "engaged" with my family or my job even though it causes me a great deal of stress, as anyone who has stayed up all night to tend to a sick child or meet an important work deadline can attest. While my endeavors are sometimes painful to me, still I judge them to be worthwhile. I stress here, though, that "engagement" is an *actual*, not a hypothetical, attitude. While very rational or mature teenagers might value an afternoon at the Met, if these *actual* teenagers do not value it, then the excursion is not meaningful for them.

What about pursuits that are valued but not objectively valuable? Do these contribute meaning to a person's life? It seems not. Consider our reaction to the committed Mafia member, or the dedicated video poker player. No matter how "engaged" these people are, we do not think they are leading meaningful lives, the kind of lives we want for ourselves or our children. Instead, we feel sorry for them: they are tragic figures wasting their existence on trivial or immoral pursuits. So a goal must meet some threshold of value to qualify as a constituent of a person's well-being. We not only want to be engaged in pursuits *we ourselves* judge to be good, we also want other people to be able to appreciate why we care about our goals (Wolf 2010). At the very least, a valuable goal must not be completely immoral. And it must not be a pointless goal, one whose accomplishment is completely worthless.

How might these reflections apply to our political case? When citizens affirm their cooperation together as a people, they make the success of that political project into one of their own goals. Insofar as their state is a reasonably valuable institution, then its success will contribute to the overall flourishing of their lives. This is one reason why it is *pro tanto* wrong for foreigners to invade, occupy, annex, or interfere with a self-determining people's institutions. Such interference undermines the flourishing of its

members, by preventing the fulfillment of one of their valuable aims. Since we ought to respect the members of this group, we ought also to respect the shared projects that they value.

It might be objected here that relatively few citizens conceive their state as a shared project.<sup>11</sup> Most ordinary citizens are not politically active, knowledgeable, or patriotic. Do these people take any interest in “making” their state? I deny that citizens must be highly participatory in order to affirm a civic relationship. Some evidence for this is given by other joint endeavors. While I value my university, I do not attend college-wide faculty meetings or wear the university logo, and I cannot name all the deans. Still, I “play my part” willingly, and I would be upset if my university was destroyed without our consent, even if my own interests went unaffected (e.g. if I easily found another job with a higher salary). Likewise, the importance of citizens’ affirmation may be quite apparent in exceptional scenarios such as foreign occupation, even if it is not apparent in everyday political life.

Further, one might think that political disagreement is a barrier to understanding states as shared projects. Are defeated political minorities meaningfully part of any joint endeavor? I concede that some subgroups are so persistently alienated that the civic relationship lacks any value for them, and I consider their case in Section 5. But I deny that ordinary political disagreement signals this. Again, we can draw evidence from other joint endeavors. As mentioned earlier, I often disagree with my colleagues about whom to hire, yet I prefer that we make our own hiring decisions together. Much ordinary political disagreement is similarly compatible with shared commitment to a joint endeavor.

Let me now turn to the third—and most controversial—reason why reasonable affirmation is valuable for individuals. When a citizen affirms her participation in the political association, I believe she relates to the demands coercively imposed by her government in a distinctive way. Rather than understanding those demands as hostile constraints on her life, she is able to see them, in part, as self-imposed requirements. Citizens who affirm their participation together in a self-determining people experience an important form of political freedom—I call it “maker” freedom—under coercive institutions. I think this is our most significant reason for valuing self-determination.

How is affirmation related to maker freedom? Consider that many joint enterprises—including the modern state—are large and complex. Tasks are often parceled out among various roles, so each person performs a specific function in the overall plan. As I noted in the last section, in the state, that

<sup>11</sup> The next two paragraphs draw on Stilz (2015).

plan is specified and imposed by a hierarchical and coercive government. As an occupant of a particular role, it can become difficult to grasp how one's role conduces to the fulfillment of a valuable shared purpose. The demands of the enterprise can seem burdensome, unfulfilling, or pointless. Consider the mundane tasks of university administration. It is often hard for someone weighed down with these tasks to see how they fit into any valuable shared endeavor. When this happens, we can say that a participant is *alienated* from the shared enterprise. It has no meaning for her.

