

The Value of Self-Determination

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The idea of self-determination was first 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.”¹ A corollary of this principle, he argued, was that “no nation should seek to extend its polity over any other nation or people, but every people should be left free to determine its own polity, its own way of development...”² No territorial annexations should be made without consulting the people, since “no right anywhere exists to hand people about from sovereignty to sovereignty as if they were property.”³

Since Wilson’s time, the self-determination principle has come to play a major role in international law. Article 1(2) of the UN Charter states its “respect for the principle of equal rights and self-determination of peoples.”⁴ Both 1966 international human rights covenants proclaim 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.”⁵ Self-determination also plays a leading role in the 1960 UN Resolution on the Independence of Colonial Peoples and the 1970 UN Declaration on Friendly Relations among States. We can define self-determination, in a preliminary way, as a community’s right to choose its own governmental

¹ This phrase is cited in a number of Wilson’s speeches, including the “Peace without Victory” speech and his Second Inaugural Address.

² See Wilson, “Meeting Germany’s Challenge,” in Harper 1918, 222. See also Knock 1992, 33; 57.

³ Wilson, “The Terms of Peace,” in Harper 1918, 219.

⁴ See <http://www.un.org/en/documents/charter/chapter1.shtml>. Accessed January 6, 2014.

⁵ For the International Covenant on Civil and Political Rights, see <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. For the International Covenant on Economic and Social Rights, see <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>. Accessed January 6, 2014.

arrangements and international standing. Unless a people decides through its own processes to integrate with another political unit, its independence should be respected by foreigners.

Yet this self-determination principle has proved enduringly difficult to theorize. Among the many questions it faces are: how do we define the “self”? Does self-determination require democratic governance, or is it compatible with non-democratic arrangements? How does it cohere with other international legal principles, such as territorial integrity? Does self-determination apply only to overseas dependencies, or also to internal minorities?

While the self-determination principle’s contours are disputed, international law clearly recognizes decolonization as a central application of it. As Antonio Cassese emphasizes, self-determination was “perceived and relied upon as a legal entitlement to decolonization.”⁶ Most ordinary people also agree that the liberation of colonized peoples was a moral triumph. There is widespread consensus that decolonization was not just a legal imperative, but a moral one as well.

This paper examines three philosophical theories of self-determination’s value, and asks which one best captures the reasons why decolonization was morally warranted. If we can get clear about the values implicated by self-determination in the colonial context—where our moral intuitions are strongest—we can then ask, in a second step, whether these values extend to further cases. This strategy may enable progress in theorizing self-determination in more controversial areas, like humanitarian intervention, secession, federalism, or devolution. Indeed, I think that the associative view of self-determination defended here does have implications beyond decolonization, and I say

⁶ Cassese 1996, 65. See also Pomerance 1982.

more about these implications at the end of the paper. Ultimately I believe that self-determination is not a *sui generis* value that applies to decolonization alone. Rather, our intuitions about decolonization can be fully justified only by invoking a more general interest on the part of alienated groups in redrawing political boundaries. This interest, I believe, may also justify self-determination in other cases, such as autonomy for indigenous peoples, and greater independence for Scotland or Quebec. I argue that those who strongly support decolonization may have reason to endorse independence for these other minorities as well.

Consider three accounts of the reasons for decolonization:

- (1) *The Instrumentalist View*: Decolonization was morally required because subject peoples were *unjustly governed*. What gave these peoples self-determination rights was the fact that colonial states failed to achieve minimally just rule.
- (2) *The Democratic View*: Decolonization was morally required because subject peoples lacked *democratic representation*. What gave these peoples self-determination rights was their claim to be politically enfranchised.
- (3) *The Associative View*: Decolonization was morally required because subject peoples were unable to *affirm* the political institutions their rulers imposed on them. What gave colonized peoples self-determination rights was their claim to be cooperative partners in a political institution they could reasonably affirm.

Each of these views argues for a link between self-determination and the value of a political community for its members. The *instrumentalist* view holds that I have an interest in my community's independence when my rights are protected by it. The *democratic* view claims that I have an interest in my community's independence when I

have a voice in its law-making processes. And the *associative* view holds that I have an interest in my community's independence when I am a partner in a shared enterprise that I can affirm. These approaches contrast with a collectivist one, which holds that the independence of a political community is impersonally valuable in itself, regardless of its value for the individuals who make it up.

I believe the instrumentalist and the democratic accounts do provide us some reasons for favoring decolonization. But I also think these accounts take an overly one-sided view of the value of political institutions for their members. For this reason, neither view can fully explain our intuitions about cases where decolonization seems appropriate. Their failure springs from the fact that they see individuals' interests in their political institutions solely from the perspective of a beneficiary, an institutional "taker." But individuals have equally important interests in their institutions as political agents, or "makers." Political institutions can be valuable for individuals, not just because they receive important benefits from them, but also because they *created* those institutions together with others, and see those institutions as reflecting their shared projects and contributions. I argue that the *associative* view accommodates the truth in the preceding views while also improving on them, by better incorporating this "maker" perspective. My strategy in the paper is thus dialectical: it is by showing the limits of other—initially plausible—accounts of self-determination that I make space for the associative view.

Before beginning, I offer a few clarificatory remarks. First, there is a widely held view of self-determination that I will not discuss in depth here: the nationalist theory. This view holds that each cultural nation has a *prima facie* claim to its own political unit.

Territorial boundaries ought ideally to reflect cultural boundaries.⁷ As a normative matter, I believe we should abandon the association between state and culture that inspires the nationalist position. If it is to treat its citizens with equal respect, a government should not privilege a particular culture, as doing so devalues citizens of other nationalities, implying that they lack a full “stake” in its institutions. Instead, I believe that a government should represent all the diverse cultural and linguistic groups on its territory, by extending them each some public recognition and support (e.g., through bilingual schooling, and a multicultural approach to official history and symbols). Because I reject the nationalist association between state and culture, I confine myself to liberal-democratic arguments for self-determination.⁸ If the arguments I consider fail, this may show either that liberals must give nationalist considerations a larger role in their thinking, or alternatively, that they ought to abandon their commitment to self-determination.

Second, one might worry that the answer to my orienting question—why was decolonization morally warranted?—is simply too obvious to require extended analysis. Most colonial regimes were imposed on an unwilling people through force and conquest. Perhaps decolonization can be justified quite straightforwardly, on grounds that it undoes a past conquest. I believe this explanation is too simple. Nearly every current state was established in part through conquest: France conquered Normandy and Languedoc in the thirteenth century; the US conquered the Southwest in 1848 and Hawaii in 1893, and so

⁷ See Raz and Margalit 1994; Miller 2000.

⁸ For other liberal approaches, see Altman and Wellman 2009, Cohen 2010.

on.⁹ Yet surely we are not required to undo all the unjust conquests of the past. Nor can the issue be resolved simply by invoking the passage of time: Britain conquered Ireland and India much longer ago than the US conquered the Southwest. Instead, I believe that decolonization was required because *continuing* political association between colony and metropole was morally problematic, regardless of how that association was initially established. The goal of this paper is to understand what precisely this moral problem with continuing political association might be, and when it arises.

Third, I will not here provide an account of the *right* to establish a new state, e.g. through secession. Instead, I explore a more preliminary question: what is the value in collective self-determination? To argue for a right to secede, we must show that this value is of sufficient weight to hold others under a duty to allow the formation of a new state. This involves comparing the interests protected under the proposed right against countervailing considerations, such as other people’s interests in the territory, the costs of secession to their expectations, the risk of civil war, instability, etc. And it involves comparing secession with other possible arrangements for protecting the interest in self-determination, such as internal autonomy, special representation rights, federalism, or devolution. I therefore remain agnostic here as to whether secession is the best means of realizing self-determination.

