

SPECIAL OBLIGATIONS AND EMERGENCY CONDITIONS

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A DISSERTATION

in

Philosophy

Presented to the Faculties of the University of Pennsylvania

in

Partial Fulfillment of the Requirements for the

Degree of Doctor of Philosophy

2022

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*To my parents*

## ACKNOWLEDGEMENTS

My dissertation supervisor, Kok-Chor Tan, was always kind, supportive, and unbelievably patient. He provided the space and encouragement I needed to explore whatever topic took my fancy, even when progress was stilted. He seemed to have faith that things would work out, which eventually rubbed off on me, and his accommodating good humour at all the twists and turns along the way was precisely the tone I required. KC epitomises humility. Perhaps incapable of imposing himself on anyone, he still planted many ideas such that his influence is peppered all through my writing and intellectual development. Not uncommonly, I'd realise that my new idea grew out of a suggestion he had provided months ago. He never sought credit for the many ways he supported me, but I know that he continually looked for ways to encourage, open opportunities, and provide direction. Finally, he expresses his formidable philosophical talent with quiet confidence and unfailing politeness. He proves that while philosophy may adversarial, it needn't be combative, and intellectual achievement can be paired with supportive generosity. I am grateful for his input and his example.

I'm thankful to have been welcomed into Samuel Freeman's home, and for being treated like a member of the family. Welcoming and generous with his time, he is as adept with the grand tradition of Western political thought as he is quick to laugh, or ready to offer a dry remark. I took more classes and attended more reading groups with Samuel than anyone else at Penn. Always interested in the big picture, Samuel helped me understand the history of political philosophy and its relationship to current debates. Even

though he may disagree with the direction it led me, his advocacy for Rawlsian liberal egalitarianism has had a deep and lasting influence on my approach to political philosophy. I am grateful for Samuel's friendship and support, be it over long car rides, or over dinner with a bottle or two of good (old world) wine. I've valued getting to know Dillon (not 'Dylan' – 'that's weird!') and cherish the many laughs we had together. I will always have his art on my wall. I'm grateful to Annette for her friendship, listening ear, and wise counsel. I look forward to each post-event wind-down and giggling over beers.

Errol Lord has an intellectual acuity that we often describe with threatening imagery. Apparently, his mind is equipped with blades and scalpels ready to carve nature at its joints. While this accurately captures the precision and acumen with which he divides conceptual space, it does nothing to convey the warmth, wit, and generosity of spirit he conveys while doing so. I'm grateful for his Prosem, his classes, and for the example he sets in the Penn Normative Philosophy Group. In each of these venues he is an exemplary interlocutor, cutting to the heart of the issue (there's that imagery again) yet doing so in a way that is reassuring, encouraging, and constructive. Especially in the early days, when I was my most self-doubting, visiting his office would remind me why I liked philosophy. He has that exceptional pedagogical talent for making you feel enthusiastic about ideas you didn't know you had.

While not on my committee, Karen Detlefsen has had an indelible impact on my teaching and my conception of philosophy. As her TA, I was able to witness the best philosophy lectures I've ever seen. I see her example as the gold standard to which I aspire. I credit my (somewhat obsessive) blackboard use to her influence. More than

anything, however, I am grateful to her for providing support and direction to put philosophy to use outside the academy. She showed me how to go beyond the narrow confines of academia, which was liberating, especially when those confines seemed the most suffocating.

Grad school is tough, but I've had the great fortune to have been part of a department that did a great deal to lessen that burden. I'm thankful for the classes, conversation, or other myriad ways that I felt welcomed by Zoltan Domotor; Javier Gomez-Lavin; Gary Hatfield; Rolf Horstmann; Susan Sauvé Meyer; Lisa Miracchi; Stephen Perry; Daniel Singer; Quayshawn Spencer; Scott Weinstein; and Michael Weisberg. Special thanks to Sukaina Hirji and Jennifer Morton for their sage job market advice, especially Sukaina, who was there from the beginning, met with me numerous times, and provided endless reassurance as well feedback on many edits over many months.