To some degree, alienation is to be expected in any complex institution. And often alienation may not present a problem: if the demands of one's professional role seem pointless, one may have the option of pursuing some other occupation. (Where exit from an occupation is onerous, we should be more concerned about alienation). But alienation is a bigger problem when the institution is a coercive one that pervasively shapes a person's social environment, and the role she plays in it is one she cannot abandon. In that scenario, her duties may seem not just onerous, but imposed by a hostile force that exercises near-complete control over her life. Since the state determines so many aspects of our lives—many more than other institutions such as universities, churches, or corporations—alienation from the state is an important concern.

In other institutional contexts, often we have a good response to alienation: a participant can reflect on the way in which her performance of a task furthers the achievement of a shared purpose that she affirms. Feeling overburdened by the demands of administration, a professor might recall that such administration is necessary to running a successful university. Without this tedious work, the purposes of mentoring students and fostering an academic community could not be achieved. When we carry out this kind of reflection, we relate differently to the demands of our roles. Administrative tasks may still seem burdensome; we do not suddenly acquire a spontaneous desire to engage in them. But we now see a *point* to the task—we understand how this work contributes to a collective goal we value—and so the role's demands are imbued with new significance. We see reason to hold ourselves to this task, even though we have no desire to do so.

Responding in this way to alienation is especially important, I think, in the context of a pervasively controlling and coercive institution. When one is alienated from an institution of this kind, substantial aspects of one's life can come to seem hostile, threatening, and completely beyond one's grasp. Yet suppose that one can reflect on how one's performance of civic duties furthers a collective enterprise whose goals one endorses. After that reflection, these requirements no longer seem threatening; instead they have new significance. Seeing that connection can give one reason to hold oneself to these demands. Citizens who affirm their cooperation together as a people

can impose these duties on themselves, as part of a meaningful joint project that they endorse.

Because of this connection with maker freedom, the desire not to be alienated from one's political enterprise is more than a mere preference. Rather, it is connected to a significant human need to be at home in one's social world.<sup>12</sup> One of the most destructive effects of colonialism was the coercive imposition, onto a subject population, of a social order that bore no relation to their own priorities. Those who lived through this experience tell of a radical sense of powerlessness, and a loss of orientation and control (for powerful accounts, see Lear 2006 and Standing Bear 2013). Even in the best imaginable scenario, where colonial institutions are substantively just, still they treat the colonized as objects to be paternalized on the basis of commitments they do not share. This imperial authority is inconsistent with its constituents' claims to govern their political lives in accordance with their own priorities.

Alienation is distinct from the other abuses perpetrated by colonial institutions, and it persists as a legacy of great bitterness and resentment among formerly colonized populations. Obviously, alienation and affirmation are matters of degree: one can criticize or reject many aspects of one's social institutions without suffering meaninglessness and loss of control. Still, the coerced imposition of a social order that fails in any way to reflect the "maker" freedom of those governed by it often leads to serious harms to the population's well-being and self-respect. For that reason, persistent alienation from one's political institutions is an important concern.

To sum up, then: a people's collective self-determination will be valuable for its members if they *reasonably affirm* their political cooperation together. Affirmation serves three individual interests. First, it enhances the stability of just institutions. Second, it contributes to well-being. Third, it enables a valuable kind of political freedom, the freedom of understanding oneself as a "maker" of the coercive institutions by which one is governed. In the *ideal case*—where a people cooperates together to sustain a reasonably just state and each member affirms her participation—then the collective self-determination of that people will be both instrumentally and intrinsically valuable for all the individuals who make it up.

## 5. PERSISTENT ALIENATION

To this point, I have argued that collective self-determination matters because it is valuable for individuals to be ruled by institutions that in some

<sup>12</sup> This is a Hegelian theme. See Hardimon (1994) and Jaeggi (2014).

way reflect their priorities. I stress again that the “priorities” reflected in our institutions need not be shared first-order values (and in modern states, they typically will not be). There need be no self-understandings such that all and only members of this group accept them. Instead, it is enough that each member of the group values the common *political endeavor* and accepts some *procedural* commitments about how this endeavor is conducted. When an individual is subject to institutions that are shaped through his participation in a valued political endeavor, then those institutions will reflect second-order priorities that he shares. Though this “maker” interest is ultimately an interest of individuals, it can be furthered through membership in a political group, to the extent the individual affirms participation in that group.