Finally, I leave aside the question of the best institutions for adjudicating and enforcing claims to self-determination. Who should judge when self-determination has been unjustly denied? How should self-determination be enforced: through self-help by the claimants, by the domestic state, or by the international community? Though these

⁹ All states are, as a matter of historical fact, initially imposed by force. Charles Tilly emphasizes this point in his important work on the origins of national states in Europe: “coercive exploitation played a large part in the creation of the European states...” Tilly 1985, 169; 184.

institutional questions are important, I cannot take them up. So I emphasize that my argument does not imply that when self-determination is denied, there is any unilateral right to claim territory by force. Instead, it only establishes a weaker claim: that the claimants have a strong interest in redrawing political boundaries. The question of the best way of accommodating that interest is one I defer to future work.

1. The Instrumentalist Approach

Why was decolonization justified? An initial, fairly obvious, thought is that decolonization was justified because of the grave injustices committed by colonial regimes: this is the *instrumentalist* approach.

The instrumentalist approach seems plausible when we examine the human rights abuses associated with colonial rule. An egregious case is the Congo Free State, the brainchild of Belgium's King Leopold.¹⁰ Under Leopold's rule, the Congo generated immense profits through the exploitation of native peoples in the production of wild rubber. To get men to collect rubber, Free State officials seized their families and held them hostage until they brought their quota. If a district fell short, its residents were flogged, tortured and raped until the rubber was provided. Tyranny in the Congo was so pervasive that it depopulated the country: up to 50% of the inhabitants died by the time Leopold's rule ended.

Though the Congo Free State is a horrific case, it is not unrepresentative of colonial practices. Forced labor was also instituted in Dutch East India, French Equatorial Africa, and Spanish America. In the settler states of North America, Australia,

¹⁰ From 1884 until 1908, the Congo was Leopold's private property, after which it became a colony of the Belgian state. For more on this history, see Hochschild 1999 and Pakenham 1991.

and New Zealand, indigenous inhabitants were dispossessed, subjected to "civilization" campaigns, and sometimes exterminated. In almost all colonies, Europeans institutionalized systems of racial and cultural discrimination. Reflecting on these facts, our basic commitment to human rights may seem enough to explain why colonized peoples had claims to self-determination.

In the contemporary literature, Allen Buchanan defends an instrumentalist account of self-determination of this kind. Buchanan argues that a state is morally justified in exercising political power over a population and territory if it "(1) does a credible job of protecting at least the most basic human rights of all those over whom it wields power and (2) it provides this protection through processes, policies, and actions that themselves respect human rights."¹¹ Basic human rights, for Buchanan, are interests that are constitutive of a decent life and necessary for individual flourishing.¹² He lists the right to life, the right to security of the person, the right against enslavement and involuntary servitude, the right to resources for subsistence, the most fundamental rights of due process and equality before the law, the right to freedom from religious persecution, the right to freedom of expression, the right to association, and the right against persecution on grounds of ethnicity, race, gender, or sexual preference. To protect basic human rights, on Buchanan's view, a legitimate state need not always be democratically organized. Nondemocratic states can be legitimate in at least some circumstances, when democratization is infeasible or would threaten other rights.¹³

¹¹ Buchanan 2004, 247.

¹² See Buchanan 2004, 126-9.

¹³ Buchanan 2004, 352. For other arguments against a human right to democracy, see Altman and Wellman 2009, Beitz 2009, Rawls 2001. Buchanan does hold that "where institutional resources exist for democratic authorization of government," such procedures must be utilized if the state is to be fully legitimate (Buchanan 2004, 254). I consider this extension of his argument in the next section.

Buchanan closely links his theory of legitimate state power with an account of self-determination rights. No claim to self-determination can be justified against a legitimate state. Instead, self-determination is a *remedial* right against a government that persists in serious injustices, such as “genocide or massive violations of the most basic individual human rights.”¹⁴ According to Buchanan, self-determination is warranted when a government fails this instrumentalist legitimacy test.¹⁵

Buchanan also includes a “Non-Usurpation” requirement in his theory, holding that “an entity is not legitimate if it comes into being by destroying or displacing a legitimate state by a serious act of injustice.”¹⁶ However, while many subject peoples had sophisticated precolonial systems of governance, these regimes were not Western-style states that met Buchanan’s human rights-based legitimacy criteria. In addition, all colonial territories were acquired before 1945, the “statute of limitations” on usurpation that Buchanan suggests.¹⁷ So it is not clear that displacing precolonial regimes constituted usurpation as Buchanan defines it, or that decolonization can be justified as rectifying an unjust annexation, on his view.

Can instrumentalism account for our intuition that decolonization was a moral triumph? Here the evidence is mixed. Certainly it can explain extreme cases, like Leopold’s Congo. But the instrumentalist does not rule out that a colonial regime could be legitimate if it did a decent job at protecting human rights. Indeed, the view might

¹⁴ Buchanan 2004, 351; see also Buchanan 1997, 37.

¹⁵ A stronger instrumentalist view would hold that self-determination is justified whenever redrawing boundaries would *improve* protection of human rights. This view seems even less likely than Buchanan’s to account for our intuitions about decolonization. It is not obvious that postcolonial successor regimes always represented human rights improvements. And the view would justify annexation whenever a colonizer could provide more just rule.

¹⁶ Buchanan 2004, 264-5.

¹⁷ Buchanan 2004, 357. Buchanan also suggests that self-determination may be appropriate where states have engaged in serious and persisting violations of intrastate autonomy agreements.

even be invoked to support “civilizing” or benevolent colonialism, historically a common rationale for the subjugation of foreign peoples.¹⁸ Particularly in the late colonial period, European colonizers often invoked arguments grounded in liberal principles to justify their practices. Thus, colonial rule was defended on the basis that it would help abolish slavery and the slave trade in Africa, or that it would further the moral and material well-being of native populations, or advance commerce and development. The US occupation of the Philippines was rationalized, in this vein, on the grounds that it aimed at “the well-being, prosperity, and the happiness of the Philippine people” and the US was “not only willing, but anxious, to establish in the Philippine Islands an enlightened system of government.”¹⁹

These claims were not mere rhetoric: beginning in the late nineteenth century, significant efforts were made to bring colonial practices into line with these “benevolent” or “civilizing” ideals. Reformers such as the British Anti-Slavery and Aborigines Protection Society lobbied for more humane practices, including the elimination of lynching, forced labor, and other forms of exploitation. While these reformers sought the amelioration of various abuses, they did not question the basic institution of colonialism itself. As one French critic of forced labor, writing in 1934, put it: “it is precisely because we accept the general and abstract justice of colonization that we desire, in the specific and concrete instance, to purify it of all that soils it.”²⁰ An important expression of the colonial reform impulse was the establishment of the international Mandate System under the League of Nations in 1919. The Mandate System sought to ensure that colonial powers served as trustees ruling in the interest of native populations. A Permanent

¹⁸ For a similar critique, see Ypi 2013, 168.

¹⁹ See Crawford 2002, 236-239.

²⁰ Quoted in Cooper 1996, 27.