Grad school would have been near impossible, and it would certainly have been worthless, without the support of good friends. My Philly is inseparable from the community I shared it with. We shared the best Philly has to offer: Ben Baker; Marie Barnett; Justin Bernstein; Grace Boey; Chetan Cetty; Devin Curry; Nabeel Hamid; Karen Kovaka; Raffi Krut-Landau; Robbie Mátyási; Paul Musso; Raj Patel; Pierce Randall; Brian Reese; and Jordan Taylor. Through these people, I'm also glad to have become friends with Ada; Amelia Curry; Sheela Krishnan; Julia Simon-Mishel; Ellie Stanford; Cecelia Tang; and Devon Taylor. Special thanks to Sally Connolly for broadening my horizons, both culinary and otherwise. My work has been immeasurably improved by

friendship and feedback from Eilidh Beaton and Mike Gadomski as well as years of discussion and input from Justin, Chetan, Paul, Raj, and Pierce whose expertise and friendship I look forward to drawing on right through to when we're old (and great) men.

Many others, through friendship and academic pursuits, have shaped my time at Penn. I hope to see more of Carlos Pereira Di Salvo and Emily Hammer for companionship, board games, and plant-watering. Thanks to the master of conferences, Brian Berkey, for his welcoming generosity and astute comments. Thanks to Mario Juarez-Garcia for proving that even libertarians can make good friends. And thanks to Lisa Martinez-Katout for her inspiration and for picking up my slack when I really needed it. Finally, thanks to the many grads who have enriched my time at Penn: Zach Agoff; Clarissa Busch; Louise Daoust; Steve Esser; Daniel Fryer; Afton Greco; Jesse Hamilton; Raul Ibarra Herrera; Kate Nicole Hoffman; Max Lewis; Hanyu Ma; Hal Parker; Ian Peebles; Sara Purinton; Tyler Re; John Roman; Tiina Rosenqvist; Itamar Rosensweig; Vanessa Schipani; Maja Sidzinska; Matthew Solomon; Daniel Swaim; Alex Tolbert; Eugene Vaynberg; Michael Vazquez; Jacqui Wallis; Yosef Washington; Steph Wesson; Rob Willison; and Youngbin Yoon.

It's difficult to comprehend the innumerable ways I've benefitted from the love, support, and cheery disposition of Amanda Lerman. She tirelessly bore the brunt of my most negative thoughts and survived. I couldn't wish for a better pandemic companion. I'm doubtful I could have finished the PhD without you propping me up and I'm grateful for our ongoing friendship.

I've bent Molly McCoy's ear on innumerable topics both large and small for years. Her non-judgmental, caring, and sympathetic disposition taught me how to reflect those values on myself and others. Thanks to her, I not only finished, but I feel good about it too.

The pandemic was disastrously lonely for many, but not for me. I can't overstate the importance of weekly meetings with the Spellweaver, the Mindthief, and the Tinkerer, nor the regular chats with Pierce and Raj. For more than a year now, I've had daily meetings with Nabeel for chats, co-working, and bending. His consistent presence literally gave me a reason to get up in the morning. Whatever successes I've had this last year are owed in large part to him. Our daily habit likely won't survive my move. I'll miss his vigilant monkdom dearly.

It doesn't feel like I've been gone long when I get to spend time with old friends, be it in person, on the phone, or online. Special thanks to all members of the Lovely Dialect, their partners, and Peter Kelly. It's difficult to process the loss of Calum Morrison; his friendship and encouragement are sorely missed. Sharing a life, albeit on the phone, with Gillian Eunson gives me faith that I must be doing something right.

I'm very proud of my family, to whom I owe my most profound debt. It must have been baffling to watch a son and brother commit himself to an esoteric subject with piteous prospects, but they all were unwavering in their support. My brother Simon has shaped all our lives in ways hard to express. I kinda needed four parents, so I'm glad to have grown up with two older brothers: Paul and Derek. I don't know any pair that's

kinder or more honourable. As I'm often so far away, I take great solace that you both are near mum and dad. Same goes for my sister-in-law Donna, I'm lucky that I also get to benefit from your big heart and riotous laugh. The family's of life has changed way a lot since my mum, Doreen Mary Manson, left Rousay, and my dad, William Nicol Manson, left Brora. All I am and have achieved I owe to the foundations placed by their hard work and the stability provided by their love.



# ABSTRACT

## SPECIAL OBLIGATIONS AND EMERGENCY CONDITIONS

Dylan Manson

Kok-Chor Tan

Each paper can be read independently, but the general problem that's at the focus of this dissertation is the following. On the one hand, morality and justice appear to impose the same requirements on all. According to some of the most influential moral and political theories, what we owe to each other should be informed by 'impartial' requirements of fairness or respect for persons—requirements that apply regardless of whether the people you interact with happen to be relatives, friends, or members of the same society. Yet many would balk at the notion that we cannot permissibly favor some—they would charge that these sorts of views of morality or justice don't do justice to the importance of 'special' relationships. This dissertation focuses on how we should think about resolving this tension between requirements, especially when it comes to national or democratic ties in emergency contexts. The first paper offers a critical analysis of the special relationship that nationalists claim we hold to co-nationals. The second paper assesses the limits of this relationship under the emergency conditions provided by the pandemic. The third investigates our special relationship to democratic society and the limits of action under the climate emergency.