But we must recognize that maker freedom is not realized for persistently alienated dissenters. Their basic rights may be protected, but they don’t affirm their participation in the state. The people’s shared will does not reflect their values and priorities, even in a second-order sense.<sup>13</sup> My question now is: to what extent does this matter? Does the persistent alienation of dissenting subgroups deserve an institutional response? I believe that in a limited range of cases, alienation does deserve an institutional response.

My discussion here takes us back to the issue, mentioned at the outset, of defining the “self” that should enjoy self-determination. I granted there that peoples are not prepolitically defined: they can be established only through institutionalized political cooperation. Our discussion of alienation, however, shows that attempts to create a people can succeed or fail. The ideal of self-determination holds that each citizen should relate to the political order by affirming his involvement in the cooperative political enterprise that undergirds it. Only then can he see himself as a coauthor of the institutions that govern his life. Yet some citizens fail to relate to their current state in this way. Where their priorities are (a) consistent with the provision of basic justice, and (b) can be feasibly addressed through institutional reconfiguration, I believe we may be required to redraw political boundaries to afford them greater self-determination. On my approach, the boundaries of the people are always up for renegotiation. The “people” is a mutable entity: its claims are contestable, and its constitution is endogenous to an ongoing process of political cooperation. I stress that this is not an argument for a unilateral right to secession, but rather an argument that we should take the value of self-determination seriously, in an ongoing way, in delineating political boundaries. The best institutional

<sup>13</sup> I am not suggesting that alienated dissenters should not be fully included or should lack full rights. I simply highlight that the self-determination of this *particular* people does not further their interests in well-being and political freedom.

arrangement for accommodating self-determination will depend on the specific scenario: absent concerns about oppression or physical security, a subgroup's self-determination may be adequately guaranteed through federalism or internal autonomy.

My argument for this claim emphasizes that our most basic natural duties of justice *themselves support* concern with persistent alienation in some cases. I take a broadly Kantian approach to these natural duties: each individual has an innate right to external freedom, which requires him to be independent from the will of other persons. This is a right to be one's own master, to make the decisions that govern one's own life. To fulfill this claim, each person must enjoy a sphere of self-determination within which others cannot interfere. The bounds of his sphere of self-determination are defined by his rights, including rights over his person and property. Thus, our most basic coercible duties of justice require us to respect the external freedom of others.

Kant adds the important further claim that many of these natural duties of justice—particularly the duty to respect others' property—are mediated by the state: property requires public law to be made determinate, and so cannot be established through uncoordinated private acts. Kant also argues that the state is necessary to fairly enforce all our rights: no private individual has the claim to wield coercive authority over his fellows, who have a right not to be subject to his private power. We have a duty to comply with a minimally just state, then, because that is the only way to fulfill our more basic natural duty to respect others' external freedom.

Rather than trying to defend this Kantian argument for the state, I simply assume it here, since the issue I am interested in arises downstream from it. It is an issue to which Kant himself did not pay much attention. Even though a minimally just state may be necessary to guarantee individuals' "taker freedom," still it can conflict with their "maker freedom." Let me define these two aspects of freedom more precisely:

- (1) *Taker Freedom*: Political institutions must define and protect—as a matter of right—certain basic "taker" interests of each member, including personal security, basic liberties, property, and subsistence.
- (2) *Maker Freedom*: As "makers," members must actually affirm their own cooperation in these institutions.

The challenge is that, as "makers," some people may fail to affirm the institutions that protect their rights as "takers." They may lack maker freedom for either of two reasons: (1) because they deny any duty to cooperate politically in any state on minimally just terms; or (2) because, though they acknowledge such a duty *in general*, they are alienated from this state *in particular*.

Such a “maker/taker” conflict arises when the particular state that coerces the individual fails to reflect his own values, priorities, or judgments. Here it would appear that the state infringes his innate right to be his own master. In that case, is he subject to an arbitrary will that threatens his independence? Sometimes, I think the answer is yes.

To develop the argument, let me return to Kant’s characterization of our most basic natural duty: that each individual has an innate right to freedom which everyone else can be coerced to respect. This is the right to *independence* from constraint by another’s arbitrary will, in so far as it can coexist with the freedom of every other in accordance with universal law (6:238).<sup>14</sup> The idea of independence highlights the importance, to freedom, of being in a position to make one’s own decisions. One is free only insofar as one is not forced to obey someone else.<sup>15</sup> As just noted, it seems possible that the state itself may threaten this claim to independence. Because the state controls our lives and coerces us to comply, it risks dominating alienated dissenters.