Mandates Commission was established to exercise oversight and articulate criteria for good imperial rule. Often staffed by former colonial administrators, this commission required annual reports by mandatory powers and allowed for the investigation and publicizing of abuses.²¹

We could certainly debate the extent to which these reforms enabled colonial regimes to deliver decent governance to their subject peoples. Still, I believe this history of colonial reform points out an important flaw in the instrumentalist approach. Suppose a reformed colonial regime was reasonably successful in living up to its “benevolent” ideology. In that case, for the instrumentalist, no claim of self-determination could have been pressed against it. This is because, for the instrumentalist, there is no difference between being ruled by a domestic government (as long as it protects one’s human rights) and being ruled by a foreign government (that does the same). But surely a subject people has an objection to being ruled by a foreign government, even if their colonizer successfully protects their most basic rights. While they are not subject to grave injustice, they are still denied self-rule. The committed instrumentalist may of course dispute this claim, arguing that benevolent colonialism is not always wrong. But I believe most people will agree that benevolent colonialism is problematic. For their sake—even if not for the committed instrumentalist—it is worth exploring what precisely seems so problematic about it.

The difficulty with instrumentalism here stems from the fact that it views the connection between the citizen and his political community solely from a beneficiary’s perspective. But this overlooks the possibility that citizens might have a distinct interest in their political institutions: an interest in deciding together how to order their collective

²¹ For useful discussion, see Crawford 2002, 260-289.

life. Citizens are not just the passive “takers” of their institutions; they also seek to be active “makers” of them. It might be just as important that citizens themselves create the institutions they live under (in their role as “makers”) as that these institutions be good ones (from their perspective as “takers”).²²

2. The Democratic Approach

One way to interpret this idea is to hold that certain forms of collective decision-making are intrinsically valuable, and that what is wrong with colonial rule is that it denies these to subject populations. This explains decolonization on the basis that legitimate political power should be authorized, through democratic procedures, by those governed by that power.²³ As John Plamenatz puts it, “if it is right that governments should be responsible to the governed, then it is wrong for one people to impose their rule on another. Alien rule and democracy are clearly incompatible.”²⁴ This democratic account seems more plausible than the instrumentalist one, precisely because it allows that self-rule is an important value. In that sense, it is an important competitor to the associative view I will argue for later. But the democrat understands self-rule in a specific way. For the democrat, self-rule is an individual right to participate in a democratic decision: the right to vote yes or no on the policies that govern one’s life. What was wrong with colonial regimes, according to the democrat, is that they denied their subjects this chance to be enfranchised in the political decisions ruling them.

This democratic approach links self-determination to the existence of fair procedures for collective decision-making. These procedures include equal rights to vote

²² For similar distinctions, see Beitz 1989; Habermas 1996.

²³ Cobban 1970, 131; Philpott 1995, 353.

²⁴ Plamenatz 1960, 1.

for representatives, to associate in political parties, to express political views, and to compete for office. If such procedures exist, then according to the democrat, the laws reflect the decisions of a self-governing people, and as such they are worthy of respect. Like the instrumentalist, the democrat connects the state's claim to independence to its legitimacy. But the democrat holds that legitimacy has a *procedural* as well as a *substantive* aspect. Even a substantively just state might be illegitimate, if its laws have not been authorized by those required to live by them.

If correct, this democratic argument accounts for a wider range of self-determination claims than instrumentalism did. Very few colonizers allowed their subjects electoral representation. Consider British India, for example. Although it is debatable whether an independent India in the 1890s would have improved the protection of human rights—and thus been warranted on instrumentalist grounds—for the democrat, this is not sufficient to give Britain the right to rule India. Since Indians were denied the opportunity to have any input into the *making* of the laws and policies by which they were governed, their institutions were not democratically legitimate.²⁵

Note that the democrat need not take a *purely procedural* view, which holds that the authorization of laws through majority voting renders those laws legitimate regardless of their content. Many people rightly find this position implausible. Instead, the democrat simply maintains that the legitimacy of political power is *partly* dependent on whether the laws were authorized in a fair procedure, leaving space for a hybrid theory

²⁵ There was some Indian political representation on local and provincial councils, but no nationwide democratic legislature.

that incorporates the instrumentalist concerns about basic rights within a more complex proceduralist account.²⁶

For our purposes, the essential question is: can a commitment to the intrinsic value of democratic procedures explain why decolonization was warranted? To answer, we need a closer look at the reasons why democracy might be intrinsically valuable. Here, I consider one popular argument for democracy's intrinsic value, the *public equality* argument. This argument holds that disenfranchising people is wrong because it brands the excluded as inferior, or fails to treat their interests with equal concern. There are several versions of the public equality argument. Jeremy Waldron holds that the right to enfranchisement is grounded on individuals' claims to be treated as a "particular intelligence," with a unique view of justice worthy of consideration.²⁷ Charles Beitz argues that among citizens' interests in the choice of a political procedure is an interest in the *recognition* of his equal status as a citizen.²⁸ Procedures that disenfranchise some people undermine this interest by expressing the belief that certain people's opinions are worthy of less attention and respect. Finally, Thomas Christiano claims that enfranchisement is required because "it is not enough that justice is done; it must be seen to be done."²⁹ When one's opinion is treated as of no consequence, one may reasonably suspect that one's interests are not given equal consideration. Each of these theorists holds that disenfranchising people is wrong because it sends the message that they are second-class citizens, or less deserving of respect, or that their interests deserve lesser consideration.

²⁶ See Beitz 1989; Waldron 1999; Christiano 2008.

²⁷ Waldron 1999, 238-9; 312.

²⁸ Beitz 1989, 109-110.

²⁹ Christiano 2008, 46.

Can this public equality argument be extended to provide a justification for decolonization? Certainly most colonial enterprises did exclude their subjects from participation in public affairs. Still, I doubt the importance of democratic enfranchisement fully explains the value of self-determination. To see why, consider the following case:

Political Incorporation. Suppose that instead of merely extending support to the 2011 Libyan revolutionary movement, France had overthrown Qaddafi's regime, occupied the country, and annexed Libya's territory, much as it annexed Algeria in 1830. Further suppose that after annexation, France governed Libya justly and extended its inhabitants participation rights within a wider French republic. Imagine that there were no distinctions between French citizens and "the former Libyans" in terms of their democratic or other rights. Would the former Libyans have a claim to political independence?

If the imagined political incorporation is wrong—as I believe it is—it is hard to see how the public equality argument can explain it. Because Qaddafi's regime threatened humanitarian abuses, there was arguably a right to intervene in Libya in 2011. And because Libya was not a democracy prior to the intervention, on the view we are considering, Libyans had no claim to collective self-determination.³⁰ What they did have was a bundle of individual rights to be enfranchised in the political decisions governing them. But France responded to these individual claims by granting them democratic rights after the annexation. So it appears that as long as a colonizer is willing to

³⁰ Libya did have an organ of political representation under Qaddafi—the General People's Congress. However, real power remained with Qaddafi himself; there was no right to form political parties or contest elections.

enfranchise the people of a non-democratic country, that group has no further claim to independence. But that seems wrong—even if the Libyans are enfranchised, they may prefer to retain their own political community.³¹

The problem is that on the public equality argument, we ought to be indifferent between a wider democratic metropole, in which colonial subjects are enfranchised, and an independent democracy on the colonized territory. Both are ways that individuals might be enabled to say yes or no to the decisions governing their lives. But intuitively, we are not indifferent among these options. Instead, it seems that a colonized territory has a claim to independence when its citizens were incorporated without their agreement.³²

One might object here that a unilaterally imposed regime, like the one envisaged in *Political Incorporation*, cannot be democratically legitimate. The thought is that this *particular* decision—to incorporate Libya into France—was not democratic, even if later decisions were. But suppose that just prior to incorporation, a referendum had been held in the combined Franco-Libyan territory, and that a majority (composed almost entirely of metropolitan French) had voted in favor. Would the annexation then be democratically legitimate? On the "individual enfranchisement" view, it seems it would: no individual has been denied a voice and vote in the decision here. Yet, intuitively, the annexation still seems objectionable, because *Libya* has been denied a separate say in the decision. This explanation, however, appeals to a right to collective self-determination that is not reducible to a set of individual rights to be democratically enfranchised. It is Libya, not

³¹ I do not mean to deny that the Libyans have self-determination rights: they may meet the conditions of the associative account I defend in the next section. I merely deny that the democratic view adequately explains their right to self-determination.

