

## Self-Determination and Moral Variation\*

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Self-determination plays a central role in debates about international morality and law. One important argument invokes the value of self-determination in order to show that rules of international morality and law should be modest or limited in content. The basic idea is clear enough. Self-determination seems to involve a kind of social process by which different groups, including political states, can develop their own distinctive shared moral codes. And so there can be legitimate moral variation between political societies. Because self-determination is valuable, the argument goes, acceptable international norms should allow for this variation, at least within certain limits. Self-determination thus constrains the demands of global justice and, consequently, international law.<sup>1</sup>

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\* Thanks to Fernando Tesón, David Lefkowitz, and David Shoemaker for very helpful constructive comments on earlier versions of this paper.

<sup>1</sup> David Miller asks rhetorically: “If political communities are in general to be self-governing in matters of economic and social policy and so forth, what scope is left for cosmopolitan principles of justice that seek to treat people equally regardless of which community they belong to?” See David Miller, “Defending Political Autonomy: a Discussion of Charles Beitz”, *Review of International Studies* 31 (2005): 381-88, p. 388. Miller has developed this thought in detail in various places. See e.g. David Miller, *On Nationality*, (Oxford University Press, 1995), ch. 4, and David Miller, *National Responsibility and Global Justice*, (Oxford University Press, 2007). For related arguments, see Michael Walzer, “The Moral Standing of States: A Response to Four Critics”, *Philosophy & Public Affairs* 9 (1980): 209–229, or Chris Armstrong, “National Self-Determination, Global Equality and Moral Arbitrariness”, *Journal of Political Philosophy* 18 (2010): 313–34.

An often overlooked, example of this view, I believe, is John Rawls, *The Law of Peoples: with “The Idea of Public Reason Revisited”*, (Harvard University Press, 2001). There are two striking points to Rawls’ view. First, in contrast to his earlier argument that states are legitimate only if they are liberal (see John Rawls, *Political Liberalism*, (Columbia University Press, 1993), p. 137), *The Law of Peoples* ascribes this status to both liberal and non-liberal but “decent” societies. That is, both liberal and merely decent societies are full members of international society, have rights of political independence (pp. 37ff), and their citizens are obligated to obey the law (pp. 65-6). Second, Rawls denied that his preferred principles of distributive justice applied internationally. The kinds of inequality Rawls thought unbearable between citizens of liberal society, he accepted between different societies.

Both points are part of Rawls’ attempt to recognize the value of self-determination. First, while decent societies are not liberal, Rawls insists that their political institutions contain a system of “consultation.” This is supposed to ensure that people’s voices and interests will be among the main inputs of political decision-making. The view that arises is that the good of self-determination is part universal, part local. What is universal is that a society must be organized around “its common good idea of justice” (pp. 65-8). But this requirement can be fulfilled in different local ways, including but not limited to the liberal way. This, Rawls suggests, preserves “significant room for the idea of a people’s self-determination” (p. 61, see also p. 111). Moreover, second, Rawls announces that the

We can state this argument in the following (enthymematic) form:

- (1) States can have a right to self-determination
- (2) Self-determination allows for moral variation between different communities
- (3) Therefore, to respect state self-determination, international moral norms should be limited

The relevance of this argument goes beyond the point that international principles of justice should be more modest than domestic ones. The claim that states have a right to self-determination is among the most commonly accepted principles of international ethical and legal thought. And state self-determination is often thought to be important precisely because it allows for moral variation between societies.<sup>2</sup> Self-determining states are thought to enjoy a kind of moral status – one that calls for respect, non-interference, independence, democracy, and even a right to curb immigration.<sup>3</sup>

Yet despite its prominence and potential implications, it is difficult to find any precise accounts of what exactly is involved in self-determination, why it matters, or how it might lead to legitimate moral variation. That is, while many seem confident in their assertions about what is required to *respect* self-determination, few seem confident to assert what self-determination really *is*. This poses a problem because many of the former assertions are disputed, and some, including the argument above, are highly controversial. But without a real grip on what self-

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good of self-determination is his reason for endorsing limited redistributive principles internationally (p. 85).

<sup>2</sup> Many argue, for example, that self-determination matters because it allows for distinct national cultures that provide a background for people to develop meaningful characters and make meaningful decisions about how to live. See David Miller, *On Nationality*, (Oxford University Press, 1997), Armstrong, "National Self-Determination, Global Equality and Moral Arbitrariness", Will Kymlicka, "Territorial Boundaries: A Liberal Egalitarian Perspective," in David Miller and Sohail Hashmi (eds.), *Boundaries and Justice: Diverse Ethical Perspectives*, (Princeton University Press, 2001), pp. 249-75, Margaret Moore, "Cosmopolitanism and Political Communities," *Social Theory and Practice* 32 (2006): 627-58

<sup>3</sup> For examples of such arguments, see Daniel Philpott, "In Defense of Self-Determination", *Ethics* 105 (1995): 352–385, Margaret Moore (ed.), *National Self-determination and Secession*, (Oxford University Press, 2003), Michael Walzer, *Just And Unjust Wars: A Moral Argument With Historical Illustrations*. 4th ed., (Basic Books, 2006), Michael Walzer, "The Moral Standing of States", Christopher H. Wellman, *A Theory of Secession*, (Cambridge University Press, 2005), Andrew Altman and Christopher H. Wellman, *A Liberal Theory of International Justice*. Reprint., (Oxford University Press, 2011).

determination is, we lack the means to settle questions about what we have to do to respect it.