However, Kant also held that the claim to freedom-as-independence is a *limited* and *moralized* one: it is bounded by a duty to respect others’ equivalent claims. One person’s freedom can therefore be coercively restricted in order to protect the rightful freedoms of others (Hodgson 2010). So while a just state’s use of coercion may threaten the dissenter’s ability to decide for himself, that coercion is not *arbitrarily* constraining if it is required to uphold others’ independence. Individuals have a limited right not to be coerced on grounds they object to, but only *if this coercion is not necessary to uphold others’ rightful freedoms*. Stressing the moralized nature of the claim, one might argue that coercion of unwilling dissenters by a minimally just state does not actually threaten their (moralized) independence, even when it fails to reflect any of their own priorities. For one has no *right* to have one’s independence respected in cases where respecting it would threaten other people’s freedom.

This response is persuasive so far as it goes, but I will argue that it does not go as far as one might think. Still, it does give us a good reply to a certain category of dissenters: namely, people who refuse to recognize any duty to cooperate together in a state on minimally just terms. (Anarchists, fascists, and theocrats fall into this category, assuming Kant’s argument for the injustice of anarchism—which I simply take for granted here—is

<sup>14</sup> I cite Kant’s writings by the standard German edition, *Kant’s Gesammelte Schriften*, edited by the Academy of Sciences (Berlin: Walter deGruyter, ongoing from 1900). These numbers are noted in the margins of most English translations.

<sup>15</sup> Kantian freedom is similar to the idea of freedom-as-non-domination developed in Pettit’s work. See Pettit (1997).

correct). To these people we say: your persistent alienation must be discounted, because greater recognition for your values is incompatible with protecting the basic “taker” freedoms of others. Groups that are persistently alienated because they hold unjust aims are not wronged by being denied self-determination.<sup>16</sup>

Still, the Kantian argument does not underwrite the thesis that a just political order may be imposed on unwilling subjects, as in the cases of annexation or benevolent colonialism with which we began. While coercion by *some* minimally just state is necessary for securing freedom, the Kantian thesis, by itself, is insufficient to decide how many states we should have, or which particular people should be subject to which states.<sup>17</sup> An institutional response to the persistent alienation of the unwilling is often possible consistent with protecting others’ essential “taker” freedoms. Where such a response is feasible, I believe a due regard for Kantian independence requires us to institute it. Individuals have an innate right to make their own decisions about their lives, including decisions about which political unit they wish to belong to, so long as these decisions are compatible with upholding others’ equivalent claims. This means their actual priorities and commitments should be extended respect, when these priorities are consistent with basic duties of justice. So suppose that there exists a feasible institutional alternative that would: (a) be consistent with others’ essential freedoms, and (b) more reflective of the priorities of persistently alienated dissenters. Then I believe we compromise the independence of those dissenters by continuing to coerce them within existing arrangements. They reject these arrangements, and while showing that current arrangements were *essential* to guaranteeing others’ freedom would be sufficient to override their objection, we lack that justification here.

The point is that our duties of justice massively underdetermine the institutional configuration we should adopt. Should we institute a unitary world state, or a plurality of states? A federal system? Internal autonomy for indigenous peoples or other minorities? Because there are a variety of just institutional configurations, the Kantian view cannot establish that coercion by *the current coercer(s)* is necessary for background justice to be realized. Yet

<sup>16</sup> It might be objected that the aims of anarchists and theocrats are not necessarily unjust, as long as they don’t impose them on a non-consenting minority. What if theocrats were able to form a state composed of only like-minded people? My response is that since states are *territorial* and *intergenerational*, it is impossible for them to encompass only like-minded people. A society of theocrats would be like-minded until the first newborn arrived: then the justice-based question of how they ought to treat this non-consenter would immediately arise.

<sup>17</sup> Kant does suggest that for right to be fully realized, a global juridical framework is required. But which particular units should exist within that framework is indeterminate.



while the alienated have a duty of justice to submit to coercion by *some* reasonably just coercer, they may lack a duty to submit to this *particular* coercer. If another institution would be equally consistent with others' external freedom, and more reflective of their priorities, why can't they institute it instead?