³² See Ypi 2013, 180, for an argument that agreement is required for fair political association.

Franco-Libya, that should be consulted. One might perhaps argue for this separate say on grounds that Libyans' shared political history gives them the right to hold a collective vote on any proposed political merger. Yet that premise cannot be accounted for solely on the basis of the individual right to a democratic say, since each individual Libyan's claim to be enfranchised can be fulfilled even if "Libya" itself ceases to exist as a political entity. Instead, the premise depends on a further—as yet unexamined—assumption about the value of independence for distinct political communities. These reflections, I believe, show that self-determination cannot adequately be theorized as an individual democratic right, since the claim to be enfranchised says nothing about the composition of the group in which the individual is to have a voice and vote.³³

In any case, it seems unclear what the democrat could say about a scenario where a subject people's separate institutions have long since been abolished, and where they are fully democratically incorporated by their colonizer. Yet colonizers have enfranchised their colonial subjects in several prominent cases. In the 1950s, for example, France granted full citizenship—with suffrage rights—to all adult men and women in its former Algerian colony.³⁴ A second case is the United Kingdom of Great Britain and Ireland: from the Act of Union in 1801 until its independence in 1922, Ireland formed an integral part of a wider Britain, electing their own MPs to the British House of Commons.³⁵

³³ For related discussion of the democratic "boundary problem," see Abizadeh 2008, 2012, Goodin 2007, Miller 2009. Agn  2010 argues that the boundary problem can be solved only by instituting a global demos. I believe his argument raises much the same worries about colonialism as the Libya example does. Abizadeh 2008 makes an exception to his "unbounded demos thesis" for persistent minorities. It is unclear if the Libyans are a persistent minority, but if so, this might justify separate political institutions for them.

³⁴ Shepherd 2006, 19-54.

³⁵ Ranelegh 1983.

On the public equality argument, it is hard to see why Ireland and Algeria had any claim to establish distinct political units. They were enfranchised within the wider metropole. And though they had substantive grievances dating from their colonial history, arguably these grievances had begun to be addressed through the political process, and might have continued to be addressed in this fashion. But this ignores the alienation of the Irish and Algerians, and is inconsistent with popular sentiment of the period, which saw Irish and Algerian independence as quintessentially just causes. If these reflections are correct, then the public equality argument—while plausible in its own right—cannot provide a warrant for decolonization. Public equality may be a demand of justice, but it does not help us draw the boundaries of the political community.

3. An Associative Account of Self-Determination

Recall that a key problem with the instrumentalist approach was that it focused only on citizens' interests (as institutional "takers") in *benefiting* from a reasonably just state's rule, through protection of their most basic rights. In response, we held that citizens have an equally important interest in *self-rule*, in being the authors (or "makers") of the institutions to which they are subject. Are there avenues other than democratic participation by which to understand a citizen's interest, as a "maker" of his institutions, in self-rule? I think there are. An individual can have an interest in his society's independence if he *reasonably affirms* his participation in the relationship of political cooperation that undergirds its institutions. This view requires that our state be structured such that: (a) our personal autonomy, as "takers," is guaranteed by our political institutions; and that (b) as "makers," we affirm or endorse these institutions.

The associative view derives inspiration from Hegel's notion that freedom has both an objective and a subjective component.³⁶ Objective freedom requires that political institutions be structured to guarantee their members' personal autonomy, by protecting essential basic rights (in this, it agrees with the instrumentalist). But Hegel argues that citizens' freedom is not exhausted by these considerations: it has a further subjective sense. Freedom additionally requires that individuals who sustain state institutions together experience this activity as an expression of themselves, not as something that they are coerced into performing by an alien power. To the extent that citizens attain subjective freedom, they will see their state as a creation of their own free cooperation, not as an institution of subjugation. The idea is that there is an important good in achieving minimally just institutions through the willing contributions of those subject to them, rather than through their imposition by force. This is the same good we achieve when we act on our own freely formed intentions, rather than being forced to act on the will of someone else. On the associative view, then, while it is important that state institutions be minimally just, it is also important that members affirm their state's rule and willingly contribute to it, if they are to be properly subject to that state's power. Like the democrat, then, the associativist holds that political legitimacy has two elements, a substantive element and an endorsement element. Even a substantively just state might be illegitimate, if its subjects widely reject its rule.

I think interpreting the citizen's agency connection to the state in these Hegelian terms captures many of our concerns about colonialism. What is striking about India or Ireland is that colonial rulers were unable to bring their subjects to affirm their association with the metropole. The alienation of colonized peoples had historical roots

³⁶ Hegel 1996, 313.

in past conquest, and in the fact that the colonizers set themselves apart as a superior class. But what is important is not the specific roots of alienation but the fact that a sense of oppression on the part of these peoples persisted and was difficult to eradicate, even once attempts to address their grievances were made. Though an objective basis for affirming their institutions was perhaps in place, their subjective ability to do so was not.

Not every political association initially imposed by force remains incapable of generating affirmation as time goes on, however. Consider the case of Hawaii. The acquisition of Hawaii occurred through a process similar to the acquisition of India or Ireland: in 1893, a group of American plantation owners overthrew the Hawaiian monarchy, and imprisoned its queen.³⁷ Five years later, Hawaii was annexed to the US. There was a case for restoring the monarchy in the aftermath of annexation, and a nationalist movement pressed this case in the early 1900s. But over time, the situation in Hawaii changed. The political power of the plantation-owning class was destroyed, and racial discrimination against Hawaiians was gradually ameliorated. When Hawaiian statehood was submitted to a referendum in 1954, 93% of the population voted in favor. So sometimes a political relationship that was established through an unjust conquest can come, over time, to feature both reasonably just governance and widespread endorsement by participants. If so, then according to the associative view, any reason to restore independence to the former colony is superseded.

To see why affirmation matters in addition to minimally just rule, we should begin by emphasizing that "the state" is not an entirely separate agency from the people who make it up. Instead, the state is reproduced by its members' cooperative activity,

³⁷ For a brief overview of this history, including the Queen's statement of abdication, see www.hawaii-nation.org-soa.html.

including their obedience to law; payment of taxes; voting; and cooperation with the police, judges, and public officials. Several philosophers have offered theories of this sort of joint agency. Christopher Kutz, whose account I largely follow here, argues that joint action is undergirded by an interlocking structure of shared “participatory intentions.”³⁸ Roughly, I share a participatory intention whenever I think of myself as doing something because we are doing something together. A group is formed when we are mutually aware of these shared intentions, and they mesh in a way that allows us to act on our joint goal. Participants in joint intentional action have an awareness of the relation in which their action stands as a means to a group end, and they would not perform it otherwise.