The purpose of this essay is to move away from this state of affairs. It offers an account of why self-determination can lead to genuine moral variation, and it asks whether political states can indeed be self-determining in this sense.

### *1. Desiderata for a Theory of Self-Determination*

Formulating an account of the nature of self-determination is no easy task. Some of its contours are clear enough: the idea of self-determination is closely related to the idea of autonomy, and self-determining communities are often described as self-governing. Beyond that, it is notoriously difficult to explicate the idea in any clear and convincing way.

A satisfying theory of self-determination should occupy the space between two commitments that are seemingly in tension. The first of these is that self-determination can happen only when people live and act, in some robust sense, together. Its locus is the group or community, not just the individual or even the sum of individuals that make up the group. As Christopher Wellman puts it, self-determination is “something that can be exercised by a collective *as a whole* rather than individually by persons in a group.”<sup>4</sup> Self-determination is an importantly *collective* value.<sup>5</sup>

The second commitment expresses *moral individualism*. This demands that an account of self-determination avoid excessive romanticism, or even mysticism, about the state or political society. Such romanticism occurs when one views society or the state as a moral entity in and of itself, with a kind of moral status that is independent of, and maybe even more important than, the true ultimate locus of moral value: the individual. To satisfy the demands of moral individualism, one’s

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<sup>4</sup> See Wellman, *A Theory of Secession*, p. 41 (emphasis in original)

<sup>5</sup> See Altman and Wellman, *A Liberal Theory of International Justice*. See also Walzer, “The Moral Standing of States”, and Walzer, *Just And Unjust Wars*.

account of self-determination and its value must ultimately be based on observations about individuals and their value.<sup>6</sup>

The difficulty of developing a satisfying theory of self-determination thus lies in explaining how truly collective social processes can lead to legitimate moral variation between societies, in a way that does not posit groups or states as independent entities of moral value. More precisely, we can formulate the following three (again, seemingly conflicting) desiderata for a theory of self-determination. Such an account must explain how:

- (a) Self-determining groups can develop different moral codes
- (b) These codes can be different from, and not simply reducible to, the moral beliefs of their individual members
- (c) Groups, societies, and states are not fundamentally morally valuable, but derive whatever value they have from their individual members

Many available approaches to self-determination fail to adequately incorporate all of these desiderata. A purely institutionalist theory, for example, might suggest that the value of self-determination lies in people living under political institutions they have created themselves.<sup>7</sup> But this leaves unexplained why self-determination might bring about legitimate moral variation between societies. After all, it seems perfectly consistent with such a view to maintain that each of those states should implement exactly the same norms. International and domestic norms might thus be the same. The idea of self-determination thus cannot be fully understood by merely focusing on the creation of independent political institutions.

A purely individualist theory, by contrast, might see group self-determination as simply the sum of individuals choosing to live together.<sup>8</sup> On such a view, the outcomes of self-determination would be a collection of individual choices. But how can that explanation capture self-determination's collective nature? Self-determination, we said, is something that essentially occurs at the level of the group,

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<sup>6</sup> See the careful discussion in Wellman, *A Theory of Secession*, ch. 3.

<sup>7</sup> For a possible example of such a view, see Wellman, *A Theory of Secession*. Wellman suggests (p. 57) that violations of self-determination are wrongful because they disrespect the collective achievement of people to create their own state.

<sup>8</sup> See e.g. Philpott, "In Defense of Self-Determination"

not just among several separate individuals. The collective nature of self-determination disappears from sight if we simply reduce it to individual choice.<sup>9</sup>

In what follows, I offer a theory of self-determination that aims to incorporate each of these three commitments. Drawing on recent findings by Christian List and Philip Pettit about group agency and judgment aggregation,<sup>10</sup> I will describe how groups can come to have moral codes that are at the same time based on, yet separate from, the moral views of their individual members. I will then explain why the development of such group moral codes can be valuable. Finally, I will ask whether these processes can take place within political states. Here, my conclusions will be skeptical. While self-determination can lead to genuine moral variation, the requisite processes do not take place within states.

