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# On the Foundation of Rights to Political Self-Determination: Secession, Non-intervention, and Democratic Governance

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## **On the Foundation of Rights to Political Self-Determination: Secession, Non-intervention, and Democratic Governance**

Almost two decades ago, the relatively peaceful breakup of the Soviet Union, the much more violent disintegration of Yugoslavia, and the near success of the secessionist movement in Quebec led to an outpouring of philosophical work on the justifiability of secession.<sup>1</sup> Though this topic no longer garners as much attention from either the media or political philosophers as it once did, many people around the world continue to view secession as an issue of critical importance. Evidence of this can be found in the current standoff over the final status of Kosovo, resurgent efforts by the Tamil Tigers to carve an independent homeland out of Sri Lanka, fear and anticipation of southern Sudan's eventual bid to secede from Sudan, and concern over the possibility of Kurdish secession from Iraq, Turkey, and/or Iran. In light of its enduring political importance, secession remains a topic worthy of careful consideration by political philosophers.<sup>2</sup>

From a justificatory standpoint, perhaps the most basic question with respect to secession is what, if anything, provides the moral foundation for a group's right to secede. My aim here is to make a start to answering this question. I do so, however, by considering a different, albeit closely related, question, namely what is the nature of the wrong done to members of a qualified group denied secession by the state that currently rules them? A compelling answer to this latter question, I suggest, will contribute significantly to a satisfactory answer of the former one.<sup>3</sup>

Christopher Heath Wellman has recently argued that the denial of a qualified group's right to secede constitutes a failure to respect that group's autonomy (or self-determination).<sup>4</sup> Though I agree with much of what Wellman says in his excellent book,

*A Theory of Secession*, I find problematic his attempt to use the value of group autonomy as the foundation for a theory of secession, as well as other rights to political self-determination. Consequently, in this paper I defend an alternative justification for such rights, including not only the right to secession, but also the right to non-intervention (including freedom from colonization and forcible annexation, as well as temporary occupation), and the right to democratic governance, that appeals instead to individual autonomy. Though not without problems I cannot fully address here, I defend the superiority of this account over Wellman's, which as I argue below, encounters serious difficulties.

I begin in section I by criticizing Wellman's argument that agents can be owed respect in virtue of their accomplishments or because of the roles they occupy, and it is the failure to extend to them the respect due on these grounds that constitutes the wrong done to a group's members when they are denied the right to secede. Instead, I argue that the denial of this right (and other rights to political self-determination) to a particular group wrongs its members because it violates certain of their individual rights. Specifically, I contend in section II that the rights to secession and to non-intervention ought to be understood in terms of individuals' exercise of their right to freedom of association – or in this case, their right not to associate with certain others. I maintain that persons enjoy such a right in virtue of their status as autonomous agents. Wellman, however, argues specifically against the attempt to justify secession and other rights to political self-determination by appeal to individual autonomy. In section III, I consider these arguments, and contend that they do not undermine my defense of the rights to secession and non-intervention as one way in which certain individuals may collectively

exercise their individual rights to freedom of association. Because I defend a plebiscitary right to secession, however, my attempt to defend the right to secession entirely in terms of respect for individual autonomy depends ultimately on the defense of an individual right to democratic governance.<sup>5</sup> I sketch an argument for such a right in section IV, and argue that despite some potential difficulties with this account, it provides an intuitively more compelling account of the right to democratic governance than does Wellman's defense of this right in terms of respect for group autonomy.

Before proceeding to these arguments, I note two substantive assumptions and two definitions that will be important for what follows. First, the object of discussion in this paper is a deontological justification for secession and other rights to political self-determination. Though in some cases these rights may also be morally justified on instrumental and/or consequentialist grounds, both Wellman and I aim to defend these rights as non-instrumentally justified entitlements held by groups or individuals.<sup>6</sup> The impetus for mounting such a defense of secession and other rights to political self-determination is the intuition that consequentialist considerations do not fully capture the wrong done when certain group are denied secession, colonized, or forcibly annexed. For example, even if the breakup of Czechoslovakia led to a reduction in the welfare of both Czechs and Slovaks, this does not strike me as providing a reason to deny Slovakia's secession, at least as long as members of both the newly created Czech Republic and Slovakia enjoyed their basic moral rights. Nor do I believe that Canada is morally entitled to forcibly annex the United States, even though I also believe that were Canada to do so the effect on the welfare of many Americans would be positive – enough,

perhaps, for Canada's forcible annexation to produce an increase in both aggregate and average welfare.

Second, I will assume the truth of Wellman's samaritan defense of political legitimacy. Samaritanism is the view that as long as the cost is reasonable, agents can be morally required to benefit others even in the absence of consent, a special relationship, or responsibility for the harm others stand to suffer. Insofar as the state – a territorially defined coercive order – is necessary to protect individual's rights and secure peace (i.e. to save its subjects from the state of nature), samaritanism entails that individuals have no claim to be free from political coercion. In short, political legitimacy follows from samaritanism together with the empirical necessity of the state.<sup>7</sup> A legitimate state, as I will understand it in this paper, is one that enjoys a liberty-right vis-à-vis its subjects to enact, apply, and enforce the law. Finally, by a 'qualified group' I will mean any group that is: (a) willing and able to perform those functions that legitimate the state and (b) whose secession does not undermine the ability of the remnant state to perform these same functions. Only qualified groups enjoy a right to secession and the other rights to political self-determination.<sup>8</sup>

The moral rights defended in this paper are prima facie ones, meaning that other considerations may entail that these rights can be justifiably limited or overridden in certain cases. For example, "supreme emergency" in time of war, natural disaster, or public health risk may warrant temporary suspension of democratic governance.

Likewise, the effects that institutionalizing the right to secede may have on political stability may justify enacting a legal right to secede that is narrower in scope than the moral right to secession defended in this paper. I do not claim, therefore, to address here

all of the morally relevant issues surrounding secession, non-intervention, and democratic self-governance. Nevertheless, a successful defense of a deontological account of these rights will make a difference to debates over issues like those just mentioned; for instance, by ruling out certain sorts of considerations, such as economic efficiency, as reasons in themselves for limiting the legal right to secession.