I believe that sustaining the state can be understood, along these lines, as a joint intentional activity—on a grand scale—among the citizenry. Of course, states also feature formal governance institutions, such as the legislative, executive and judicial branches; the police; the bureaucracy; and the binding procedures used in making collective decisions. These formal institutions typically direct citizens’ activity. But it is the willing contributions of ordinary citizens—their intentions to “play their parts”—that make their formal institutions effective and stable. In the absence of such participatory intentions, officials cannot rule without significant repression. But such repression is not characteristic of most well-functioning states: instead, citizens cooperate voluntarily with their officials, and they accept the results of decision procedures without having to be forced.

Thus, ordinary citizens of well-functioning states willingly coordinate their behavior to make law and policy effective on their territory. What it means for something to be my property is simply to have my right over it generally recognized and

³⁸See Kutz 2000; also Bratman 1999.

respected by my fellow citizens. By paying taxes, the people contribute to the institutions that enforce their rights. Additionally, when their state is a democracy, the people don’t simply sustain an apparatus of legislation and coercion, they also offer input into the shape of their cooperative activity. In all these ways, ordinary people maintain and reproduce their political institutions. Though they do not know each other personally, citizens are still participating in a joint enterprise together: they are upholding a shared scheme of law. Of course, these examples are culturally biased, and reflect civic life in a modern, Western bureaucratic state. But though the content of citizens’ contributions will differ across political forms, I believe some structure of contributory intention will undergird any widely endorsed political institution. As long as a political form allows for binding collective rule-setting and centralized enforcement, I believe we can apply the term “state” to it, in a suitably broad sense.

To share in this joint enterprise, it is not necessary that each citizen actively intend all his state’s policies. But his contributions—in the form of obedience to law, voting, payment of taxes, and cooperation with police, judges, and state officials—are causally linked to an ongoing collective process. They support the public coercion of other people in the name of a particular conception of justice, and he can be expected to be aware of that fact. In this way, citizens have a grasp of the relation in which their contributions stand to a collective end. Indeed, many characteristic 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.³⁹

³⁹Kutz elaborates a minimalist conception of joint action that is appropriate to large and diffuse groups, such as a citizenry (Kutz 2000, 90-96). I elaborate a theory of citizenship as joint intentional action at greater length in Stiliz 2009, ch. 7.

The “people’s” collective activity, however, takes place against the background threat of coercion by government agents. So we might wonder: does this joint activity implicate the wills of those involved? Or is it simply something they are forced into? A structure of participatory intentions can be achieved in several ways, and because the state is a coercive institution, we need to pay special attention to whether people form these participatory intentions only as a result of manipulation or duress. Though the state is a coercive institution, I believe the wills of its members are sometimes manifested in their joint activity. This is the case when citizens *reasonably affirm* their participation in this shared enterprise, according to the following conditions:

- (1) *Minimal Justice*: Citizens’ relationship of political cooperation must be reasonable to value, because it protects the most basic human rights of each member, particularly their personal security, subsistence, and ability to form and express their own opinions;
- (2) *Subjective Legitimacy*: Citizens, by and large, must actually affirm their political cooperation together, under these minimally just background conditions.

On my view, then, a state’s claim to political independence is derived, not just from the minimal justice of its rule, but also from the additional subjective value of *willing* affirmation of a relationship of political cooperation by a wide majority of participants. While it is important that the state protect basic rights, it is additionally important that it be sustained—to the extent possible—through the unforced activity of the citizenry. I believe there are both instrumental and intrinsic reasons for valuing affirmation alongside minimal justice. Affirmation is an important instrumental good because without it, people will have to be “forced to be free,” and this makes for a less

stable, more repressive political community. And affirmation is an important intrinsic good because it allows citizens to see political institutions as their own creation, and that gives those institutions a relational value for them that goes beyond the benefits they provide.

The *instrumental* reasons for valuing affirmation derive from the fact that it is better for everyone if states can achieve willing compliance, as this enhances the stability of legitimate institutions. Colonial rulers have to force people to cooperate in sustaining the institutions they impose, and we can expect that—since it is likely to be resisted—their rule will be imposed with significant repression. If this kind of coercion is a disvalue, then we have a reason to favor bounding legitimate institutions so that their subjects *can* be brought to willingly support them. In many cases, this will tell in favor of decolonization. Even dissenters benefit from the lower levels of insecurity, mistrust, and repression that decolonization often brings: ending riots and social unrest produces public goods for everyone. But these instrumental goods cannot be privately distributed, since the reproduction of state institutions requires the participation of a critical mass of other people. The interest of one person, or of a small number, is not sufficient to warrant redrawing political boundaries on instrumental grounds. But the aggregate interest of a sufficiently large group is often weighty enough to ground a claim to self-determination.⁴⁰ Where many people together have an interest in a public good, the case for that good’s provision becomes much stronger.

Yet these instrumental considerations do not exhaust our reasons for caring about subjective affirmation. The existence of a community of willing cooperators is also valuable for *intrinsic* reasons, since it enables citizens to see their political institutions as

⁴⁰ Raz 1986, 208-9; Jones 1999, 354-6.

their *common creation*, rather than an alien imposition on them. Albert Einstein reportedly once said that “The state to which I belong does not play the least role in my spiritual life; I regard allegiance to a government as a business matter, somewhat like the relationship with a life insurance company.”⁴¹ Einstein has no commitment to political cooperation together with any particular group: if he were incorporated into an equally just colonial institution, it would make no difference to him. But citizens who affirm their political relationships do not regard their state in this way. It is not a matter of indifference to them if their state is replaced by an equally just colonizer, since only their state reflects a shared project to which they are committed. Instead, they see themselves as partners in a joint enterprise, acting together to shape the character of their political environment. Nor are they wrong to take this view. By choosing to support and comply with their institutions, these cooperators are *empowering* their state: they are helping to maintain and influence its rule. No one citizen’s voluntary contributions are alone sufficient to empower an institution, but the contributions of many citizens together are. This gives citizens an interest, not just in having *some* legitimate institution rule them, but in being ruled by the institution that is the product of their joint endeavor. As their creation, their state has a relational value for them that goes beyond the justice-functions it performs, which could be performed (in a slightly different way) by other institutions.

To see the difference between the state’s intrinsic and its instrumental value, compare the relation a tourist has with a state she is visiting with the relation a citizen has with her own state. When visiting Brazil, its system of law has instrumental value for me, because it performs an authoritative specification of property and contract rights, tort law, etc., that I need in order to respect others’ rights. It is a good thing, from my point

⁴¹ Quoted in Wellman 2001.

of view, that there is a state in place here. But my situation is much like Einstein’s: it is really a matter of indifference to me which state in particular this might be. If Brazil were annexed by Argentina tomorrow, I could still do justice to others with whom I interact, only by complying with Argentine law rather than Brazilian law. Brazil does not have intrinsic value for me, then, because I am not part of the group agent that, over time, has created it.

But matters look very different when we consider the issue from the perspective of a *citizen* of Brazil. If he affirms his politically cooperative relationship, this citizen will not be indifferent between living under Argentine law or Brazilian law. He and his fellow citizens together *created* the legal institution that is Brazil, and he endorses their shared project and wishes to continue it.⁴² Because he shares a commitment to this joint endeavor, then, he will prefer that he and his compatriots work out their own policies, even when that means accepting some decisions with which he personally disagrees. By valuing their joint endeavor, and standing ready to play his role in it, he associates his personal agency with the Brazilian project. When a wide majority of citizens willingly endorses their political activity in this way, then the activities of their state are appropriately seen as an extension of the free agency of these cooperators.