In 'Against Cultural Identity as Grounds for the Intrinsic Value of Self-Determination' I argue against the liberal nationalist claim that national self-

determination is intrinsically valuable because it's grounded in national cultural identity. In 'Vaccine Nationalism and Basic Rights' I argue that the case against COVID-19 vaccine nationalism is robustly overdetermined because it violates duties we have to uphold a basic subsistence right to health. In 'Eco-Sabotage as Defensive Activism' I argue that we can do justice to our commitments to democratic society and yet still engage in illegal and coercive property destruction with environmental aims.

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## PREFACE

Each paper can be read independently, but the general problem that's at the focus of this dissertation is the following. On the one hand, morality and justice appear to impose the same requirements on all. According to some of the most influential moral and political theories, what we owe to each other should be informed by 'impartial' requirements of fairness or respect for persons—requirements that apply regardless of whether the people you interact with happen to be relatives, friends, or members of the same society. Yet many would balk at the notion that we cannot permissibly favor some—they would charge that these sorts of views of morality or justice don't do justice to the importance of 'special' relationships. This dissertation focuses on how we should think about resolving this tension between requirements, especially when it comes to national or democratic ties in emergency contexts. The first paper offers a critical analysis of the special relationship that nationalists claim we hold to co-nationals. The second paper assesses the limits of this relationship under the emergency conditions provided by the pandemic. The third investigates our special relationship to democratic society and the limits of action under the climate emergency.

In 'Against Cultural Identity as Grounds for the Intrinsic Value of Self-Determination' I argue against the liberal nationalist claim that national self-determination is intrinsically valuable because it's grounded in national cultural identity. In 'Vaccine Nationalism and Basic Rights' I argue that the case against COVID-19

vaccine nationalism is robustly overdetermined because it violates duties we have to uphold a basic subsistence right to health. In ‘Eco-Sabotage as Defensive Activism’ I argue that we can do justice to our commitments to democratic society and yet still engage in illegal and coercive property destruction with environmental aims. I’ll provide more detailed summaries in what follows.

### **Against Cultural Identity as Grounds for the Intrinsic Value of Self-Determination**

This paper takes David Miller as my primary interlocutor. His life’s work is to defend a liberal nationalism which argues that there ought to be moral and legal protections for nations because nations provide us with cultural bonds that are intrinsically valuable. Liberal individualism is impoverished, in Miller’s view, for the same reasons that a strict moral impartiality is impoverished if it requires us to treat strangers and our nearest and dearest alike. We ought to reject a view that would lead to the disintegration of our relationships to friends, family, and romantic partners, so we ought to reject a view that fatally undermines our relationships to our co-nationals too.

The intrinsic value of collective self-determination, for Miller, is “...the value of belonging to a group that can act so as to make a difference to the world in accordance

with the formed will of its members.”<sup>1</sup> He aims to establish this intrinsic value with two independent arguments. First, he uses an inference to the best explanation argument to claim that the only explanation for the members of well-functioning democracies to seek self-determination is because they recognize that self-determination is intrinsically valuable. Against this, I argue there is a readily available alternative: members of well-functioning democracies may see the achievement of collective self-determination as the best route to achieve their preferred political aims. Entrenched political minorities may have faced generations of political impotency in a democratic system. If a political minority is even loosely tied by territory and culture, then it’s easy to see how well-meaning and nefarious actors alike could exploit this to achieve their political aims by constitutional change. In the same way that many campaign for legal changes that support their political agenda, I argue that there’s a straightforward connection between institutional political impotency and a desire for constitutional change.

Miller’s second argument for the intrinsic value of collective self-determination claims that it’s intuitively appealing that small interpersonal groups have intrinsically valuable collective self-determination. One way of understanding the intrinsic value of autonomy is that we prefer to be able to make our own choices even when we know that our choices make us worse off. We often think of small-scale interpersonal groups in the same way: we would prefer that our group is free to make its own decisions even if, as a member, I think a particular decision the group takes will make me and/or the rest of the group worse off. Miller argues that nation-states are normatively continuous with

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<sup>1</sup> David Miller, *Is Self-Determination a Dangerous Illusion?*, 1st edition (Medford, MA: Polity, 2020). p.36

interpersonal groups in this regard, so we ought to recognize the intrinsic value of the collective self-determination of nations too.