## I

Wellman argues that if the value of group autonomy is to entail a set of deontological rights to political self-determination, then it cannot be understood as either the extension of individual autonomy to groups, or as merely instrumentally valuable to the promotion of individual welfare.<sup>9</sup> Moreover, Wellman finds suspect the suggestion that group autonomy has the same kind of non-derivative, ultimate, value that he assigns to individual autonomy; that is, he rejects value-collectivism in favor of value-individualism.<sup>10</sup> Nevertheless, he contends that the violation of a group's right to secession (freedom from colonization, etc.) wrongfully disrespects the individual members of that group. Agents can be owed respect in virtue of their accomplishments or because of the roles they occupy, and it is the failure to extend to them the respect due on these grounds that constitutes the wrong done to a qualified group's members when they are denied the exercise of their right to secede. Unfortunately for Wellman, neither of these bases for respect provides a plausible explanation of the wrong done to these individuals.

One way in which a person can disrespect another involves a failure to grant her the recognition due to her in light of her accomplishments. For example, Wellman writes that a student who challenges Amartya Sen regarding his work on famine, and does so in

a familiar manner though she has no previous relationship with him, disrespects Sen because she does not “exhibit the type of deference to which Sen is entitled because of his remarkable accomplishments.”<sup>11</sup> Similarly, the failure to respect the rights to political self-determination of a group willing and able to perform the functions of a legitimate state exhibits a failure to grant them the recognition to which they are entitled in light of their accomplishing those tasks.

This line of argument fails because it substitutes a different sense of respect for the one necessary to defend a deontological right to collective self-determination. The student treats Sen rudely – that is the relevant antonym to ‘respectfully’ in Wellman’s example. Yet while treating someone rudely displays a character fault for which a person may be justifiably criticized, by itself rude treatment of another does not count as wronging him. The student acts inconsiderately, and perhaps pompously (who is she to challenge a Nobel Prize winner in such familiar terms?), but not immorally. Insofar as we think that denying a group’s rights to political self-determination does not merely evidence inconsiderateness but constitutes a *wrong* done to the members of the group, we cannot understand the disrespect done to them in terms of a failure to recognize the group’s accomplishments.

Moreover, Wellman claims that a group ought to enjoy self-determination even if it makes very poor choices about its political order, as long as this does not result in a failure to fulfill those functions that justify the state.<sup>12</sup> It seems possible, therefore, for there to be a group whose rights to political self-determination we ought to respect (meaning ‘not violate’), but that has accomplished very little that is worthy of respect (meaning ‘worthy of honor or esteem’). That is, we might think that in light of the

group's poor choices, the group does not merit our *adoption of a certain attitude* toward them, one that we express through compliance with various social norms commonly understood to convey this attitude. Yet we might still believe that we ought not to *act* in certain ways that would violate their right to secession, non-intervention, or democratic governance.

Nor is it always the case that a group warrants respect merely for having accomplished those tasks that legitimate the state. In Sen's case, respect is due to him for his "remarkable accomplishments." While in some cases a group's accomplishing those tasks that justify the state may be remarkable (say if local environmental problems make this difficult to do), this is not so for all groups (or states).<sup>13</sup> However, Wellman aims to demonstrate why we must respect the rights to political self-determination of *all* qualified groups, not merely those that succeed against long odds in creating or maintaining legitimate states. I conclude, therefore, that the idea of respect due to an individual in light of her group's accomplishments cannot explain why the denial of a group's political self-determination wrongs the individual members of that group.

Wellman's second attempt to explain how disregard for a qualified group's rights to political self-determination disrespects the group's members rests on the claim that certain people are owed respect in virtue of the roles they occupy, conditional upon their competent performance of those roles. Thus a teacher who imposes her own decisions regarding the kind of milk her students should drink, rather than deferring to a mother's reasonable decisions, disrespects the "authority to which the mother is entitled in virtue of her satisfactory care for her child."<sup>14</sup> Likewise, the failure to recognize a right to political self-determination on the part of a group willing and able to fulfill the functions

that justify the state constitutes a denial of their authority to govern themselves in virtue of their satisfactory accomplishment of these tasks.

Unfortunately, this line of argument is incomplete. The problem is that Wellman provides no justification for treating a mother's authority over her child – her right to raise her child – as the default moral position. Why should we accept this claim, rather than, say, the view that assigning mothers primary responsibility for raising their own children is justified instrumentally, on the grounds that doing so is the best mechanism overall for seeing to it that children develop as autonomous beings, or for promoting aggregate welfare?<sup>15</sup> I do not believe that this instrumental argument provides the correct analysis of a mother's right to raise her child, an intuition Wellman likely shares. Rather, I suspect that a successful defense of a mother's deontological right to raise her child will require an appeal to the treatment the mother is due as an autonomous agent. It is the mother's status as such a creature, one whose choices ought to be respected as long as they do not conflict with her natural duties to others, that accounts for the mother's freedom to control her child's upbringing, even when intervention by others would provide a greater benefit to the child. Wellman, however, does not think it possible to justify a group's right to political self-determination by appeal to respect for its members' individual autonomy. As I explain more fully below, he argues that group autonomy can only be an extension of individual autonomy when agents voluntarily choose to join and remain a member of the group – and this condition is not met for most people vis-à-vis the state of which they are subjects. If my suspicion regarding what justifies respect for a competent mother's authority over her child is correct, then given Wellman's belief that most group's rights to political self-determination cannot be grounded in individual

autonomy, he will be unable to successfully complete his role-based analysis of the wrong done to members of a group denied secession.<sup>16</sup> I conclude, therefore, that Wellman fails to provide a compelling account of the nature of the wrong done to members of a qualified group denied the exercise of their right to secession.

## II

In the remainder of this paper, I offer an alternative foundation for a group's rights to political self-determination. I begin in this section with a defense of the rights to secession and to non-intervention, arguing that disregard for a qualified group's exercise of these rights wrongs the group members individually because it violates their individual rights to freedom of association.

Like Wellman, I contend that only a qualified group can exercise the right to secession, but that the refusal to permit such a group to secede wrongs the individual members who comprise it. But whereas Wellman attributes the right to the group, and so cannot explain the wrong done to the group's members in terms of the violation of individual rights, I suggest that the right to secession is nothing more than one way in which agents may exercise their individual rights to freedom of association.<sup>17</sup> Of course, I have assumed that a set of individuals can fulfill their samaritan duties only by acting collectively, and that doing so (or being willing and able to do so) constitutes a necessary condition for justifiable secession. It is therefore true, if potentially misleading, to say that since only a group can perform the necessary political tasks, only a group can exercise a right to secession. Nevertheless, the denial of secession to a qualified group wrongs the individuals who constitute it, because it is they who are denied the opportunity to perform these tasks with others who are willing and able to act collectively

with them, *and only with them*.<sup>18</sup> These individuals enjoy a right to freedom of association, grounded in their status as autonomous creatures, and that right includes a (defeasible) claim against others that they not be compelled to associate with them. When a qualified group is not permitted to secede, or colonized, or forcibly annexed, its individual members are denied their right not to associate with those who are members of the ruling, annexing, or colonizing state.