A citizen’s agency-connection to his political institutions may show up in his feelings of pride, shame, or liability for his state’s acts. When Brazil gets involved in an unjust war, its citizens will rightly feel responsible for what they have done in a way that I—a tourist visiting their territory—cannot. Unlike me, Brazilians share, to a degree, in Brazil’s successes or failures. Individuals may not have had control over their country’s

⁴² It might be objected that only the founding generation actually *creates* an institution. But later generations *willingly reproduce* it, and in so doing they may “give” the institutions “to themselves” because they participate voluntarily, and they affirm their activity in sustaining these institutions.

decision to go to war. But the Brazilian *people*, acting together, did have control over that war. The institution of Brazil rests on the interdependent choices of many Brazilians to empower it, by voting, complying with the law, and paying taxes. Were Brazilian citizens—on a mass scale—to withhold this support, their state’s power would be diminished. So Brazil is valuable for those citizens who affirm it in much the same way a football team is valuable for its players: since they together produced it, they share in its wins and losses, even when—as individuals—they did not solely cause them.

Let me clarify a few aspects of my argument. First, I should emphasize that citizens’ affirmation of their cooperative political relationship is valuable only when it is authentic, and the state’s background protection of its citizens’ most basic human rights is necessary to ensure this authenticity. For my will to be implicated in my state, I must not be manipulated or coerced into affirming it. Where an endorsement is expressed out of fear, manipulation, or indoctrination, it carries no moral weight. Minimal guarantees of my personal security, subsistence, and of my ability to form and express my own opinions—including basic liberties of conscience, speech, and association—are, in my view, necessary conditions for any expression of authentic affirmation.

While free background conditions do require human rights protection, on my view, they do not require full democracy. One can imagine a range of liberties that enable citizens to freely affirm their state, beginning with freedoms of speech and thought, and extending all the way to political participation rights. Democratic rights—including the right to vote, to form parties, and to run for office—provide robust guarantees that citizens’ affirmation is authentic. But it is also possible for citizens to authentically

affirm their participation in the state even where its institutions are not fully democratic, so long as they are free to form and express dissenting views.

Second, one might object that, in practice, a state can be empowered by the contributions of those who place no intrinsic value on their political relationships, people much like Einstein. Citizens can be motivated to collective political action for many reasons, including pragmatic calculation, self-interest, or even fear. I do not deny this. Yet another reason why people sometimes cooperate collectively is because they endorse a shared project and care about its success. When this is true, I believe their joint venture has a relational value for participants that deserves our recognition and respect. Because widely affirmed political relationships are especially valuable for those who engage in them, this gives us reason not to destroy or undermine such relationships. I also believe that the value of affirmed relationships may give us *pro tanto* reason to reconfigure political boundaries in cases where territorially concentrated subgroups are currently unable to enjoy this value. These reasons for recognizing and respecting a shared political relationship are not equally present in cases where constituents sustain institutions out of fear, self-interest, or pragmatic calculation.

Third, it is important to see that the value of affirmation emphasized here is not the same as a requirement of individual consent. Consent is generally taken to require alternative options. But affirmation can be present even where there are no alternatives, as long as we endorse the option on which we act. Most citizens were born into their state and cannot easily leave it. Still, they may see their own activity in sustaining it as something in which they willingly participate. It is also not necessary that *every* individual endorse their state in order for the “public” good of rational affirmation to

exist. It is only necessary that there be a *widespread* sense of willing cooperation. To be a willing cooperator, it is also not necessary that I endorse all my state's laws. Just as I can disagree with my golf club's policies—and even work to change them—without resigning my membership, so I can be a willing political cooperator even when I disagree with many laws, so long as I affirm my particular state's right to rule.⁴³

It might be objected here that even if most citizens are willing cooperators, *unwilling* individuals are wronged by being forced to participate in a state. But this is often implausible. Following Kant and Rawls, I hold that each individual is subject to a natural duty of justice that he cannot fulfill without participation in a legitimate state. Without political authority, many of our rights—including property and contract rights—would remain indeterminate and subject to reasonable disagreement, and impartial mechanisms for their enforcement would be lacking. It would be impossible for individuals to do justice to one another in such anarchic conditions. I accept that legitimate political authority can take a number of different forms, which are not limited to the modern, European sovereign state. But if unwilling anarchists or holdouts refuse participation in *any* legitimate political institution—perhaps because they deny a duty to live together on just terms—then I believe their non-affirmation should be discounted. So as long as those persons' human rights are guaranteed, we do them no wrong by subjecting them to a legitimate institution, because such an institution is necessary to secure the basic rights of others.⁴⁴

Sometimes people fail to affirm their state for other reasons, however: not because they are unwilling to cooperate on fair terms, but because they seek an

⁴³ For this point, see Pasternak 2012.

⁴⁴ See Wellman 2005.

alternative configuration of political units. I think these failures of affirmation should be taken more seriously. One reason for taking such failures seriously is that the Kantian argument—which emphasizes that state coercion is necessary for securing background justice—provides no way of deciding how many states we should have, or which particular states should rule which particular groups. All the argument shows is that each individual has a responsibility to contribute to political coordination and collective action in order to provide the essentials of public justice. But there are a variety of ways such coordination and collective action might be structured. And here, I believe the widespread affirmation of the political community has a role to play. Affirmation shows that a political authority stands in a special moral relationship with a particular group, a relationship that no alternative authority could claim. This fact—that a particular state is the product of a widely affirmed joint project among citizens—singles it out as the one with the right to rule that particular community.⁴⁵ Such affirmation is generated when a number of individuals share interlocking intentions to willingly comply with the laws, to pay taxes, to vote (in a democracy), and to cooperate with the police, judges, and state officials. To generate this special right to rule, it is not necessary that every member of the community willingly cooperate with their state; but it is important that *most* do.

One might finally worry that my associativist view is not meaningfully distinct from the nationalist approach. In reply, I emphasize that my associative argument interprets “peoples” not as cultural groups, but rather as groups defined by willing political cooperation together. The “people’s” relationship consists in a pattern of voluntary coordinated behavior that can support organized political authority. Though this pattern of political cooperation may overlap with cultural ties, it does not have to.

⁴⁵ For this particularity requirement, see Simmons 2001.

Citizens who have cooperated to sustain a multinational state—Belgium, India, or Canada—will count as “peoples” on my view, though they would not qualify as national cultures. Of course, “nationalism” can also refer to a shared sense of civic or political identity, and I accept that my view comes close to this use of the term. I should stress, though, that on my view there is no independent or prepolitical criterion for delineating “peoples,” beyond the fact that existing institutional structures either succeed or fail at generating the affirmation of those they rule. So I deny that “the people” is a prepolitical entity: instead, a people can only be brought into being by engaging in institutionalized cooperation together, and coming to affirm that cooperation.

To sum up, then, on the associative view, a citizen will have an interest in his community’s independence if three conditions are met:

1. *Political Relationship Condition*: The group has established a politically cooperative relationship, either through a state or substate unit, or through constructing broadly representative institutions (such as a separatist party or organized national liberation movement, about which more below),
2. *Minimal Justice*: Their relationship is one that it is reasonable to value and affirm, because it can serve as the basis for institutions that protect the human rights of each member, and
3. *Subjective Legitimacy*: The citizens, by and large, do affirm their political relationship, under appropriately free background conditions.