This argument hangs on how we ought to conceptualize self-determination. Jeremy Waldron describes the territorial conception and the identity-based conception. The former claims that proximity always results in disputes and disputants have interests in being part authors of fair and equal rules of dispute resolution. The latter claims that a shared cultural identity across time provides a common reference point to ease conflict, provides emotional (not just pragmatic) bonds, and increases trust between members. Miller affirms the identity-based conception. I claim that the identity-based conception requires, at least some of the time, that nationals value cultural self-determination over fair and equal procedures of conflict resolution. This is impermissible because it is objectionably perfectionistic.

## **Vaccine Nationalism and Basic Rights**

The COVID-19 pandemic illustrates the strength of nationalist tendencies. It created a global emergency that required international solidarity and cooperation, but many world leaders and governments reacted by leveraging any advantage they had to prioritize the residents of their own territory. Countries clearly showed their nationalist commitments through how they handled COVID-19 vaccine distribution, in particular. In this paper, I



provide an assessment of what makes COVID-19 vaccine nationalism wrong and the extent to which it is wrong. I do this by giving a lot of ground to nationalists: I assume the truth of liberal nationalism and make the case that there are more reasons to engage in vaccine nationalism during the conditions of absolute scarcity in life-saving medical resources that are created by the pandemic.

Still, permissible nationalism can never happen at the expense of the basic rights of others. There is much debate over the content of a basic subsistence right. I claim that part of a basic subsistence right incorporates a basic subsistence right to health. There is also a lot of debate over which duties may emerge from recognition of such a right. Instead of taking a stand on this issue, I argue that COVID-19 vaccine nationalism violates each of the sorts of duties we would normally associate with such a right. COVID-19 vaccine nationalism violates our positive duties to aid those in low- and middle-income countries (LMICs). Furthermore, failing to discharge our positive duties toward LMICs violates our negative duty not to needlessly prolong and deepen the severity of the pandemic. Together these provide very strong reasons against COVID-19 vaccine nationalism. Finally, vaccine nationalism is multiply overdetermined and protecting against it requires diligence. Even if a country would fully comply with current international institutions pertaining to vaccine distribution, this is not enough if support of those institutions tends to burden LMIC's in ways that focus the benefits on rich countries.

## **Eco-Sabotage as Defensive Activism**

Eco-sabotage is always illegal, commonly involves property destruction, and aims to protect animals or the environment. Moreover, eco-sabotage ought to be illegal, so how could it ever be justifiable to a democratic society? I draw on the civil disobedience literature to argue that illegal action can be permissible, and I draw the just war literature to claim that even coercive civil disobedience can be permissible.

I develop a just war inspired defensive theory that justifies defensive activism even in the face of some negative outcomes for the environmental movement, while showing how defensive theories need not lead to rationalizing murder or serious harm to persons. The conscientious defensive activist can only engage in permissible eco-sabotage when she acts with just cause as constrained by necessity, proportionality, with a reasonable chance of success, without putting life at excessive risk. Permissible eco-sabotage must pass stringent conditions, but this is preferable to being unavailable as a strategy. Extreme situations call for the availability of extreme tactics lest activists be left impotent in the face of egregious wrongs.

This places a considerable burden on eco-saboteurs to justify their acts. I argue that there are two, sometimes crosscutting, justificatory standards that acts of eco-sabotage must pass to be permissible. The public justification points out that since all acts of eco-sabotage are illegal, there's a sense in which they all bypass impartial means of

conflict resolution. Appropriately constrained eco-sabotage doesn't bypass societal norms, however, but takes them into account. I argue that there are at least four forms of eco-sabotage which can be individuated by the value they seek to defend and that not all these forms of defense can be publicly justified to democratic society. Eco-sabotage grounded in defense of animal rights, for instance, fails the public justification because it is grounded in a private conception of the good. What I call species defense is publicly justifiable but doesn't have as strong a case as defense against suffering or defense against climate change. Defense against climate change has a particularly strong case as it can be grounded in human rights, which are an undeniable basis for any democratic society.