It may seem odd to claim that individuals have a right (the right to freedom of association) that they may exercise in certain ways (to secede) only if enough other individuals also choose to exercise that right in the same way. Perhaps it would be better to conclude, as Wellman does, that since morally justifiable secession can only be carried out by a collection of individuals intentionally acting in concert with one another to achieve a shared goal, that the right to secession is held by the group, rather than its individual members. Upon reflection, however, it may not seem so strange to claim that in some cases an individual can exercise her right to freedom of association only if certain others do so as well. For example, suppose I want to form a group to discuss Russian literature, but can find no one else who wishes to do so. Surely this does not entail that the right to discuss Russian literature can be held only by a group, even though successfully creating and maintaining such a discussion requires that two or more individuals collaborate in pursuit of this shared goal. Were a discussion group to form, and then be suppressed by the state, the wrong would be done to the individuals whose freedom to associate with one another for the purposes of discussing Russian literature the state denied. Legally it might make sense to describe the conflict as one between the state and the Russian discussion group (as opposed to, or at least in addition to, the

individuals who currently constitute it), since a victory for the latter would establish that any future member of the group, and not just those who currently belong to it, enjoy a right to meet and discuss Russian literature. This does not change the fact that the group's moral rights, and the wrongs done to its members when those rights are violated, can and should be accounted for solely in terms of the individual moral right to freedom of association.<sup>19</sup>

Someone might object that in the Russian literature example, the inability of an individual to exercise his right to freedom of association in a certain way without others doing likewise follows from the impossibility of a discussion group with only one member. In contrast, the barrier to secession for a person who cannot convince enough others to join him is not that doing so is impossible, but rather as I argue below, that doing so is morally prohibited. It is not clear why this difference should weaken the analogical argument for the claim that in some cases, including secession, an individual can exercise her right to freedom of association only if certain others do so as well. All that matters is that there be a good reason why an individual's exercise of her right to freedom of association is conditional in this way, and both (metaphysical? logical?) impossibility and true moral prohibitions provide such a reason.

The Russian literature example is intended to make the case for the possibility of an individual right that agents can exercise only in concert with one another; that is, as a group. A critic might employ it for a different purpose, however; namely, to call into question the sufficiency of an appeal to the right to freedom of association as an explanation for the wrong done to a qualified group denied the opportunity to secede.<sup>20</sup> Suppose the state permits those who wish to discuss Russian literature to meet with one

another, but then prevents them from carrying on any conversation on that subject. If the state acts wrongly here, as most will agree it does, that cannot be because it denies these agents their right to freedom of association since, by hypothesis, they are free to meet with one another. Rather, the wrong must involve the violation of some other right, such as the right to freedom of speech. Similarly, when an existing state denies a qualified group living within its territory the opportunity to secede, it need not be denying members of that group their individual rights to freedom of association. Instead, it may be denying them certain other rights, such as the right to educate their children in a way disapproved of by the majority in the existing state.<sup>21</sup>

This criticism conceives of the right to freedom of association as merely a right to be in the presence of others, or a right to meet with them in some very minimal sense. Such a conception strikes me as mistaken, however. Rather, the right to freedom of association consists in a right to associate with others for a certain purpose (or for many purposes). Members of the Russian literature group wish to associate with one another *for the purpose of discussing Russian literature*. If the state allows them to congregate in the same room, but prevents them from discussing Russian literature, then it violates their right to associate for that purpose. The state may also be denying these agents their right to freedom of speech, though perhaps it need not do so. We can imagine the state permitting each to speak as he wishes, but making it impossible for the others to hear or understand them, and it may be that in doing so the state does not violate the Russian literature group members' rights to free speech. Regardless, I suggest that a conception of the right to freedom of association that characterizes it in terms of associating for a

certain purpose better captures the common understanding of that right than does the thin notion of free association employed in the foregoing criticism.

Nevertheless, the criticism serves a useful end as it points to the need to say something about the scope of the right to freedom of association. I contend that all else equal the only purpose for which people may not associate – or perhaps better, the only ends people acting in association with one another may not pursue – are those that involve the violation of others’ basic rights.<sup>22</sup> I suspect, though I will not investigate the matter here, that such an understanding of the scope of the individual right to freedom of association can be justified by appeal to a variety of liberal theories of justice; for example, by appeal to Rawls’ first principle of justice (and other theories of justice in the Kantian tradition), or to A. John Simmons’ conception of people as naturally free and equal (and other theories of justice in the Lockean tradition).<sup>23</sup> Given this conception of the scope of the right to freedom of association, and so the right not to associate, as long as the seceding group is willing and able to perform the requisite political functions, and the remainder group is also able and willing to do so (or at least should be willing to do so), then by exercising their right not to associate members of the seceding group do not violate anyone’s basic rights. It follows that secession under these cases falls within the scope of individuals’ rights to freedom of association.

The understanding of the rights to secession and non-intervention in terms of the individual right to freedom of association may appear to pose a serious challenge to the legitimacy of existing states. After all, if the right to freedom of association includes a right not to associate, then it appears that every individual has a right to secede from the state that claims to be sovereign over her. Should any individual choose to exercise this

right, the state would often be morally unjustified in coercing her (or threatening to coerce her) in order to get her to comply with its demands.<sup>24</sup> Moreover, given that individuals enjoy a right to freedom of association grounded in their status as autonomous agents, we ought not to assume that a state enjoys legitimacy vis-à-vis its subjects unless and until they secede, but rather that it can justifiably claim to rule them only if they freely choose to associate with the state; that is, only if they have consented to the state's rule. Since very few individuals have freely consented to rule by an existing state, the argument from freedom of association gets us a right to secession at the cost of de-legitimizing all existing states. Some may conclude, therefore, that the proposed account of the rights to secession (and non-intervention) ought to be rejected.

This line of argument fails because it assumes that the right to freedom of association is absolute, when in fact that right is limited by those natural duties the fulfillment of which requires participation in a state. Put a bit simply, morality requires that every agent contribute his or her fair share to see to it that all enjoy their basic moral rights (or alternatively, benefit from others' fulfillment of their samaritan duties). It follows that individuals have no right to freedom of association in cases where it would result in either the duties correlative to these rights (or samaritan duties) going unfulfilled, or an unfair distribution of the burdens involved in fulfilling these duties amongst all those who have them.<sup>25</sup> But while the natural duty to bear one's fair share of the burden involved in the fulfillment of samaritan duties requires that every individual be part of *some* group willing and able to perform the functions that justify the state, it leaves it open to individuals to form any size group consistent with the performance by all of their samaritan duties. Thus the right to freedom of association entails a claim to

belong to one qualified group rather than another, but it does not include a claim not to associate with any group willing and able to fulfill the functions that justify the state.