Like the instrumentalist and democratic views, my associative account holds that claims to redraw boundaries are remedial claims that come into effect when the state’s legitimacy fails. One way the state’s legitimacy might fail is through severe human

rights violations, as the instrumentalist emphasizes. But this is not the only way legitimacy can fail. When the people (or a territorially concentrated subgroup thereof) cannot be brought to affirm their minimally just state, they will have a remedial claim to create legitimate institutions that they can affirm. Generally, members of a just state will respond over time by affirming its practices of cooperation. But it is possible for some members to remain alienated from it. This is especially likely to be the case when there is a past history of coercion, conquest, and colonial oppression. It may also occur when a territorially distinct subgroup finds that their political priorities on many issues go unrecognized by the majority. So despite the fact that a people is not a prepolitical entity, sometimes existing political institutions fail to bring a “people” into being. In these cases, I believe that groups with practices of political cooperation that can be more readily affirmed may have *pro tanto* claims to redraw boundaries to create new political units.

Consider two types of case. The first I call *warranted* failures of subjective legitimacy. Here, some citizens quite reasonably fail to affirm their state, despite the fact that its rule over them is minimally just. Such warranted failures often occur when the past history of the political relationship is oppressive. For an analogous case, take the wife of a former alcoholic. Her husband may now be perfectly sober and loving. He may sincerely regret their past history, and have attempted to build a better relationship going forward. Still, when we consider his wife’s perspective, it seems reasonable that she may not identify with this relationship, and wish to discontinue it. Like other relationships, the value of a political relationship is in part a matter of a history of interaction, and we cannot “undo” this history, even if it lies in the past.

I believe many colonial cases are *warranted* failures of subjective legitimacy of this kind. Subject peoples often experienced a history of political misdeeds that left behind a legacy of alienation. Even though better governance was established for Ireland in the late nineteenth century, for Algeria in the 1950s, or for US indigenous peoples since the 1970s, these groups still have extreme difficulty in bringing themselves to affirm a political relationship with their former colonizer. I submit that this is a “reasonable” reaction: it is one we could imagine ourselves having in their situation. The interest in self-determination is very strong when it is grounded in a warranted failure of this kind. If a group:

- (a) has a past history of coercion, conflict, or oppression at the hands of a now-minimally just state;
- (b) finds itself unable, over a significant period, to affirm its political participation in that state;
- (c) possesses an institutionalized basis for political cooperation that can be more willingly affirmed (perhaps through a substate political unit or organized national liberation movement), and
- (d) has the political capacity to construct human-rights protecting institutions on the basis of these practices,

then it has a strong claim to establish a new political unit. As noted above, this claim must still be assessed against countervailing considerations, such as the potential for civil unrest, instability, ethnic conflict, or human rights violations. But warranted alienation provides a weighty reason for redrawing political boundaries.

A harder type of case I call a *simple* failure of subjective affirmation. Here, a subgroup feels alienated despite a reasonably good history with their state. We may not believe that we would have the same reaction in their shoes. But I think persistent alienation should still be taken seriously, even when it does not spring from a colonial past. In Scotland or Quebec, for example, there are now significant separatist movements, partly due to a sense of distinctive political priorities, though there is no historical legacy of oppression. If Scottish or Quebecois alienation is sufficiently deep, and if separate institutions can be more readily affirmed, then I believe there is a *pro tanto* reason to allow self-determination in these cases as well. One way to characterize this reason is that the Scots and Quebecois persistently find themselves in the minority when it comes to fundamental issues about how to structure and organize their political institutions. They would like to enjoy a sphere in which they can shape their institutions to conform to their distinctive joint goals. Granting them such a sphere would facilitate their sense of participation in a shared political project that they can affirm, thus enabling them to enjoy the relational value of political cooperation.

Compare the case of someone who has enjoyed a good history with his family, but has now become severely disaffected. He finds himself persistently desiring to pursue goals his family does not share. He may still have duties to care for his children, or to pay spousal or child support. Still, if his alienation is genuine and long-lasting, much of the value of the family relationship is lost to him, in an irretrievable way. In this case, it is better to allow separation, if separation can be achieved in a manner that is not too costly. I believe the case is similar for disaffected minorities. If a group is persistently alienated from their state, then much of the intrinsic value of citizenship—their sense of

partnership in a shared enterprise—is destroyed for them. If self-determination can be achieved in a manner that is not unduly costly, and that enables both parties to pursue more widely affirmed political relationships that better reflect their priorities, then there is a *pro tanto* reason to allow it. Still, this reason may be weaker than in the case of a warranted failure. It may therefore be appropriate to impose higher “exit” costs on these groups, or to explore options for self-determination short of independence, such as federalism or devolution.

In conclusion, I wish to make three final points. First, the associative account raises many problems of practical application. For reasons of space, I can only offer a sketch of how these might be addressed. In order to claim self-determination, a group must be territorially organized and possess representative practices that can serve as the basis for constructing minimally just institutions. Since any territory will necessarily include some who do not endorse the prevailing political project, it is important that the claimant group be broadly inclusive. Where the claimant group is intermixed with dispersed minorities, it may be appropriate to demand that it grant these minorities special representation rights, or accommodations on issues of intense concern to them. Qualified claimant groups could include existing political subunits, separatist parties, and national liberation movements that represent a broadly inclusive, territorially-based constituency.

It is also difficult to be mathematically precise about the level and intensity of alienation that triggers concern. But the associative view would support the use of plebiscites or referenda to ascertain people’s wishes on matters of their political status. Persistent majorities favoring independence, produced under conditions of high voter

turnout, and sustained over a series of votes, would provide evidence to support a self-determination claim. In such cases, I believe the overarching state has a moral obligation to negotiate an institutional configuration that the alienated group can more readily affirm—by redrawing boundaries to create new subunits, granting more internal autonomy, or in severe cases allowing for political independence.

Applying the minimal justice condition may also be challenging, since it can be hard to ascertain whether a group can sustain human-rights protecting institutions prior to their independence. But this problem can be handled by a staged independence process, conditional on certain benchmarks being met. For example, a limited sphere of local governance might be granted initially, with a state or international authority standing ready to intervene if abuses occur. If good performance is achieved, greater independence—where warranted, extending even to full sovereign statehood—could then be granted over time.⁴⁶

A second worry is that on my account, both minimal justice and subjective legitimacy are valuable. But which has the higher priority when the two conflict? Suppose a colonial power now rules in a way that protects its subjects’ most basic rights, but its regime is not widely affirmed. If it decolonized, however, the native inhabitants would establish a highly repressive regime, perhaps because deeply rooted social cleavages would lead one segment of society to oppress another. Should the colonizers leave?

In reply, I highlight once again that the minimal justice and affirmation elements of self-determination are inherently connected. Because basic rights must be protected for affirmation to be genuine, I believe minimal justice should take priority over

⁴⁶ Keohane 2003.

subjective legitimacy in cases of conflict. Were the colonizer to withdraw in the case above, this would not in fact promote the subject people's self-determination, since the successor regime would fail to safeguard the preconditions for it. For these reasons, my view grants little weight to citizens' embrace of a highly repressive regime, even one with religious or cultural foundations in their society. Though people can affirm an undemocratic social order, this affirmation must be generated in sufficiently free background conditions (with, at the very least, protection for personal security, subsistence, and freedom of conscience, speech, and association) in order to count as authentic.