The second justificatory standard is that eco-sabotage must also have a reasonable chance of success since futile defense is no defense at all. This objection has little effect on eco-sabotage as defense of rights or defense against suffering because they are both about protecting individuals. It's easy to determine and obtain the success conditions for protecting animal rights or stopping animal suffering. Species defense and defense against climate change, however, are more complicated. How many members of a species is it necessary to protect if we want to preserve the species? Will stopping any particular act of pollution do anything to curtail the suffering and death that results from climate change? I argue that the strength of this objection is reduced by placing the act of eco-sabotage in a broader environmental strategy.

Because defense against suffering doesn't face the full brunt of either objection, it is perhaps the most justifiable form of eco-sabotage. However, eco-sabotage as defense

against climate change, and to a lesser extent species defense, remain in the conscientious activist's repertoire of permissible actions.

## Chapter 1: Against Cultural Identity as Grounds for the Intrinsic Value of Self-Determination

‘All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.’ This is article 1 from two UN documents on human rights.<sup>2</sup> When we think of human rights, we think of individual rights that individual persons enjoy. Individuals face dangers that require special moral, legal, and political protections. Individuals face dangers from other individuals, but we commonly think of rights as protections against groups both public and private. Individuals enjoy an inviolable status that cannot be sacrificed for the pursuit of collective (or any other) ends. Article 1, above, clearly bestows a right of self-determination to groups, however, not individuals. Normatively, can we make sense of this?

Intuitively, there are two different directions that a right of self-determination can be criticized from. On the one hand, there’s the external perspective taken by an actor outside the group purported to have a collective right of self-determination. They may wonder about the basis of their exclusion, or why they are being deprived of certain protections others have. On the other hand, there’s the internal perspective. Members of the group that enjoy a right to collective self-determination may see it is a permission to silence their individuality or otherwise use the group to wrongfully deprive them. In this paper I will concentrate on the value of self-determination because whether the criticism is internal or external, the defense must involve some reference to what value is being protected in the first place.<sup>3</sup> Maybe it turns out that individuals regardless of

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<sup>2</sup> The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Quoted from p.1 of Miller.

<sup>3</sup> Anna Stilz, ‘The Value of Self-Determination’, in *Oxford Studies in Political Philosophy, Volume 2*, ed. David Sobel, Peter Vallentyne, and Steven Wall (Oxford University Press, 2016), 98–127, <https://doi.org/10.1093/acprof:oso/9780198759621.003.0005>.

group membership get priority over a group's right to self-determination because the demands of the global needy are so great, but it's difficult to know this without understanding the value at stake, if indeed there is a coherent value at stake.<sup>4</sup> Most of my discussion will center around internal criticisms because when discussing a justificatory value for a right that's supposed to range over a group, the most pressing objections will come from members of the group who may reasonably object that this right is valuable to them. Only if the group right can be defended for its individual members, can we then move to see whether the right remains justified in the face of external criticisms.

Finally, the most robust defense of a right to collective self-determination won't rely on it being merely instrumental to some further ends since this makes it too easily overridden. Moreover, the most prominent defenders of collective self-determination tend to view it as non-instrumentally valuable. This is certainly how one of the most prominent defenders of collective self-determination from a liberal nationalist perspective, David Miller, views the value in his recent book *Is Self-Determination a Dangerous Illusion?* I will use this book to focus discussion.

## **1.1: Introducing Miller and the Shape of the Paper**

Are political communities valuable? Forming in groups has numerous benefits like security and efficiency, e.g., but are political communities only valuable in this derivative way? Miller argues

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<sup>4</sup> Kok-Chor Tan, 'Liberal Nationalism and Cosmopolitan Justice', *Ethical Theory and Moral Practice* 5, no. 4 (2002): 431–61; Kok-Chor Tan, *Justice Without Borders: Cosmopolitanism, Nationalism, and Patriotism* (Cambridge University Press, 2004); Kok-Chor Tan, *Justice, Institutions, and Luck: The Site, Ground, and Scope of Equality* (Oxford University Press, 2012).

that group membership can be intrinsically valuable.<sup>5</sup> For him, nations have special status because they are vehicles for collective self-determination. Nations are groups that are unified over time via a shared cultural identity.<sup>6</sup> It's valuable, he claims, for nationals to make decisions together about their collective future. This capacity to make decisions together is not only valuable for what we gain by it, but it's valuable in and of itself.<sup>7</sup>

If collective self-determination is intrinsically valuable, then this would provide special normative protection for group decisions just for being group decisions. If we decide on something together, then this provides a presumptive privilege that our choice ought not be overridden. Minus defeating reasons, we must respect individual autonomy. If Miller is correct, then the same holds for collective self-determination. This would give special dispensation to certain groups and normatively reify a distinction between insider and outsider. We can imagine that this provides a starting point to justify broad ranging group partiality including control over resources, migration, and – in general – it would provide some resistance against principles or institutions that range over various nations. Just as, everything else being equal, individuals have the final say over their life's course, nations would have the final say over their future too.