The reader may wonder why the individual right to freedom of association gives rise (under certain conditions) to a right to secede, and not merely a right to emigrate. Why does Canada not adequately recognize its subjects' individual rights to freedom of association by permitting residents of Quebec who no longer wish to be part of Canadian society, or forced to associate with non-French speaking Canadians, to leave Canada? The reason is this. The state's right to rule over certain people in a certain territory – that is, its claim to jurisdiction over them – is conditional on its successfully performing those functions that legitimate the state. Central to those functions, and so the state's legitimacy, is that it protect its subjects' individual rights. Among those rights are the right to associate with others who are willing and able to act collectively with them, *and only with them*, to fulfill their samaritan duties. If a number of individuals make up a qualified group, and they wish to exercise their right to act with one another, and only with one another, to fulfill their samaritan duties, then the state that formerly enjoyed morally justifiable jurisdiction over them no longer does so. This state does not have the moral standing to demand that the individual members of the qualified group either recognize its rule or exit from its territory – the territory no longer “belongs” to that state. So for example, if the people of Quebec constitute a qualified group, and they wish to secede from Canada, then Canada no longer enjoys morally justifiable jurisdiction over Quebec.<sup>26</sup> Canada has no moral claim to rule over that territory and those who live in it, and so it has no standing to make the offer “acknowledge my rule or leave this territory (or my jurisdiction).”<sup>27</sup>

Thus far I have argued that the rights to secession and to non-intervention should be understood as one way in which, under certain conditions, agents may exercise their individual rights to freedom of association. In the next section, I consider and rebut Wellman's attempt to demonstrate that these rights cannot be grounded in individual autonomy.

### III

I have claimed several times that the right to freedom of association is one that creatures enjoy in virtue of their status as autonomous agents. Wellman argues, however, that the rights to political self-determination cannot be justified by appeal to individual autonomy, because the value of group autonomy (at least for political groups) cannot be accounted for as an extension of individual autonomy. While I reject Wellman's approach to justifying secession, etc, by appeal to group autonomy, it will still be useful to consider his argument, and to explain why it does not affect the account of the rights to secession and non-intervention I defend.

Wellman claims that group autonomy can only be an extension of individual autonomy when agents voluntarily choose to join and remain a member of the group. For example, Wellman argues that compelling Augusta National Golf Club to accept a woman as a member disrespects the autonomy of the club members.<sup>28</sup> It does so because only they have a right to determine who can or cannot join the club. Since Augusta National's origination and continued existence depend upon the voluntary decisions of its members to create the club and to remain members of it, each of the men who belong to Augusta National can be understood to freely endorse its secondary rules regarding how the club's policies are to be set, and likely many or even all of its primary rules of

conduct. It is in virtue of this voluntary endorsement that the club's autonomy can be understood as an extension of individual autonomy. Though no individual exercises sole control over the club's policies, this fact does not undermine the claim that Augusta National's (group) autonomy is an extension of its members (individual) autonomy, because each person is bound by these rules only if he freely joins and chooses to remain a member of it.<sup>29</sup>

As Wellman rightly points out, few people voluntarily choose to associate with the state that claims them as subjects. This raises two difficulties for the attempt to account for the value of a political group's autonomy in terms of the value of its members' individual autonomy. First, if the members of a group have not freely chosen to act in concert with one another, then we cannot appeal to the need to respect people's autonomous choices as an explanation for why we ought to respect the group's exercise of rights to political self-determination. Since states "non-consensually coerce all those over whom they exercise sovereignty," it follows that we cannot appeal to the individual subjects' autonomous choice to act in concert with one another to explain why colonization, forced annexation, or the denial of secession to a qualified group is wrong.<sup>30</sup> Second, as the argument in the preceding paragraph demonstrates, voluntary endorsement of a group's policies is essential for establishing an understanding of a group's autonomy as an extension of its individual members' autonomy. Absent such an endorsement, which requires at least a right to exit at reasonable cost, and perhaps also that membership in the group arise originally from a free and informed choice, we cannot understand the state's autonomy as an extension of its subjects' autonomy. Since Wellman believes that the defense of deontological rights to political self-determination,

such as the right to secession, require an account of group autonomy, he concludes that these rights cannot be derived from respect for individual autonomy.

Does either, or both, of these objections undermine the case for understanding the rights to secession and to non-intervention in terms of respect for individuals' exercise of their right to freedom of association? Consider the first of these – that when membership in a group results from coercion, denial of the group's rights to secession and non-intervention cannot be understood as the denial of individual's autonomous choice, since no choice was made to join the group. Yet even if membership in group A is non-voluntary, it seems that its members can still justifiably object to being compelled to become members of group B (as in a case of forced annexation). This is so even if some subset of the members of group A can also justifiably object to being compelled to remain members of group A. To take a concrete example, suppose that the residents of Quebec constitute a qualified group, and that the vast majority of these residents did not voluntarily choose to become either Quebecois or Canadians. Were the United States to forcibly annex all of Canada, the Quebecois would have a justifiable complaint against them; the United States would have violated their right to associate only with one another. This is so even if Canada had also violated this same right, by refusing to allow the Quebecois to secede. Indeed, the only point at which a group of people cannot justifiably complain about being non-voluntarily compelled to associate with certain others is if they do not count as a qualified group.<sup>31</sup> The non-voluntary origins of a person's membership in a given state do not conflict with respect for that person's autonomy, since as I argued above, all agents have a natural moral duty to participate in some state or other.<sup>32</sup> However, denial of a qualified group's right to secession does

constitute disrespect for its members' individual autonomy. In short, the refusal to allow a group to secede violates the members' individual rights to freedom of association, even if their membership in the original group (or in the newly created state) is non-voluntary, unless that group is not a qualified one.<sup>33</sup>