Consider, then, the situation of dissenters who are persistently alienated, not because they deny a duty to cooperate in a just state, but because they seek an alternative configuration of units. These people do not see why this *particular* government should be the one ruling their lives. They might be alienated because their subgroup has a legacy of oppression at their current state's hands—many colonized or indigenous peoples fall into this category. Or they might be alienated because, though they have no significant history of oppression, they share distinctive political priorities on many issues, which almost always go unrecognized by the majority. Scotland and Quebec are persistent minorities of this kind. If these subgroups possess a structure of representation that can be more readily affirmed, and can construct minimally just institutions on this basis, then I believe there is *pro tanto* reason to grant them self-determination. Allowing self-determination would better facilitate their sense of participation in a shared political project, enabling them to enjoy the goods of meaning and political freedom in their lives. As already noted, self-determination does not necessarily entail a right to a sovereign state; it may frequently be satisfied through federalism, devolution, or internal autonomy. I also deny that a self-determination claim is absolute; it can sometimes be overridden by countervailing concerns, especially the interests of others in avoiding conflict or instability. But—where a just alternative is accessible at reasonable cost—I think persistent alienation generates a *pro tanto* reason for institutional reconfiguration.

It might be objected here that the remainder group can become disaffected if dissenters are allowed to redraw boundaries. The English might be alienated if they were no longer able to live in Great Britain, in association with the Scots, rather than in England. Here I reply once again that freedom-as-independence is a *moralized* claim. The Kantian argument is that freedom-as-independence is limited by duties of justice to respect others' rights, and that a minimally just state is required for these duties to be fulfilled. Dissenters can thus be forced to cooperate against their will if their cooperation is essential to sustaining just state institutions. But there is a flip side to this Kantian argument: justice is the *only* reason unwilling dissenters can permissibly be forced to cooperate. Once their duties of justice have been fulfilled, individuals have a claim to independence to pursue their own values. In particular, they should not be coerced to sustain someone else's identity. If greater recognition for the identity of the English

would involve forcing the unwilling cooperation of the Scots—under conditions where their cooperation is not required to uphold just institutions—then English alienation should be discounted. (Much the same could be said of the widespread disaffection of British imperialists, at the moment of British withdrawal from India).

Analogously, in other relationships—compare a marriage or a friendship—we do not coerce disaffected parties to continue cooperating because their departure would cause alienation for those they leave behind. Individuals have claims to lead their own lives, within the boundaries of their duties of justice to others. Of course, we may delay or place conditions on departure to ensure that essential duties are discharged. But as long as exit is consistent with justice, we recognize that people are entitled to pursue the priorities that matter to them. Using coercion to force a dissenter to uphold someone else's identity, without any further justice-based rationale, is wrong.

Of course, not all alienated dissenters can be accommodated. Some will be forced against their will to cooperate, because their cooperation is required to sustain a reasonably just state. This is how my account would explain a permissible military occupation, or a humanitarian intervention. In cases of civil war, say, there may be no politically cooperative people currently in existence. As long as the population cannot themselves sustain a decent domestic government, they may have to put up with alienating foreign rule, if it is the only means of establishing basic justice. Still, as long as the occupying administration is not widely affirmed by its constituency, its legitimacy is only partial. If the time comes when those constituents can set up a minimally just regime that would better reflect their values, they may displace their foreign rulers.

A feasible response to the alienation of dispersed ideological minorities—such as socialists—may also be lacking. My reply to them stresses that our duties of justice are importantly *territorial* in nature. Since, on a Kantian view, the state plays an essential role in establishing property rights, jurisdictions need to be territorially defined if they are to carry out morally mandatory tasks. If each person were extended the discretion to sign up for the regime of property, contract, and tort law of his choice, interactions between individuals would generate conflicts that undermine their independence from one another. Groups claiming self-determination must therefore be capable of territorial organization in representative institutions. Since dispersed minorities are unable to fulfill this condition, we have sufficient reason to reject self-determination for them, as inconsistent with upholding the “taker” freedoms of others.