In Miller's *Is Self-Determination a Dangerous Illusion?*, I see him as offering two arguments for the intrinsic value of collective self-determination (hereafter 'self-determination'). I'll reserve 'autonomy' for 'individual autonomy'). His first argument is an inference to the best

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<sup>5</sup> Miller, *Is Self-Determination a Dangerous Illusion?*, Chapter 2.

<sup>6</sup> Cf. Will Kymlicka, *Liberalism, Community, and Culture* (Oxford, New York: Oxford University Press, 1991); Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Clarendon Press, 1996); Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (Oxford: Oxford University Press, 2001); David Miller, *On Nationality*, Oxford Political Theory (Oxford : New York: Clarendon Press ; Oxford University Press, 1995); David Miller, *National Responsibility and Global Justice* (Oxford University Press, 2007); Yael Tamir, *Liberal Nationalism* (Princeton University Press, 1995).

<sup>7</sup> Compare '...as we shall try to show, the right of self-determination so understood is not ultimate, but is grounded in the wider value of national self-government, which is itself to be only instrumentally justified.' Avishai Margalit and Joseph Raz, 'National Self-Determination', *The Journal of Philosophy* 87, no. 9 (1990): 439–61, <https://doi.org/10.2307/2026968> p.441.

explanation. He describes some actual political circumstances that, he argues, can only be explained if self-determination is intrinsically valuable. I argue to the contrary by showing that there are other plausible explanations. Second, he describes small, interpersonal groups, where self-determination seems intrinsically valuable, and argues that there is continuity between them and large groups like nations. I argue that while Miller may be correct that some large-scale groups seem to preserve a meaningful continuity to intrinsically valuable self-determining groups in the way he describes, this is rare because the method of group unity that Miller favors is often illiberal due to being unjustly exclusionary.

A key component of my argument is to ask how defenders of the intrinsic value of self-determination can provide a reasonable justification to entrenched political minorities. Miller must show that self-determination isn't merely valuable for what we may gain by its use, but for its own sake. This amounts to valuing a protected normative status for group decisions even when, as individuals, we disagree with them. Entrenched political minorities perpetually disagree with group decisions, so Miller's task is to explain why entrenched minorities intrinsically value self-determination despite this supporting their political impotence. This is particularly perplexing given that collective self-determination is supposed to be an extension of individual autonomy, yet if an entrenched minority supports self-determination, this seems to undermine their political agency.

Following Jeremy Waldron, we may recognize two ways to address this problem.<sup>8</sup> Either the entrenched political minority is appeased by the cultural unity they feel with the majority, or they are appeased by appeal to fair and impartial procedures. Miller favors the former identarian conception of self-determination. I argue that the identarian view's only response is to make it the

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<sup>8</sup> Jeremy Waldron, 'Two Conceptions of Self Determination', in *The Philosophy of International Law*, ed. Samantha Besson and John Tasioulas (Oxford University Press, 2010).



state's business to tell entrenched minority's what they ought to value. This is unjustly exclusionary for perfectionistic reasons. Entrenched minorities have good grounds to reject the intrinsic value of self-determination, and the only recourse the identarian conception can appeal to is that the minority group doesn't value the correct things. This isn't within the remit of a liberal state. On the other hand, the territorial conception of self-determination can be defended on the grounds that impartial procedures can be supplemented in order for the voices of entrenched minorities to be heard.

## **1.2: First Intrinsic Value Argument**

Miller's first argument for the intrinsic value of self-determination is intuitively appealing. Miller ascribes to J. S. Mill's view of intrinsic value.<sup>9</sup> That is, the best evidence of something being intrinsically valuable is that people value it that way. If people seek self-determination for no other reason than to have self-determination, then this is sufficient reason to think that self-determination is intrinsically valuable. Establishing this is no mean feat, however. We need an example of a group seeking self-determination when there is no ulterior motive other than to obtain self-determination itself.