## *2. The Possibility of Collective Self-determination*

A moral code is a set of propositions about morality that is endorsed by its holder.<sup>11</sup> A group moral code, if such a thing is possible, thus consists of the set of beliefs about morality that is shared by a group. The theory of self-determination I will develop holds that when different individuals together form a group, their several beliefs about morality (their several moral codes) can combine into a new and separate moral code. This new moral code will be held by the group as such, and will not be readily reducible to the beliefs of its members. As a result, this theory can

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<sup>9</sup> Hegel's theory of the state might be an example of a view that fails commitment (c). Hegel wrote: "The state is the actuality of the ethical idea. It is ethical mind *qua* the substantial will manifest and revealed to itself, knowing and thinking itself" And: "The state is absolutely rational inasmuch as it is the actuality of the substantial will which it possesses in the particular self-consciousness once that consciousness has been raised to consciousness of its universality. This substantial unity is an absolute unmoved end in itself, in which freedom comes into its supreme right. On the other hand this final end has supreme right against the individual, whose supreme duty is to be a member of the state." See G.W.F. Hegel, *The Philosophy of Right: the Philosophy of History*, trans. T.M. Knox (Oxford University Press, 1967), pp. 155-6. See also the discussion in Fernando Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality*, 3<sup>rd</sup> ed., (Transnational, 2005), pp.62ff.

<sup>10</sup> The argument below relies on the argument presented in Christian List and Philip Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents*, (Oxford University Press, 2011). In a way, what follows can be seen as the extension of List and Pettit's findings about group agency to the realm of group self-determination. The title of the next section pays homage to the title of the first part of their book.

<sup>11</sup> No doubt this is to simplify considerably. The intuitive notion of a moral code may well include more than merely propositions, such as attitudes, affects, and so on. I set these complications aside for the sake of argument.

explain how self-determination can lead to genuine moral variation between groups. After all, different groups, being constituted by different members, can produce different moral codes. However, because the group's code is ultimately based on, or the product of, the moral codes of its individual members, this theory still satisfies the demands of moral individualism.

To see how this is possible, we need to consider on what grounds we might ascribe beliefs about moral propositions to groups. To stay true to the individualism we have endorsed, such group beliefs must be ultimately explainable in terms of the beliefs of individual members. There are numerous ways of doing this, but let us here focus on the most obvious one: a simple majoritarian rule. A group, we might then say, has a certain belief if the majority of its members has that belief.

Of course this way of understanding group beliefs seems to ignore claim (b) above. That is, it seems to understand group beliefs as straightforwardly reducible to those of its members. But this appearance is deceiving. For, under certain conditions, there simply is no way of understanding group beliefs as aggregated individual beliefs. More precisely, it is not possible to arrive at a consistent set of group beliefs in this way. Even more precisely, if moral beliefs have basic logical connections, and a group's moral code is going to satisfy minimal requirements of consistency between those beliefs, then it can be necessary for the group to endorse certain propositions that are not held by the majority of its members.

It will be easier to see this by looking at an example.<sup>12</sup> Consider a group's beliefs about distributive justice. Let us assume that there is no single morally correct system of distributive justice but that, within certain limits, a variety of different regimes are acceptable. Among these figure regimes which enforce strongly egalitarian distributions as well as regimes that allow markets to be the primary determinant of holdings. Let us further suppose that the individual members of the group base their views about distributive justice on their views concerning two other issues – to put it slightly differently, they treat their views

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<sup>12</sup> The example here is a variation on a problem that can arise in legal contexts, first presented in Lewis A. Kornhauser and Lawrence G. Sager, "Unpacking the court", *Yale Law Journal* 96 (1986): 82–117. List and Pettit discuss similar cases, which they call "discursive dilemmas."

about distributive justice as conclusions based on these premises. These are: (i) that the point of a society's economic system is to enhance economic productivity, and (ii) that tampering with people's property rights through redistributive policies will significantly reduce productivity.<sup>13</sup>

Finally, suppose that there are certain basic logical connections between the conclusion about distributive justice and these two issues such that a consistent person must favor the market as the primary determinant of people's holdings if she assents to both (i) and (ii). Table 1 lists the views on these issues of a three-person group. The views of each individual, as well as the views of the group based on the views of the majority, are listed below.

**Table 1: Group beliefs on distributive justice**

	Property to enhance productivity	Redistribution reduces productivity	Market outcomes should determine holdings
P1	Yes	No	No
P2	No	Yes	No
P3	Yes	Yes	Yes
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G	Yes	Yes	No

Note that each of the individuals has internally consistent beliefs about distributive justice. None of the persons endorses both premises of the argument without also endorsing the conclusion. However, the aggregate views of the group are inconsistent in just this way. For while the majority of the group believes both that the point of property systems is to enhance economic productivity and that

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<sup>13</sup> Two points of clarification. First, as should be obvious, nothing for the present argument turns on this particular example. The assumptions in the text are only chosen for ease of exposition. If you strongly disagree with these points, you are free to insert your own favored issue. Second, and equally obvious, the example given here significantly understates the complexity involved. The propositions (i) and (ii) are really not simply, but complex propositions, each of the constituent parts of which people might take diverging views. This complexity bolsters the result below as well as its implications. That is, the more complex the issues involved, the stronger the case for the possibility of self-determination. See also List and Pettit, *Group Agency*, p. 77

redistributive policies interfere with this, the majority of the group also believes that a strongly egalitarian distribution ought to be enforced. Thus, *ex hypothesi*, the group's moral views are internally inconsistent even though none of its members' are.