Wellman's second objection to a justification of the political rights to self-determination in terms of respect for individual autonomy rests on a conception of autonomy as active self-government. Some theorists argue that democracy has non-instrumental value because it is the only form of government in which the people rule themselves.<sup>34</sup> But Wellman notes Allen Buchanan's observation that subjects of a democratic state do not rule themselves, but are instead ruled by the majority.<sup>35</sup> Even a person who votes with the majority does not rule herself, since it is in virtue of the fact that the majority favors a certain outcome, policy, or rule, and not the fact that she favors it, that renders the agent subject to it. Thus government by majority rule excludes active self-determination, unless members of the group so governed can freely exit it should they disapprove of the decisions made by the majority.<sup>36</sup> Wellman calls attention to the incompatibility of democracy and individual self-government in order to buttress the claim that we ought to endorse the idea of group autonomy even if we cannot (yet) provide a convincing explanation of its value, because doing so is necessary to provide a deontological account of the right to democratic governance. But this incompatibility has implications as well for the attempt to justify a right to secession by appeal to individual autonomy. Wellman defends, and I also endorse, a plebiscitary right to secession. That is, a decision regarding whether to secede involves a majority rule decision procedure in which all competent persons living in the territory over which the new state would rule

exercise an equal vote.<sup>37</sup> It follows that a qualified group's exercise of the right to secession cannot be understood in terms of individual autonomous choice, since it is the majority, rather than any individual, who exercises it. As indicated above, this is so regardless of whether an individual casts her vote in favor of, or against, secession.

It appears, therefore, that a successful defense of a plebiscitary right to secession grounded in the individual right to freedom of association requires that democratic governance be reconciled with respect for individual autonomy. In the next section, I describe one way in which such a reconciliation might be carried out.

#### IV

The first step to resolving the apparent conflict between democracy and individual autonomy involves the substitution of a Kantian conception of autonomy for a Lockean one. The latter emphasizes the idea of active self-government, and posits that individuals are bound only by a (usually) minimal number of natural duties to others, and whatever transactional obligations they may acquire (e.g. promissory obligations or duties of gratitude). A Kantian, in contrast, does not treat autonomy as fundamentally a kind of activity, but rather as a status that certain creatures enjoy.<sup>38</sup> For example, on a contractualist version of the Kantian conception of autonomy, respect for persons as autonomous agents requires that they be treated only in ways that, as rational and reasonable creatures, they could not reject. Here the term 'rational' refers to the power an agent has to organize his own life, a task that includes the evaluation of ends as well as the means to them. To be rational in this sense is to be capable of forming and acting on a conception of the good. By 'reasonable' I mean a fundamental commitment to limiting the pursuit of the good life (i.e. some particular conception of the good) when and as

necessary to accommodate others who are also rational and reasonable, that is, who also pursue a conception of the good life but are committed to limiting that pursuit in order to accommodate others with the same two basic commitments.<sup>39</sup> To act only on principles (or for reasons) that others could not reasonably reject, to constrain in this manner one's pursuit of a particular conception of the good life, is simply to recognize other agents as self-governing, as creatures whose actions can be justifiably limited only in ways that, if they were reasonable, they would limit it in order to respect other agents' autonomy. As T.M. Scanlon puts the point, "by accepting the requirement that [rational and reasonable creatures] should be treated only in ways allowed by principles that they could not reasonably reject, we acknowledge their *status as self-governing beings*, not just things that can be harmed or benefited."<sup>40</sup>

Someone might object that to treat someone in accordance with principles they would not reject were they rational and reasonable cannot constitute respect for them as self-governing creatures, since it may sometimes require treating them in ways to which they have not consented, and would not in fact choose to be treated. Yet the same is true on the Lockean conception of autonomy; agents may not commit certain acts, regardless of whether they have voluntarily agreed to refrain from doing so. Moreover, on the Kantian conception, respect for others as autonomous agents does entail duties to refrain from interfering with individual's actual choices in a wide range of situations; indeed, it may also justify duties to promote others' development of those abilities and skills involved in actual decision-making, and to assist them in the exercise thereof.<sup>41</sup> Thus the Kantian can recognize the importance of actual self-governance, that is, an individual's actual exercise of choice and normative authority over various aspects of her life. But

because the Kantian does not equate actual self-governance with autonomy, but rather with treating others in ways that they would not reject if they were rational and reasonable, it remains open to him or her to justify a right to democratic governance as a necessary element of respect for (most) people's status as autonomous agents.

I have said more (though perhaps not enough) about this contractualist version of Kantian autonomy elsewhere, and argued on the basis of it for an individual right to democratic governance.<sup>42</sup> Here I present only a brief summary of those arguments, noting in particular those elements that can be drawn on to rebut the objections Wellman raises to Allen Buchanan's attempt to justify an individual right to democratic governance, albeit on different grounds than those I employ.

Suppose that, as I have assumed throughout this paper, respect for others' basic moral rights (i.e. respect for them as autonomous agents) requires collective action, and that states can, and often do, play a necessary role in facilitating it. Their primary means for doing so is via the enactment, application, and enforcement of laws. Yet even well-intentioned agents will often reasonably disagree as to the form that morally necessary collective action ought to take; that is, over what the laws ought to be. Here the term 'reasonable' refers not to the moral power discussed above (moral reasonableness), but rather to judgments made in circumstances characterized by what Rawls labels the burdens of judgment (cognitive reasonableness).<sup>43</sup> I offer two arguments intended to demonstrate that in such circumstances, respect for others' status as autonomous agents requires that the resolution of these disagreements ought to be made democratically.

Every agent has two reasons to bring about a state of affairs in which he or she alone exercises the authority to settle the form that morally necessary collective action

ought to take. First, if the agent thinks that, morally, everyone ought to do X, then she is rationally committed to the claim that the disagreement should be resolved in favor of everyone doing X. The best and only way to ensure such a result is for the agent to exercise dictatorial authority. Second, every agent has a reason to promote a state of affairs in which she never needs to act contrary to what she believes morality requires in order to act legally. Obviously it is not possible for each member of the state to act simultaneously on these reasons. Moreover, no member can offer these reasons as a justification for exercising total authority over the content of the law, since every other member has the same reasons for claiming this authority. Resolution of this impasse requires a principle that assigns equal weight to each person having the same reasons for wanting to exercise the authority in question. The two salient options are a principle of equal chances, as in the form of a fair lottery for selecting who should be dictator, and a principle of equal division, as in the case of a majority rule vote. I offer two reasons in favor of the latter over the former. First, only in a majority rule vote does every person exercise (or at least have a right to exercise) authority over the form that morally necessary collective action ought to take; indeed, each exercises the greatest authority possible consistent with a like authority for all of the other participants.<sup>44</sup> Second, a fair lottery is less likely to reflect the preferences of a majority than will a majority rule vote, and so is more likely to lead to disobedience and deliberate efforts to undermine the effective and/or efficient operation of the morally necessary collective action scheme (i.e. the legal order). If this hypothesis is correct, and given the moral necessity of collective action, it follows that rational and reasonable agents can offer this practical consideration

as a reason to reject a fair lottery in favor of a majority rule vote. It follows, on contractualist grounds, that individual's have a right to democratic governance.<sup>45</sup>