What examples of groups seeking self-determination might we look to? The most obvious example is those who seek freedom from colonial rule, but it's far from clear that these groups sought self-determination for its own sake. Colonial rule goes hand-in-hand with

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<sup>9</sup> Miller, *Is Self-Determination a Dangerous Illusion?*; J. S. Mill, *Utilitarianism*, ed. Roger Crisp, Revised edition (Oxford ; New York: Oxford University Press, 1998) Chap. 4.

oppression, subjugation, and injustice. It's possible that the only reason any of the post-colonial nations sought self-determination was to be released from the oppression of their colonizer. A clearer example would be self-determination without freedom from an outside force.

Those nations that sought self-determination during the Arab-Spring were not looking to get out from underneath another nation. They wanted to throw off stagnant dictatorships and become self-governing. Here again, however, we might surmise that these groups sought self-determination for a different reason: they wanted to establish a democracy. Plausibly, this was not self-determination for its own sake, but self-determination for governmental change. In a clearer example, the group seeking self-determination isn't only doing so to establish democracy.

Hence, Miller looks for examples of groups seeking self-determination where it's clear they don't want freedom from injustice nor wish to establish democracy. He argues that there are numerous examples with these features because there are various respectfully treated groups within democracies seeking self-determination. Or, in his words, there are many groups from within *well-functioning democracies* seeking self-determination.<sup>10</sup> The groups he has in mind are Catalonians, Flemish, Scottish, and the Quebecois. Since these groups are already treated with equal respect alongside others in the polity, and they already benefit from democratic rule, it cannot be that these groups seek self-determination to achieve what they already have. Thus, Miller argues, there cannot be any other reason that these groups want self-determination other than for self-determination itself. Recall that we're following Mill, if people treat something like it has intrinsic value, then this is good evidence that it has intrinsic value. Millions of people seem to seek self-determination for its own sake, so we seem to have good evidence that self-determination is intrinsically valuable.

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<sup>10</sup> Miller, *Is Self-Determination a Dangerous Illusion?*, 27.

Miller relies on this argument heavily. He uses the example of groups in well-functioning democracies seeking self-determination multiple times to head off objections, and to motivate his continued pursuit of the details of the intrinsic value of self-determination.<sup>11</sup> One way this argument is vulnerable is if there are other explanations for why these groups seek self-determination. What other explanations are available?

One alternative explanation charges these groups with chauvinistic nationalism.<sup>12</sup> That is, they seek self-determination out of a sense of cultural superiority or purity such that they wish to rid themselves of the burden of multiculturalism and establish their rightful superiority over other nations. This would counter Miller's argument because chauvinistic nationalism is clearly unjust. More evidence is required, however, if the charge of chauvinistic nationalism is going to stick. Some nationalisms, for instance, are known to embrace multiculturalism, migrants, and refugees. Scottish nationalism, e.g., is commonly considered as civic nationalism rather than ethnic nationalism, and while Scots exclude the audibly English from Scottish identity, Scots welcome ethnically Pakistani Muslims, for instance, as Scottish.<sup>13</sup> The threat of chauvinistic nationalism is real and liberal nationalists risk emboldening them, but it's not obvious that liberal nationalism is a morally incoherent position. It would be too quick to dismiss these movements as necessarily exclusionary in this way.

Another explanation for why these groups seek self-determination claims that national groups within well-functioning liberal democracies desire self-determination for narrow political advantages. Unsurprisingly, even though the self-determination movements at hand seek self-determination as independence on cultural grounds, they also have political aims that tend to

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<sup>11</sup> Miller, 27, 70, 90.

<sup>12</sup> Tan, 'Liberal Nationalism and Cosmopolitan Justice', 445.

<sup>13</sup> Asifa M. Hussain and William L. Miller, *Multicultural Nationalism: Islamophobia, Anglophobia, and Devolution* (Oxford: Oxford University Press, 2006), <https://doi.org/10.1093/0199280711.001.0001> Chap. 1.

differ from the majority group they wish to secede from. After all, if their political aims were broadly aligned then there would be little reason for constitutional change. Political differences alone, however, are not good grounds for secession. At least, not unless those political differences lead to injustice.<sup>14</sup> Disagreement is an unavoidable challenge that every society must address. If disagreement alone was grounds for self-determination, then self-determination would occur down party political lines. Moreover, since disagreement is inevitable, there could be no such thing as society as every proposed society would be created with the grounds of its own fracture. Hence, advocating self-determination on the grounds of disagreement alone is untenable.