The priority that my associative view places on minimal justice sets it apart from other views—like Michael Walzer's—that emphasize subjective legitimacy alone. Walzer argues that outsiders should presume a certain "fit" between a community and its political institutions, even if the regime is highly oppressive, as long it does not commit grievous moral wrongs, such as massacre, enslavement, or expulsion of large numbers of people.⁴⁷ In contrast, I believe we are not entitled to presume "fit" unless citizens' opinions are formed under sufficiently free conditions, and unless those opinions have some channel for public expression. The people's affirmation must not be coerced or manufactured by their own regime is it is to count as genuine.

If a subject people cannot currently sustain institutions that meet these preconditions, decolonization may be delayed until they develop the political capacity to do so. Colonial institutions can be *provisionally legitimate* during this period. Some groups may lack the capacity to sustain minimally just institutions as a result of

⁴⁷ Walzer 1980, 211.

exploitation, or past "divide and rule" tactics, and in this case, the former colonial power has a remedial duty to provide them material aid in developing those institutions.⁴⁸

Finally, one might worry that my view could be invoked to support cultural nationalist movements. I do not deny that some alienated cultural groups might currently claim self-determination rights on this account. But this is not a necessary consequence of the associative view. To the extent that cultural minorities are presently alienated, I believe this has its roots in the fact that many states have adopted an illegitimate "nation-state" ideal that privileges the majority culture. I believe liberal states should instead reduce their association with the majority culture, and give culturally diverse citizens an equal stake in their institutions and public spaces. The more culturally "neutral" states become, the more likely they are to bring diverse citizenries to affirm their cooperation together. Were such a "cultural neutrality" requirement implemented, I believe that the practical implications of my associativist view would differ markedly from the nationalist one. Though current patterns of subjective alienation may reflect patterns of cultural distinctiveness, they need not do so.

References

- Abizadeh, Arash. 2012. "On the Demos and its Kin: Nationalism, Democracy, and the Boundary Problem," *American Political Science Review* 106(4): 867-882.
- Abizadeh, Arash. 2008. "Democratic Theory and Border Coercion," *Political Theory* 35(1): 37-65.

⁴⁸ If a group cannot establish minimally just institutions, even with aid, then they may not claim self-determination. Their situation may be tragic, but since a key purpose of the state is protecting the human rights of its members, this purpose must be fulfilled in some other way. For a similar view, see Altman and Wellman 2009, 195.

Agné, Hans. 2010. "Why Democracy Must be Global: Self-Founding and Democratic Intervention," *International Theory* 2(3): 381-409.

Altman, Andrew and Wellman, Christopher. 2009. *A Liberal Theory of International Justice*. Oxford: Oxford University Press.

Beitz, Charles. 1989. *Political Equality*. Princeton: Princeton University Press.

Beitz, Charles. 2009. *The Idea of Human Rights*. Oxford: Oxford University Press.

Bratman, Michael. 1999. *Faces of Intention*. Cambridge: Cambridge University Press.

Buchanan, Allen. 2004. *Justice, Legitimacy, and Self-Determination*. Oxford: Oxford University Press.

Buchanan, Allen. 1998. "Democracy and Secession." In Margaret Moore, ed. *National Self-Determination and Secession*. Oxford: Oxford University Press.

Cassese, Antonio. 1995. *Self-Determination of Peoples: A Legal Reappraisal*. Cambridge: Cambridge University Press.

Christiano, Thomas. 2008. *The Constitution of Equality*. Oxford: Oxford University Press.

Cohen, Joshua. 2010. "Is there a Human Right to Democracy?" In *The Arc of the Moral Universe*. Cambridge, Ma: Harvard University Press.

Cooper, Frederick. *Decolonization and African Society: The Labor Question in French and British Africa* (Cambridge: Cambridge University Press, 1996).

Crawford, Neta. *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention*. (Cambridge: Cambridge University Press, 2002).

Goodin, Robert. 2007. "Enfranchising All Affected Interests, and Its Alternatives," *Philosophy and Public Affairs* 35 (1): 40-68.

Habermas, Jürgen. 1996. *Between Facts and Norms*. Cambridge, MA: MIT Press.

Harper, George McLean, ed. *Woodrow Wilson's Addresses*. (New York: Henry Holt, 1918).

Hegel, G.W.F. 1996. *Philosophy of Right*. Ed. Wood/Nisbet. Cambridge: Cambridge University Press.

Hochschild, Adam. 1999. *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa*. New York: Houghton Mifflin.

Jones, Peter. 1999. "Group Rights and Group Oppression," *Journal of Political Philosophy*, 7(4): 353-377.

Keohane, Robert. 2003. "Political Authority after Intervention: Gradations in Sovereignty," in *Humanitarian Intervention*, ed. J.L. Holzgrefe and Robert Keohane. Cambridge: Cambridge University Press.

Knock, Thomas. *To End All Wars: Woodrow Wilson and the quest for a new world order*. (New York: Oxford University Press, 1992).

Kutz, Christopher. 2000. *Complicity*. Cambridge: Cambridge University Press.

Kymlicka, Will. 1995. *Multicultural Citizenship*. Oxford: Oxford University Press.

Miller, David. 2000. "Secession and the Principle of Nationality." In *Citizenship and National Identity*. Cambridge: Polity.

Miller, David. 2009. "Democracy's Domain," *Philosophy and Public Affairs*, 37(3): 201-228.

Pakenham, Thomas, *The Scramble for Africa*. (London: Weidenfeld and Nicolson, 1991).

Pasternak, Avia. "Limiting States' Corporate Responsibility," *Journal of Political Philosophy*, online early view, August 2012.

Pomerance, Michla. 1982. *Self-Determination in Law and Practice*. The Hague: Martinus Nijhoff.

Philpott, Daniel. 1995. "In Defense of Self-Determination," *Ethics* 105(2), 352-385.

Plamenatz, John. 1960. *On Alien Rule and Self-Government*. London: Longmans Green.

Ranelegh, John. 1983. *A Short History of Ireland*. Cambridge: Cambridge University Press.

Raz, Joseph. 1986. *The Morality of Freedom*. Oxford: Clarendon Press.

Raz, Joseph and Margalit, Avishai. 1994. "National Self-Determination." In Raz, *Ethics and the Public Domain*. Oxford: Oxford University Press.

Rawls, John. 2001. *The Law of Peoples*. Cambridge, Ma: Harvard University Press.

Shepherd, Todd. 2006. *The Invention of Decolonization*. Cornell: Cornell University Press.

Simmons, A. John. 2001. *Justification and Legitimacy*. Cambridge: Cambridge University Press.

Tilly, Charles, "War Making and State Making as Organized Crime," in *Bringing the State Back In*, ed. Peter Evans, Dietrich Rueschmeyer, and Theda Skocpol, (Cambridge: Cambridge University Press, 1985).

Waldron, Jeremy. 1999. *Law and Disagreement*. Oxford: Oxford University Press.

Wellman, Christopher. 2001. "Friends, Compatriots, and Special Obligations," *Political Theory*, 29(2): 217-236.

Wellman, Christopher. 2005. *A Theory of Secession*. Cambridge: Cambridge University Press.

Walzer, Michael. 1980. "The Moral Standing of States: A Response to Four Critics." *Philosophy and Public Affairs*, 9(3): 209-229.

Ypi, Lea. 2013. "What's Wrong with Colonialism." *Philosophy and Public Affairs*, 41(2): 159-191.