One might object here that *no* coercive arrangements are ever strictly *necessary* to secure taker freedom. There will always be some alternative legal regime that could uphold basic justice among us. But I do not have in mind

logical necessity, but rather feasibility in given political circumstances, which involves a contextual assessment. To be feasible, an alternative institutional arrangement must: (a) be accessible, through achievable political reforms; (b) entail acceptable costs of transition; and (c) be likely stable once realized (Gilabert and Lawford-Smith 2012). Many logically possible alternatives will not be presently feasible in this sense. So, in concrete cases, we will need to weigh the claims of the persistently alienated against the countervailing risks to just institutions, including the potential for civil unrest, instability, ethnic conflict, or rights violations. Self-determination is not an absolute right, but rather a weighty moral claim that must be applied with due regard for circumstances. Sometimes the risks of reconfiguring our institutions will be so great as to outweigh persistent alienation. Still, institutional alternatives that are inaccessible at one point in time may become accessible later (compare the discussion of “context-dependent” moral requirements in Patten 2014, 24–7). Moreover, it is often immediately possible to allow greater self-determination at low institutional risk, as in 1934, when the US Congress passed the Indian Reorganization Act, ending fifty years of direct federal control over Native American affairs.

Our reasons for granting self-determination—in cases where a just institutional alternative can be instituted at reasonable cost—are rooted in the basic Kantian thought that people have an innate right to *independence*, and this gives them standing to reject unwanted coercion whenever that coercion is not *necessary* to securing the freedoms of others. While self-determination is important, it stands in a subordinate relation to natural duties of justice. Self-determination is not an absolute right, and it can be legitimately denied in cases where its recognition would threaten decent governance, jeopardize urgent “taker” interests, or entail unreasonably high costs. Yet I believe self-determination still has very great weight. Only a state that affords its members self-determination is *fully* legitimate. Otherwise, minimally just institutions are subject to the constant possibility of displacement by alternatives that better guarantee self-determination.<sup>18</sup>

## 6. CONCLUSION

We have come a long way, so I briefly summarize the chapter’s main conclusions. I believe our regard for self-determination is ultimately rooted

<sup>18</sup> Here I differ from Allen Buchanan, who argues that self-determination is only a *remedial* right against a government that persists in serious injustices. On my view, while potential injustice is a constraint on self-determination, it is not a necessary condition (see Buchanan 2004, 351–7).

in a fundamental “maker” interest of individuals—an interest in being the author of the institutions that govern one’s own life. The state’s imposition of coercive requirements may threaten this interest, if those requirements fail to reflect the individual’s values and commitments. Though the “maker” interest is an interest of individuals, it is furthered by an individual’s membership in a self-determining group, to the extent that he affirms his participation in that group. Because of the importance of this “maker” interest, a perfect regime would not only be *just*, it would also be *self-determining*—i.e. it would rest on the shared will of its people. In the real world, though, the peoples of even reasonably just states fall short of actual consensus. How seriously should we take the complaints of alienated dissenters under these conditions? I believe we have an important though limited reason to take alienation seriously, since unwanted coercion may threaten Kantian independence where it is not essential to upholding just institutions. If a reasonably just but less alienating institutional alternative is available, a due regard for Kantian independence gives us reason to institute that arrangement.

## Bibliography

- Altman, Andrew and Wellman, Christopher (2009). *A Liberal Theory of International Justice* (Oxford: Oxford University Press).
- Anaya, S. James (2004). *Indigenous Peoples in International Law* (Oxford: Oxford University Press).
- Beitz, Charles (1979). *Political Theory and International Relations* (Princeton: Princeton University Press).
- Beitz, Charles (2009). “The Moral Standing of States Revisited,” *Ethics and International Affairs* 23(4): 336–8.
- Bratman, Michael (2007). *Structures of Agency* (Oxford: Oxford University Press).
- Bratman, Michael (2014). *Shared Agency: A Planning Theory of Acting Together* (Oxford: Oxford University Press).
- Buchanan, Allen (2004). *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press).
- Cassese, Antonio (1995). *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press).
- Cohen, Joshua (2010). “Is There a Human Right to Democracy,” in J. Cohen, *The Arc of the Moral Universe* (Cambridge, MA: Harvard University Press).
- Crawford, Neta (2002). *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention* (Cambridge: Cambridge University Press).
- Dworkin, Ronald (1996). *Freedom’s Law* (Cambridge, MA: Harvard University Press).
- Dworkin, Ronald (2000). *Sovereign Virtue* (Cambridge, MA: Harvard University Press).