The result here, of course, is not a product of the particular issue concerning distributive justice. It can occur with any set of beliefs that have modest logical connections. Less obviously, the result is also not a feature of the majoritarian method of aggregating individual beliefs. As List and Pettit have shown, given a number of plausible conditions, this problem can arise for *any* method of aggregation (participatory, hierarchical, majoritarian, super-majoritarian) – with the only exceptions being unattractive methods such as dictatorships.<sup>14</sup>

For obvious reasons, a group's moral code should be internally consistent. If the group is at the same time committed to premises that imply a conclusion, and the denial of that conclusion, it will not be able to come to any determinate views. Proponents of the conclusion will be able, and quite reasonably so, to point to the group's views about the premises. Opponents of the conclusion will be able, and quite reasonably so, to point to the group's view about the conclusion. Thus, without an internally consistent group moral code, the group will lack the ability to arrive at determinate answers for certain cases – like the case of distributive justice.<sup>15</sup>

This raises some difficult questions. Groups face a choice between basing their views on the majority's views concerning the premises or the majority's views concerning the conclusion of a certain issue. It is a substantive moral issue which of the two will be the correct way to go, and this question lies beyond the focus of this essay. But the very fact that there is such a choice to be made shows something important for our purposes. For, whichever way we go, it will be true that certain

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<sup>14</sup> See Christian List, Philip Pettit, "Aggregating Sets of Judgments: An Impossibility Result", *Economics and Philosophy* 18 (2002): 89-110. The result here is an extension of Arrow's famous impossibility-theorem.

<sup>15</sup> List and Pettit claim that this kind of consistency is a condition of group agency. Some people have challenged this thought. See e.g. Robert Sugden, "Must Group Agents Be Rational? List and Pettit's Theory of Judgement Aggregation and Group Agency", *Economics and Philosophy* 28 (2012): 265-73, p. 269. But even if Sugden's challenge succeeds against the theory of group *agency*, the account of group *self-determination* I am offering here survives. For my account relies on the very plausible assumption that *morality* should be consistent.



propositions need to be recognized as genuine elements of a group's moral code even though they are not directly reducible to the views of its members. Either the group adopts the majority's views on the conclusion – but then it will commit itself to beliefs about the premises that are contrary to the majority's views. Or it adopts the majority's views on the premises – at the price of ignoring the majority's views on the conclusion. In either case, the group will have adopted a view that is (directly) contrary to its views on one issue, even though it is (indirectly) based on its members' views about another issue. That is, in either case, the group will have a view that is genuinely formed at the group-level.

Note just how far-reaching this result is. For one, the beliefs of a group's members turn out to be both unnecessary and insufficient for particular group beliefs. In this way, the group can achieve views that are, in a sense, autonomous or self-standing. Groups as a whole might endorse something even though each of its members does not endorse it. In fact, the group might endorse something that each of its members opposes.<sup>16</sup>

Let us call group norms that arise in this way *emergent* group norms.<sup>17</sup> The processes by which emergent group norms arise, I propose, are processes of group self-determination. Self-determination, then, can indeed lead to genuine moral variation between groups.

This account helps explain both the “self” and the “determination” of self-determination. It is “determination” because groups, as such, can produce their own moral codes. And it is determination by the “self” because these processes occur on the basis of members' moral codes. This account therefore satisfies all three claims (a)-(c) identified in the previous section. It demonstrates (a) how genuine moral variation between self-determining groups is possible, (b) why this variation is not simply variation between the views of groups' individual members, yet (c) it does so

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<sup>16</sup> This, in turn, seems to violate certain other intuitive ideas about how rational groups should behave, such as that they allow Pareto-superior moves. See Robert Sugden, “Team Preferences”, *Economics and Philosophy* 16 (2000): 175-204, p. 188. For a different kind of argument, see Margaret Gilbert, *A Theory of Political Obligation*, (Oxford University Press, 2008), p. 137.

<sup>17</sup> In technical terms, the group's beliefs *supervene* on the beliefs of its members. Roughly, A supervenes on B if, and only if, necessarily, the facts about A cannot change without some accompanying change in the facts about B. For discussion, see List and Pettit, p. 65.

by invoking only facts about its individual members (and no mysterious or magical group-entities or values).

### *3. The Value of Group Self-Determination*

With this basic description of how self-determination works in place, we can now turn to the question of its value. What, if anything, is the importance of these processes such that their results command the kind of respect that self-determination is usually thought to command?

The answer to this question is not obvious. It will not do, for example, to simply state that it matters for people to live on shared or mutually agreed terms, and that those terms require group membership. One might think this, say, if one thought of self-determination as a simple extension of the autonomous choices of individual members, or based on something like Rousseau's idea of a General Will. Such approaches typically regard a group's moral code as something that its individual members are rationally committed to endorse – either because they actively endorsed it (through voting, say) or because the group outcome represents their views in a relevant way.

But while it may well be true that there is value in living on mutually agreed terms, this cannot explain the value (if any) of group self-determination. For group self-determination can actually be in tension with living on mutually agreed terms. After all, as we have seen, self-determining groups can produce emergent moral codes that contain elements that its members individually reject. In such a case, living on the terms that are the outcome of self-determination means living on terms that one rejects.