A second argument in favor of the individual right to democratic governance rests on the intuition that, in circumstances characterized by cognitively reasonable disagreement, treating others morally requires equal respect for each agent's exercise of his or her moral judgment. I suspect that many people would agree that assigning less weight to one citizen's judgment regarding what the law ought to be than is accorded to other citizens' judgments denigrates or degrades that individual.<sup>46</sup> As Jeremy Waldron writes,

because A has a sense of justice, A may think of himself as having what it takes to participate in decisions where others' rights are also involved [in addition to his own.]. If A is nevertheless excluded from the decision . . . A will feel slighted: he will feel that his own sense of justice has been denigrated as inadequate to the task of deciding not only something important, but something important in which he, A, has a stake as well as others.<sup>47</sup>

Of course, the duty to respect others' exercise of moral judgment is not absolute; if an agent's judgments are cognitively unreasonable – that is, not intelligible even in light of the burdens of judgment – then no disrespect is done to him or her when these judgments are disregarded. I argue that in practice, this implies that basic moral rights limit the scope of democratic authority (as well as individual's liberty and authority).<sup>48</sup> In sum, the individual right to democratic governance rests on the following two claims: first, each participant in a morally necessary collective action scheme (such as the state) has

the same claim to the authority to determine the form such action ought to take (i.e. what the law ought to be), a claim that is better accommodated by democracy than by a fair lottery; and second, each individual's exercise of moral judgment regarding the form morally necessary collective action ought take should be given the same weight, as long as that judgment is cognitively reasonable.

Wellman attempts to defend the plausibility of group autonomy in part by demonstrating that only it can provide a justification for a deontological right to democratic governance. It should be clear from the earlier discussion why this right cannot be understood in terms of individual autonomy, understood in Lockean terms as active self-government. But Wellman also criticizes Allen Buchanan's claim that the right to democratic governance follows from a principle of fundamental equality.<sup>49</sup> Such an argument faces (at least) two difficulties, according to Wellman. First, it cannot explain why political authority should not be distributed via a fair lottery. A fundamental principle of equality does not uniquely justify democracy; rather, it justifies a disjunctive right to either democracy or what Wellman calls an egalitarian monarchy (i.e. a lottery in which each person has an equal chance of being crowned absolute monarch). For the reasons I briefly outlined above, my own account of the individual right to democratic governance is not vulnerable to this objection. Second, Wellman claims that Buchanan's egalitarian argument implies that all members of the state must possess equal political power, so that the individual right to democracy entails the moral necessity of direct democracy. Such an implication will likely strike many as troubling, not only because the implementation of direct democracy as the sole method of government appears

unrealizable in the modern world, but also because many think representative democracy compatible with fundamental equality.

Though my own account of the right to democratic governance does not rest on equality – rather, equal treatment results from respect for each individual’s right – it appears to be just as vulnerable to Wellman’s second objection. In response, I contend that the right to democratic governance involves only a claim to a minimally democratic state. Such a state is one in which the norms that structure political decision-making (i.e. constitutional norms) include procedures by which those norms (and so any acts they legitimate) may be revised, and those procedures must take the form of a majority rule vote, in which each person subject to the political authority in question may participate equally. That is, while decisions regarding the basic structure or constitution of the state must be arrived at through (and be open to change by) a process of direct democracy, it does not violate any agent’s right to democratic governance if the product of such a process is government via some combination of a representative legislature, a supreme court with the powers of judicial review, and so on.<sup>50</sup> In short, though my account of the individual right to democratic authority does entail that all members of the state should exercise equal political power with respect to that state’s constitution, it does not require that they exercise an equal say in every political decision.

The foregoing attempt to reconcile a non-direct democratic state with the individual right to democratic governance may strike some as problematic. However, its attractiveness may be enhanced, at least vis-à-vis Wellman’s account of the right to democracy, by considering a troubling implication of the latter. Wellman argues that though democratic decision making is not compatible with a Lockean conception of

individual autonomy, it can be explained in terms of group autonomy: the denial of democratic governance to a group constitutes a failure to properly acknowledge the value of the group's autonomy, or in other words, to respect the group's self-determination. This justification for the right to democratic governance faces a serious difficulty, however, even apart from the lack of a convincing account of the value of group autonomy. For suppose that a sufficient number of group members prefer a non-democratic form of government – say, an egalitarian monarchy. It seems that Wellman's argument entails the justifiability of such a change in the form group governance takes. The minority of group members who would prefer a democratic form of government are not wronged when they are denied it, since the group's right to self-determination has not been violated. Wellman might claim that the minority is wrongfully disrespected, even though their autonomy is not violated and they are not treated unequally. But as I demonstrated in the first section of this paper, Wellman fails to provide a compelling account of the nature of this disrespect. Wellman does write that “our basic rights place limits upon democracy's sphere; we would never allow a majority to vote to enslave or disenfranchise a minority, for instance.”<sup>51</sup> But on what grounds does Wellman think that *individuals* have a basic right to democratic participation? And why won't whatever grounds he provides suffice as a justification for the right to democratic governance, thereby eliminating the need to appeal to group autonomy to provide such a justification? Even if Wellman can appeal to the fundamental equality of persons to explain why a majority may not disenfranchise a minority, he cannot offer the same reason to explain why a majority cannot opt to replace a democratic form of government with an egalitarian monarchy. Of course, Wellman could simply accept this implication of his

account, but I suspect that many of those who share Wellman's deontological intuitions with respect to democratic governance will find it very troubling.

In contrast, on my account of the right to democratic governance, nothing short of a unanimous waiver of the right to an equal say in determining the basic structure of the state can justify a non-democratic form of government. Even in this case, the voluntary waiver of each person who subsequently joins the community (through immigration or coming of age) would be required to justify the continuation of non-democratic rule. Since the right to democratic governance is a basic moral right held by all competent members of the state, the majority's decision to replace their democratic government with an egalitarian monarchy would violate the rights of the minority who had not waived this right. Just as a majority is not empowered to waive or surrender every citizens' rights to freedom of association or freedom of conscience, so too it lacks the moral authority to waive or surrender their right to democratic governance.<sup>52</sup> In sum, Wellman's appeal to group autonomy or self-determination cannot explain why political communities must be ruled democratically, while my defense of the right to democratic governance on the basis of respect for creatures' status as autonomous agents does so.