- Eyal, Nir (2011). "Informed Consent," in E. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Stanford, CA: Stanford University) <<http://plato.stanford.edu/entries/informed-consent/>> accessed Aug. 25, 2015.
- Gilabert, Pablo and Lawford-Smith, Holly (2012). "Political Feasibility: A Conceptual Exploration," *Political Studies* 60(4): 809–25.
- Hardimon, Michael (1994). *Hegel's Social Philosophy: The Project of Reconciliation* (Cambridge: Cambridge University Press).
- Hodgson, Louis-Philippe (2010). "Kant on the Right to Freedom: A Defense," *Ethics* 120(4): 791–819.
- ICISS (International Commission on Intervention and State Sovereignty) Report (2002). *The Responsibility to Protect* (Ottawa: International Development Research Centre).
- Jaeggi, Rahel (2014). *Alienation* (New York: Columbia University Press).
- Kleinig, John (2010). "The Nature of Consent," in F. Miller and A. Wertheimer (eds), *The Ethics of Consent* (Oxford: Oxford University Press): 3–24.
- Kutz, Christopher (2000). *Complicity* (Cambridge: Cambridge University Press).
- Lear, Jonathan (2006). *Radical Hope* (Cambridge, MA: Harvard University Press).
- List, Christian and Pettit, Philip (2011). *Group Agency* (Oxford: Oxford University Press).
- Locke, John (1980). *Second Treatise of Government*, C. B. Macpherson (ed.) (Indianapolis: Hackett).
- Margalit, Avishai and Raz, Joseph (1990). "National Self-Determination," *Journal of Philosophy* 87(9): 439–61.
- Mill, John Stuart (2008). *On Liberty and Other Essays*, John Gray (ed.) (Oxford: Oxford University Press).
- Miller, David (2008). *Global Justice and National Responsibility* (Oxford: Oxford University Press).
- Patten, Alan (2014). *Equal Recognition* (Princeton: Princeton University Press).
- Pettit, Philip (1997). *Republicanism* (Oxford: Oxford University Press).
- Pettit, Philip (2005). "Rawls's Political Ontology," *Politics, Philosophy, and Economics* 4: 157–74.
- Pettit, Philip (2012). *On the People's Terms* (Cambridge: Cambridge University Press).
- Philpott, Daniel (2010). *Revolutions in Sovereignty* (Princeton: Princeton University Press).
- Rawls, John (1999a). *A Theory of Justice* (Cambridge, MA: Belknap Harvard University Press).
- Rawls, John (1999b). *Law of Peoples* (Cambridge, MA: Harvard University Press).
- Raz, Joseph (1986). *The Morality of Freedom* (Oxford: Clarendon Press).
- Rodin, David (2014). "The Myth of National Self-Defence," in C. Fabre and S. Lazar eds), *The Morality of Defensive War* (Oxford: Oxford University Press): 69–89.
- Rousseau, Jean-Jacques. (1997). *The Social Contract and other later political writings*, Victor Gourevitch (ed.) (Cambridge: Cambridge University Press).
- Scanlon, T. M. (1998). *What We Owe to Each Other* (Cambridge, MA: Belknap Harvard University Press).

- Sciaraffa, Stefan (2009). "Identification, Meaning, and the Normativity of Social Roles," *European Journal of Philosophy*, 19(1): 107–28.
- Shapiro, Scott (2011). *Legality* (Cambridge, MA: Harvard University Press).
- Simmons, A. John (1999). "Justification and Legitimacy," *Ethics* 109(4): 739–71.
- Standing Bear, Luther (2013). *My People, the Sioux* (Lincoln, NE: Bison Books).
- Stilz, Anna (2009). *Liberal Loyalty: Freedom, Obligation, and the State* (Princeton: Princeton University Press).
- Stilz, Anna (2011). "Nations, State, and Territory," *Ethics* 121(3): 572–601.
- Stilz, Anna (2015). "Decolonization and Self-Determination," *Social Philosophy and Policy* 32:1.
- Wolf, Susan (2010). *Meaning in Life and Why it Matters* (Princeton: Princeton University Press).