The real question, then, is how group self-determination might have value for the reason that it enables emergent group norms that are relatively independent of individual beliefs and norms, not in spite of it. One such source of value is that group self-determination offers a particularly attractive way for individuals who would otherwise have intractable moral disagreement to interact and cooperate. Consider different people who disagree on a certain issue, like the correct interpretation of distributive justice. There are a number of ways in which they might interact with

one another. One way would be to deliberate and discuss the issue. Often, people come to certain conclusions on the basis of faulty reasoning, and deliberation might help people to identify their mistakes, thereby removing the source of the disagreement. Another way is to sideline the issue. Sometimes we can “compartmentalize” issues and allow different people to act on their different views of how things ought to be. Freedom of religion might be a case in point, which enables theists and atheists to live together without having to settle upon a shared view about the existence of God or the importance of religion.

But these options cannot resolve all cases of disagreement. For one, as the example of group inconsistencies in Table 1 above showed, even those who reason in internally consistent ways can nevertheless end up with collectively inconsistent beliefs. And not all moral issues can be compartmentalized in the way that religious freedom achieves. Sometimes people need to coordinate on a single outcome, and perhaps distributive justice is one such case.

In these cases of disagreement, norms that emerge as a result of group self-determination can help solve the problem. That is, members of the same group, whose individual moral outlooks are incompatible on issues where compatibility is required, can use the group’s emergent norm as a salient point of convergence for their actions. Consider again the case illustrated in Table 1 above. The three persons involved there deeply disagree about not only the requirements of distributive justice itself, but also about the merits of the premises that support their respective views about this. The process of group self-determination offers them a way of overcoming their disagreement: they can use the group’s emergent view as a point on which they can converge.<sup>18</sup>

This feature of self-determination is attractive for a number of reasons. First, the process is reliable. Because none of the views of individual members are necessary or sufficient for the group’s norms, it turns out that even people with very complex and intricately different individual moral views can combine to bring about

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<sup>18</sup> Recall: this emergent view can be either the conclusion of the argument or one of the premises. The point here is neutral between the two.

a relatively simple and clear moral code at the group level.<sup>19</sup> Second, and more obviously, it allows people to resolve what might otherwise become a conflict by non-coercive means. Members of groups who take emergent norms as devices for coordinating their actions can thus live together peacefully.

Emergent norms are particularly well suited for this purpose because they are not, as we have seen, readily reducible to any of the personal views of the disagreeing parties. This allows them to have a kind of impartial character – something different than one of the parties insisting that his or her view is correct after all. Yet, because they are indirectly (and, given certain methods of aggregation, potentially symmetrically) based on the views of the parties involved, they are not simply imposed on them either. These group codes are still importantly connected to the views of their members. In fact, group norms and individual views are not static. Group norms and individual views can interact. When a group adopts a certain position, this can lead individual members to reconsider their own views on the matter. Thus, processes of self-determination will likely involve repeated adjustments of individual views to group norms, and vice versa. This tightens the connection between emergent group moral norms and the views of its members.<sup>20</sup>

It can make sense, then, for people to value the processes by which emergent norms come about. And it can make sense to insist that others respect these norms. The reason is the same: the process of group self-determination provides people who would otherwise face real problems of disagreement with the possibility of living together on terms that are logically and morally consistent as well as self-imposed in the sense that they are the result of their own views.

Before moving on, two points are worth stressing. First, the fact that self-determination can be valuable does not undo the need for independent moral standards that determine what emergent norms are acceptable. It may be tempting here to suggest that we should evaluate the acceptability of a group's emergent norms in terms of the underlying norms of its members. But this will not do. For

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<sup>19</sup> Cf. List and Pettit, *Group Agency*, p. 77

<sup>20</sup> Note that this bolsters the idea of self-determination itself. For when there is this kind of back-and-forth relation between group and individual beliefs, it becomes even more difficult to reduce the group's moral code to its members' respective views.

even though the group's norms are the product of its members' views, the two are importantly separate. It is in principle possible for a group to develop a problematic collective code even if all its members' views are acceptable, as well as for people who each have deeply unjust views to develop a morally acceptable code as a group. If we are to continue to distinguish between morally acceptable and unacceptable group norms, then, we need to appeal to something other than the views of group members. We need independent moral norms to make this judgment.

Second, the coordination made possible by group self-determination is different from other ways in which disagreeing people can manage to cooperate. Self-determination cannot be equated, for example, to coordination by rational but disagreeing persons on the basis of conventions. Such conventions can allow people to cooperate when they prefer to act on the same terms – even if this means they cannot act on their individually preferred option. In such scenarios, if a convention exists that identifies an option as the one on which to coordinate, it can become the best option for each to act in that way.

An example of this is the kind of convention that often arises in subway tunnels. If everyone in the tunnel is walking on the right hand side, and assuming they do not want to bump into people all the time, this gives all people entering the tunnel a reason to walk on the right hand side as well. By walking on the right side, they all can get to where they are going, and that is ultimately what they care about the most. This is true even if only some of them like this way of doing things, while others think it would be better if everyone were walking on the left. Thus, the convention can help people with varying preferences coordinate their actions.