If successful, the defense of the right to democratic governance grounded in respect for individuals' status as autonomous agents completes the development of a plausible (and hopefully compelling) alternative to Wellman's attempt to justify deontological moral rights to political self-determination by appeal to the value of group autonomy.

*I would like to thank Colleen Murphy and Kit Wellman for their comments on an earlier version of this paper.*

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<sup>1</sup> In addition to the texts cited later in this paper, see *Theories of Secession*, ed. Percy Lenhing (London: Routledge, 1998); *Secession and Self-Determination*, eds. Stephen Macedo and Allen Buchanan (New York, New York University Press, 2003); *National Self-Determination and Secession*, ed. Margaret Moore (Oxford: Oxford University Press, 1998).

<sup>2</sup> Moreover, while some groups formerly seeking secession now speak more often in terms of exercising greater political autonomy within the states that rule them, rather than complete independence from those states, many of the moral questions surrounding secession apply to demands for greater political autonomy as well.

<sup>3</sup> As the text implies, identifying the moral foundation of a right to secession does not complete the task of determining when secession is morally justifiable. For a brief explanation of why this is so, see the concluding paragraph in this introductory section.

<sup>4</sup> Christopher Heath Wellman, *A Theory of Secession* (Cambridge: Cambridge University Press, 2005).

<sup>5</sup> A plebiscitary right to secession is one the exercise of which requires the endorsement of secession by a majority of the voters in the territory over which the proposed new state will be sovereign

<sup>6</sup> Thus even if my deontological account of the rights to political self-determination prove superior to Wellman's, additional arguments must be made to refute those who claim that some or all of these rights have only an instrumental or consequentialist justification. See, for example, Allen Buchanan's views on secession (Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, CO: Westview Press, 1991), and *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (New York: Oxford University Press, 2004), and J.S. Mill's defense of democratic governance in *Considerations on Representative Government* (Buffalo, NY: Prometheus Books, 1991 (1861)).

<sup>7</sup> Elsewhere I argue that Wellman's justification of the state is better understood in terms of duties correlative to others' basic moral rights than in terms of samaritan duties, or duties of easy rescue (author, ---). It makes no difference to the present paper whether this is correct, however.

<sup>8</sup> See Wellman, 36.

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<sup>9</sup> I discuss in some detail Wellman's argument against understanding the value of group autonomy in terms of individual autonomy in section III. Appeal to the promotion of individual welfare cannot justify *deontological* rights to political self-determination.

<sup>10</sup> Wellman, 42-4.

<sup>11</sup> Wellman, 56.

<sup>12</sup> Wellman, 42.

<sup>13</sup> Or at least it ought not to be, even if in our more cynical moments we find it remarkable that any state does what it morally ought to do.

<sup>14</sup> Wellman, 56.

<sup>15</sup> See, for instance, Robert Goodin, *Protecting the Vulnerable* (Chicago: University of Chicago Press, 1985).

<sup>16</sup> Perhaps my suspicion is wrong, and Wellman (or someone else) can offer an alternative account of a mother's right to raise her child. I do not claim to have shown that no such argument can be made. Rather, all I maintain is that (a) without an account of exactly why the teacher disrespects the mother, pointing out the similarity between our intuitions regarding a mother's right to raise her child and a group's right to self-determination does not suffice to *explain* the way in which the denial of self-determination to a group disrespects that group, and that (b) one possible explanation, namely respect for the mother as an autonomous agent, is not one Wellman can appeal to in order to make his case.

<sup>17</sup> David Gauthier also employs an individual right to freedom of association to defend secession; see Gauthier, "Breaking Up: An Essay on Secession," *Canadian Journal of Philosophy* 24:3 (1994): 57-72.

<sup>18</sup> To say that the individuals constitute the group does not imply a commitment to a radically reductive account of groups. Groups, or at least the kind of groups under discussion in this paper, consist of individuals acting in an organized fashion, often through institutions (such as political parties or local legislative bodies), in pursuit of a shared goal. These characteristics distinguish a group from a mere set of individuals, a thing wholly constituted by its members.

<sup>19</sup> Perhaps an even closer analogy to the right to secession would be a Jewish person who wishes to leave the only Jewish congregation in town, but finds himself unable to convince nine (or more) others to join him, and so cannot produce the minimal number of attendees required for the conduct of certain religions

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ceremonies. Here, too, the individual can exercise his right to freedom of association – in effect, secede from his current congregation – only if enough others are willing to exercise the same right in the same way. Note that, at least for a devout Jew, the limitation on his successful exercise of the right to freedom of association is a normative one; unless he can convince enough others to join him, he cannot form a “qualified” group (where that involves fidelity to the rules concerning prayer). This parallels the normative explanation for why secession can only be carried out by individuals who form a qualified group.

<sup>20</sup> I thank an anonymous reviewer for noting this possibility and for prompting the following discussion.

<sup>21</sup> Note that the state need not be denying them the right to govern themselves, since they may enjoy a substantive right to democratic governance equal to that enjoyed by those from whom they wish to secede. However, they are being denied the right to carry out those tasks the legitimate the state *only* with one another, and not with (most of those that make up) the majority.

<sup>22</sup> All else will not be equal if a person has voluntarily acquired an obligation (not) to associate with others, or if she has a moral duty to obey certain laws that restrict the right to freedom of association in certain ways. Note, however, that a qualified group that is currently part of a larger state with a justified claim to political authority can free themselves of certain restrictions on their freedom of association (e.g. a duty to perform military service) by seceding from that state.

<sup>23</sup> John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971); A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001), especially the introduction.

<sup>24</sup> I say ‘often’ because in some cases the state might still be justified in the use (or threat of) coercion against this agent, namely those in which legitimate states are justified in using coercion against other states.

<sup>25</sup> Similarly, Wellman writes that “without denying the importance of being able to choose one’s associates, we must acknowledge that this discretion may permissibly be restricted in the political context, because (unlike the case of choosing a marital partner or a religious community) its costs in the political arena are prohibitive” (Wellman, 32).

<sup>26</sup> I assume here that no other moral considerations override or constrain the Quebecois’ right to secession (but see the remarks on this point in the introductory section of this paper).

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<sup>27</sup> Conceiving of jurisdiction as if it is (like a) property right may lead to the conclusion that a legal right to exit suffices as recognition of the individual moral right to freedom of association. But jurisdiction is not a property right; instead, it involves a claim to enact, apply, and enforce rules, including rules of property.