Such conventional coordination is a common and important social phenomenon. Yet there are fundamental ways in which it differs from cooperation on the basis of emergent group norms. For example, conventional cooperation is successful because each of the parties involved sees coordinating action as in their self-interest. Such cooperation thus cannot survive the absence of a shared preference for coordination. When people disagree about whether it is preferable to act in a coordinated way, conventional cooperation breaks down. The same is not

true for emergent group norms. These can survive even disagreement about whether to coordinate in a given case.<sup>21</sup>

Another difference is the ways in which conventional norms and emergent group norms come about. Conventions can arise between persons who are perfect strangers, and not members of a group in any meaningful way, such as people entering a subway tunnel. All that is needed is that they share a preference for coordinating their actions in certain ways. By contrast, emergent group norms can only arise in what I have called self-determining groups. They require a kind of aggregation procedure and can only provide reasons for compliance to their members.

#### *4. Self-Determination in Political States*

Recall the argument with which we started:

- (1) States can have a right to self-determination
- (2) Self-determination allows for moral variation between different communities
- (3) Therefore, to respect state self-determination, international moral norms should be limited

The account of self-determination above vindicates the second premise of this argument: self-determination can give rise to moral variation through emergent group norms. What about the first premise? Can these processes take place within political states? The answer to this question depends on whether the conditions of membership in self-determining groups allow for states to be among them. This section argues that, contrary to what is commonly thought, states cannot satisfy those conditions.

The question of the membership conditions in self-determining groups matters not just because it allows us to see whether states can be truly self-determining groups. It also matters because such membership might mean that one be *bound* to follow the group's emergent norms. Some philosophers think, for

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<sup>21</sup> Obviously, the absence of agreement to cooperate will cause significant practical problems even in cases of self-determination. The point here, however, is different: emergent group norms can exist independently of agreement or preference to coordinate, while conventions cannot. This suffices to demonstrate the difference between the two.

example, that it is a general feature of group membership that one becomes obligated to follow the group's collective rules or plans.<sup>22</sup> This raises the stakes of our discussion considerably. For while we have so far been focusing on the opportunities that group self-determination brings, the possibility of emergent group norms being binding provides some potential threats as well. If mere membership in a group can make one bound by the emergent group norms, then self-determination can also significantly limit the liberty one would otherwise enjoy.

Another reason this question matters is that changes in a group's membership can affect its emergent moral code. Since the composition of members' views determines the group's views, currently present members will have a stake in who else becomes a member of their group. Given a certain membership profile, the group's moral code might resemble more closely a code that fits with one's interests, beliefs, or preferences. This raises a number of questions. Groups can be created, and their membership can be influenced and molded in several ways. Some of these are more agreeable than others, and so the possibility of self-determination may incentivize bad behavior. Similarly, one might raise questions about the morality of immigration. If states are self-determining groups, does this mean they get to control who joins them through restricting immigration?<sup>23</sup>

For these reasons as well as others, it cannot be true that just any set or collection of persons will qualify as a self-determining group. And of course that is clearly right. For example, there is in some sense a group that contains all people living within a mile of the Mason-Dixon Line. But it is highly implausible that this group is capable of self-determination or generating obligations. The reason is clear: the condition of membership in this group refers to the morally arbitrary or meaningless fact of mere geographical location. And groups with membership

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<sup>22</sup> See e.g. Gilbert, *A Theory of Political Obligation*

<sup>23</sup> Some theorists think that this fact about self-determination can justify coercive immigration restrictions for states. For the argument that such views fail *even if*, contrary to the point here, states can be genuinely self-determining, see Bas van der Vossen, "Immigration and Self-Determination", *Politics, Philosophy & Economics*, (forthcoming), doi: 10.1177/1470594X14533167.

conditions that refer to only morally arbitrary or meaningless facts cannot have the kind of moral characteristics I have attributed to self-determination.<sup>24</sup>

It is easy to identify certain sufficient conditions for membership in morally relevant groups. Most plausibly, genuine consent can suffice. Consider, for example, a group like a union, the members of which each agree to join the group. As such, they can all become bound by the union's decisions regarding controversial matters, such as the acceptable terms of labor contracts, including decisions that do not reflect their own evaluation of the matter at hand. In general, genuine consent can change one's moral status. And it can clearly generate the kind of membership that can come with obligation.

There are also plausible examples of groups (including those that might be characterized by obligations) that do not require consent. Consider for example a group of neighbors whose houses are all painted a certain color. Suppose the neighbors chose to live in the neighborhood because they like color-coordinated houses. And suppose it is commonly known among them that the houses are supposed to remain that color. Under those conditions, it may be that the neighbors form a kind of group, and perhaps even that they are, as members of the group, obligated not to change the color of their homes.

One of the more permissive accounts of group membership, in the sense of accepting weak conditions for membership, is Margaret Gilbert's "plural subject" theory. According to Gilbert, groups (and group obligations) are the result of people undertaking "joint commitments" to act together as a group. Such joint commitments are the result of certain kinds of behavior on the part of the people who will become the members of the group. These kinds of behavior express their mutual readiness to become jointly committed in ways that are common knowledge among the would-be members. This is the source of the group's existence and its accompanying obligations because it involves a commitment of the will on the part of its members.<sup>25</sup>

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<sup>24</sup> For a similar point, see A. John Simmons, "External Justifications and Institutional Roles", *Journal of Philosophy* 93 (1996): 28-36.

<sup>25</sup> See Gilbert, *A Theory of Political Obligation*, pp. 128, 135, 138, 144, 166, and 271



Let us call theories that require this kind of involvement of the will for group membership in self-determining (or obligating) groups *soft-voluntarist* theories. We can call them voluntarist because they insist that the morally relevant properties in virtue of which people are members of groups make essential reference to their wills. But we can call them soft-voluntarist because they will recognize as sufficient undertakings of the will that fall short of consent or other clear outward signs of acceptance usually associated with voluntary undertakings. (Insisting on these would be a sign of hard-voluntarism.) Soft-voluntarism is plausible as a necessary condition for membership in at least certain groups. It rules out cases like the people living close to the Mason-Dixon Line. But it rules in cases like the color-coordinating neighbors.

We cannot here settle the debate over whether soft-voluntarist conditions, like Gilbert's idea of joint commitment,<sup>26</sup> can also be sufficient for membership in groups and for the accompanying obligations. The important question for our purposes, instead, is whether those views, if true, would support the first premise of the argument above. If people can become jointly committed by being members of a neighborhood, do they also become jointly committed by being members, citizens, or subjects of the state? That is, when people live together as citizens in a state, might they thereby become members of self-determining groups in the way required for them to become obligated to comply with the state's emergent norms?<sup>27</sup>

There are two reasons why this thought ought to be resisted. The first has to do with the normative significance of baseline, or normal, behavior. One cannot become jointly committed merely by remaining where one is, going about one's ordinary life. Undertaking new obligations requires some sort of personal engagement, uptake, or indication. This is an implication of the voluntarism that

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<sup>26</sup> For other examples, see Raimo Tuomela, *The Importance of Us: A Philosophical Study of Basic Social Notions*, (Stanford University Press, 1995). Tuomela writes: "A central thesis to be defended is that the performance of a joint action, X . . . requires that the participants have explicitly or implicitly agreed to perform action X" (p. 73). Or see Robert Sugden, "Team Preferences", pp. 184, and 192ff. who defends "taking oneself to be a member" as a condition for membership.

<sup>27</sup> Gilbert might think so, as she argues that membership in a state can generate obligations. See Gilbert, *A Theory of Political Obligation*, parts II and III.

soft-voluntarist theories accept. Thus, even if others take their going about their normal daily lives to indicate their readiness to become obligated, and even if this is publicly known, that fact alone cannot suffice to render one's normal daily life obligating.

To see this, consider the following example. Suppose Donna lives in a neighborhood populated by extremely virtuous people. At some point, Donna's neighbors start a campaign for organ donation. They post signs saying things like "This neighborhood donates kidneys!" and "We all donate!" The significance of these signs is common knowledge among the neighbors and they take themselves to be obligated to donate their kidneys. But suppose that Donna does not want to donate a kidney, and also does not want to leave the neighborhood. If Donna chooses to remain where she lives, she plainly does not thereby still become obligated to donate her kidney. Her merely staying where she was, living her normal life, cannot suffice for this.

If this is right, then mere citizenship in a state is not sufficient to become a member in the sense required here. After all, most people become citizens of their states in much the same way as Donna became part of the organ-donating neighborhood. They are citizens by birth, ascription, or the decisions of their parents. For most, citizenship requires no personal engagement, uptake, or indication whatsoever. Indeed, actions that might normally constitute the relevant signals (getting government issued identification, for example) are in many countries necessary simply in order to live a normal life. But if such actions are not sufficient to render Donna obligated to follow her group's norms about organ donation, then it seems similarly true that they are not sufficient to render citizens obligated to follow their state's emergent group norms. They are simply part of the ordinary baseline of behavior.

The second reason for doubting that states are actually self-determining units is slightly different: the appropriate conditions for *taking* people to be obligated are sensitive to the comprehensiveness and impactfulness of the obligations in question. This is due to the uncertainties and possible confusions that typically accompany the conditions of membership, and especially the type of "soft"

conditions that are involved in proposals such as Gilbert's idea of joint commitment. A lot can be unclear here: the nature and extent of the joint commitments around which a group is organized, the actions that constitute their acceptance, what people already count as its members, and so on. These are all matters of interpretation and, as such, are often surrounded by ambiguities, uncertainties, and indeterminacies. That is, while it might be common knowledge that certain behaviors are obligating, the details about the behaviors, the obligations, and the group might all be less than fully clear.