It should be noted that Canada may own certain pieces of territory within Quebec, and it does own certain other things in Quebec, such as federal office buildings. Were Quebec to secede from Canada, it would owe Canada compensation for some of these things, and for other types of investment (broadly construed) that Canada has made for the purpose of benefiting Quebec and its citizens. And in fact, Canada has taken legal steps to spell out in some detail what sorts of compensation Quebec will owe it if it ever does secede.

<sup>28</sup> Secession parallels the Augusta National case because both concern the question of who has a justified claim to authority over membership criteria; that is, who will count as a member of the group, and who will not.

<sup>29</sup> Wellman, 45-7.

<sup>30</sup> Wellman, 47-8.

<sup>31</sup> Even were Quebec to secede from Canada, the people of Montreal and the surrounding region might in turn vote to secede from Quebec and petition to rejoin Canada. A minority of subjects in an existing or newly created state are morally disallowed from seceding only if they do not themselves constitute a qualified group, will not upon secession be immediately annexed by some other state that already constitutes a qualified group, and will not upon secession immediately join with some other non-qualified group so that having merged the two non-qualified groups constitute a single qualified group. Thus even those that lose a vote on secession need not have their right to freedom of association violated, as long as they are permitted to secede from the territory created by the first act of secession. If the losers do not constitute a qualified group, and will not immediately become part of one upon secession, then denying them secession does not violate their rights to freedom of association because the scope of that right is limited by the duty to do one's fair share in seeing to it that all enjoy their basic rights. Moreover, if successful, then the defense of an individual right to democratic governance sketched in the last section of this paper demonstrates why the majority's preference to (not) secede should control – and so why the minority's plight may be unfortunate but not unjust.

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<sup>32</sup> This is the key disanalogy between cases involving group's exercise of their rights to political self-determination and the example that Wellman offers to buttress his claim that coerced membership in the group prohibits the justification of these rights in terms of individual autonomy. Wellman writes that were he to kidnap hundreds of people and force them to become members of a religious community in Arizona, it would be "ludicrous to suggest that third parties have autonomy-based moral reasons to respect the group's self-determination" (Wellman, 47). Wellman grants that (some) states are morally justified in compelling the membership of those within the territory it rules, and since this justification invokes a natural duty, it follows that states do not violate their subjects' individual autonomy simply because they compel their membership. I grant that it would be "ludicrous" to claim that a third party has autonomy-based reasons to respect a state's self-determination if it denies secession to a qualified subset of its subjects. But of course that is simply to acknowledge a right to secession, grounded in individual autonomy, and to assume that, all else being equal, third parties may permissibly intervene to stop ongoing rights violations.

<sup>33</sup> Does respect for individuals' rights to freedom of association, including a conditional right to secede, entail that the state must make reasonable efforts to inform its subjects of the terms on which they may secede, or that it create an institutional mechanism for facilitating such an act in advance of any secessionist movement? I suspect that the right to secede only requires the state to refrain from certain conduct, but not to take positive steps to inform or assist people in leaving the group. I acknowledge, however, that the exact content of a right to exit is a matter of dispute amongst philosopher and political theorists.

<sup>34</sup> See, for example, Daniel Philpott, "In Defense of Self-Determination," *Ethics* 105(2): 352-385.

<sup>35</sup> Wellman, 53. See also Allen Buchanan, "Democracy and Secession" in *National Self-Determination and Secession*, ed. Margaret Moore (New York: Oxford University Press, 1998): 17-8.

<sup>36</sup> This qualification explains why the employment of a majority rule decision to determine what the rules for admission to Augusta National ought to be is not incompatible with an understanding of the group's autonomy as an extension of its individual members' autonomy.

<sup>37</sup> See also Guathier, 361-2.

<sup>38</sup> This is not to deny that Kantians also can, and often do, speak of (active) autonomous choice.

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<sup>39</sup> Note that the claim here is not that moral duties are owed only to those who are in fact acting in ways that rational and reasonable agents would act, but rather that respect for all those who are capable of acting rationally and reasonably requires that they be treated only in ways they would not reject if they were acting rationally and reasonably.

<sup>40</sup> T. M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Belknap Press of Harvard University Press, 1998): 183, italics mine.

<sup>41</sup> Some may think that if autonomy is truly valuable, its exercise ought to be promoted (though not at any cost), as well as not interfered with. A Kantian conception of autonomy may be more likely to justify this intuition than will a Lockean one.

<sup>42</sup> Author, -----.

<sup>43</sup> For discussion of these two notions of reasonableness, the role they play in a contractualist account of democratic authority, see author, -----, 349.

<sup>44</sup> See Jeremy Waldron, *Law and Disagreement* (Oxford: Clarendon Press, 1999) for discussion of this point.

<sup>45</sup> Scanlon distinguishes between wrong-making properties, which are those features of the world in virtue of which of an agent can object to a proposed principle for the general regulation of behavior, and the property of wrongness, which is characterized in terms of being reasonably rejectable (Scanlon, 391 fn. 21). Likewise for the distinction between right-making properties and the property of rightness (or being right). So in the above discussion, the fact that majority rule vote is likely to produce more stable outcomes than will a fair lottery (assuming that this is indeed the case) is a right-making property, while the fact that a fair lottery could be rejected in favor of majority rule on the basis of this fact is what makes it right to employ majority rule, and not a fair lottery.

<sup>46</sup> Obviously this example tacitly assumes some threshold notion of competency that all the parties exceed.

<sup>47</sup> Waldron, p. 239.

<sup>48</sup> Of course, cognitively reasonable disagreement will surely extend to the exact content of these rights, their relative importance in various situations, and so on. Nevertheless, I contend that there exists an understanding of the core of these rights, such that disagreement over it counts as (cognitively)

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unreasonable. That people will reasonably disagree over the penumbra of these rights is precisely the fact that justifies democratic authority.

<sup>49</sup> Wellman, 178-9.

<sup>50</sup> Briefly, the reason for this is that other moral considerations, namely the effectiveness and efficiency of the state in securing basic moral rights (which is the morally necessary collective action that justifies the state's existence) justify this deviation from direct democratic rule. However, were such considerations to override the right to exercise equal authority even in the case of constitutional norms, that right would be practically worthless. Besides, given the fact of reasonable disagreement, who could justifiably claim a superior authority to design the basic institutions of a political community than that enjoyed by any other member of that state?

<sup>51</sup> Wellman, 54.

<sup>52</sup> As a descriptive matter, of course, states can do so; indeed, they can even be *legally* empowered to do so. My claim is that even democratic states lack the *moral* authority to waive their subjects' rights to democratic governance.