So even if people in such situations do become obligated in some particular way, it is not true that others can be justified in holding them to be bound, unless there is some reassurance that they were committing themselves in just that way. This is especially true if the obligations in question are onerous and far-reaching in nature. As a general rule, the more comprehensive or impactful the implications of group membership, the more demanding we should be of the conditions for membership. For groups the impact of which is relatively minor, such as the color-coordinating neighbors, "soft" actions, such as moving into the neighborhood, might suffice. But for groups the impact of which is far-reaching, clearer and "harder" conditions are plainly required.

To see this, consider a slightly different example. Suppose Donna comes across a march of people who are campaigning for more organ donations. They hold signs saying things like "On our way to donate kidneys! Will you?" And "Come donate kidneys with us!" Suppose that Donna cares about organ donation, sees the march in progress, and decides to walk along. When the march arrives at a hospital, its participants start preparations to have their kidneys removed for donation. Can the hospital's physician take the fact that Donna was part of the march to be sufficient for removing her kidney? Clearly, the answer is no. Given what is at stake, the mere decision to join in the march, even though it satisfies Gilbert's conditions of joint commitment, cannot be enough. For others to take Donna to be obligated to donate her kidney, more than just this is required. Donna would have to do something like sign a consent form.

If this is correct, then the prospects for the thesis that citizenship is sufficient for taking membership in the state as a self-determining group are also dim. States are among the most comprehensive and impactful groups. They are coercive institutions that require and enforce the obedience of their subjects. They use their powers to legislate on a wide variety of social, economic, cultural, and personal matters. And the possibility of self-determination occurring at the state level further increases their impactfulness by attaching a binding emergent moral code to membership. Given that the argument we are inspecting here concerns how to treat people globally, any demand that we water down the rights and freedoms of individuals in the international realm in the name of self-determination again needs some “harder” forms of assurance. We should expect, then, that for present purposes the conditions of membership in the state *qua* self-determining group be more like agreeing to a kidney transplant than like moving into a neighborhood.

Note that this is not to reassert the consent theory of political obligation or state legitimacy. According to that theory, people are subject to the state’s authority if and only if they voluntarily give their consent.<sup>28</sup> But we have not been focusing on state authority as such. Instead, our question has been whether membership in a group can imply that one is bound to follow the group’s emergent norms. And when this kind of membership becomes as pervasive as being subject to state authority, consent, or something close to it, seems required. This leaves open the possibility that state authority is immune to this argument about group membership. Perhaps state authority is special in ways that group membership is not. And it leaves open the possibility that membership in less impactful and comprehensive states can result from the satisfaction of softer conditions.

Either way, then, the upshot is that for all practical purposes we cannot accept that being identified as a citizen or subject by the governments that rule us is sufficient for membership in a self-determining state. Absent the requisite undertakings, engagements, or indications on the part of all individual persons who live there, the mere fact of such identification by the state is as brute and morally

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<sup>28</sup> The classic discussion remains A. John Simmons, *Moral Principles and Political Obligations*, (Princeton, 1979)

impotent a fact as living close to the Mason-Dixon Line. Genuine state self-determination thus is a mirage.

This seems the correct result. If being considered a citizen were sufficient for membership in a self-determining group, then some seriously counter-intuitive implications would follow. It would render incoherent, for example, claims made by secessionist movements on the grounds of self-determination. These, we would be forced to say, are simply mistaken because, by their current state's identification as citizens, the people seeking secession already qualify as full members of a genuinely self-determining group. It would therefore not even be possible for their right to self-determination to be denied. Calls for secession would thus be obviously mistaken in the face of state self-determination. This is implausible.

The account proposed here of course also implies that secessionist groups cannot establish self-determining states, but the reasoning is importantly different. For the account does allow groups as such to be self-determining. It only rules out that the state they want to establish – which will identify members and non-members of the group as citizens on grounds of residence or birth and coercively govern them – will be. But this is a general result. And so the implausible implication is avoided. Secessionist states lack a right to self-determination for the same reason as larger states do.<sup>29</sup>

Note that argument above cannot be challenged by claiming that membership in a self-determining group requires only the acceptance, consent, or agreement of that group's majority. For in order to identify the majority of a group we first need to know who counts as its members. We cannot say that 51 people's votes constitutes a majority without knowing that the group has no more than 100 members, and who those members are. But that is precisely the question we are

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<sup>29</sup> States can approximate self-determination to greater or lesser extents. Many of the things normally associated with the idea of self-determination move a state closer to this ideal, including secession. By seceding, a group would a state the citizenship of which is closer to membership in the self-determining group. Similarly, democratic politics and deliberation might move states closer to true self-determination. These are aggregation procedures that translate individual beliefs and preferences into group codes. State sovereignty protects a society against the kind of outside interference that would override a group's ability to arrive at its own emergent norms (i.e. norms that are the product of the beliefs of its members).

addressing here. We are asking about the boundaries of group membership, who does, and who does not, count as a member in the first place. Important though majority rule might be, this is one problem it cannot solve.

### *5. Conclusion*

The argument with which we started this essay thus turns out to be unsound. Self-determination can give rise to moral variation, but political states are not the sites of the requisite processes. Insofar as the demands of global justice go, then, defenders of modest or minimalist international moral standards should look elsewhere for support.