There's a clear link between disagreement and seeking self-determination. One set of people feels the negative aspects of disagreement more than others: entrenched minorities. Being a member of an entrenched minority is frustrating and may even feel hopeless. The political changes that one wishes to see are consistently and predictably voted down. If this happens over a long period of time, one can imagine that the predictive ease with which one's loss can be forecasted has an air of inevitability. It's easy to see how under these conditions the political system itself might become tainted in one's perspective. Members of entrenched minorities may come to believe that their political institutions are weighted against them in various ways. Perhaps through corruption or collusion. It's easy to see how members of entrenched minorities would feel a loss of political agency and be tempted by apathy.

Liberal nationalists enter this context with the following argument. Trying to resolve disagreements between different cultural groups using impartial means will create entrenched political minorities with no means to gain political expression for cultural interests which are

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<sup>14</sup> Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2007).

necessary for individual autonomy.<sup>15</sup> Democratic processes, e.g., count political preferences equally, but they also treat cultural perspectives equally. Without the special political protection that only members of a culture can provide, unique and valuable cultures are likely to peter out. This tragic outcome is the inevitable result of treating cultural interests like political preferences. When cultural groups within well-functioning liberal democracies seek self-determination, they are seeking to reorganize the boundaries of the political unit in order to give their cultural perspective special representation in the political process and avoid the inevitable decline that results from supposedly benign neutrality.

For my purposes here, I only want to point out that even if this argument reaches a false conclusion, it's not obviously false, so sincere political actors will believe that it is true. Furthermore, cynical political actors may recognize that they will be better placed to achieve their political aims if they act like it is true. I take it that these claims are undeniable. Given that being part of an entrenched political minority is frustrating and/or hopeless for the reasons canvassed, yet the fact that a group is an entrenched political minority is not reason alone to reorganize political boundaries in one's favor, it's no surprise that other sorts of reasons for reorganizing political society become attractive. It's easy to see how reasons that make one's political minority group culturally distinct would become more salient and how an argument could be made that this cultural unity is what provides legitimacy to one's desire to break free of predictable political losses and find more political agency in a newly constituted society.

I claim that self-determination is a way to achieve political gains, so it would be no surprise if groups sought it for that reason rather than for its own sake. Moreover, there is no way

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<sup>15</sup> Kymlicka, *Liberalism, Community, and Culture*; Kymlicka, *Multicultural Citizenship*; Kymlicka, *Politics in the Vernacular*; Margalit and Raz, 'National Self-Determination'; Joseph Raz, 'Multiculturalism: A Liberal Perspective', *Dissent Magazine*, 1994, <https://www.dissentmagazine.org/article/multiculturalism-a-liberal-perspective>; Joseph Raz, 'Multiculturalism', *Ratio Juris* 11, no. 3 (1998): 193–205; Tamir, *Liberal Nationalism*.

to separate the achievement of self-determination from the political gains that are achieved in tandem with it, so we can't distinguish between groups that seek self-determination for its own sake from groups that seek self-determination for political gains. I don't need to show that these groups actually are seeking self-determination for political gains, only that this explanation can't be ruled out. Therefore, the fact that some minority cultural groups in well-functioning democracies seek self-determination is not conclusive evidence of its intrinsic value to them. It's true that it is evidence that they are not seeking self-determination to escape injustice, or achieve democracy, but it can't be ruled out that they're seeking other political gains.

I've argued, pace Miller, that we can't take the behavior of groups that are seeking self-determination as conclusive evidence of self-determination's intrinsic value. I interpret Miller as presenting a second argument for the intrinsic value of self-determination, however. He aims to show that self-determination is an extension of autonomy. Since autonomy is intrinsically valuable, then so is self-determination. It's to that argument that I now turn.

### **1.3: Second Intrinsic Value Argument**

There are various steps involved in moving from individual autonomy to large-scale collective self-determination. First, we begin with the claim that autonomy is intrinsically valuable. I take this as given. Second, we move to the claim that small-scale groups exhibit collective self-determination and that this is valuable for analogous reasons that autonomy is valuable. Third, we establish that large-scale groups are on a continuum with small-scale groups in this regard, so

they can retain the intrinsic value preserving features, and thus exhibit intrinsically valuable self-determination.

I won't disagree with the claim that small-scale self-determination is intrinsically valuable just as autonomy is intrinsically valuable. Specifically, self-determination seems intrinsically valuable in some interpersonal groups. By 'interpersonal group' I mean, roughly, groups where each member can relate face-to-face with any other with relative ease. Examples of interpersonal groups may be families, many workplaces, clubs, or community groups. It should already be clear that in these groups self-determination doesn't refer to independent statehood, but a set of decisions relative to a meaningful range of choices that is appropriate for the sort of group under consideration. We normally think that a different range of options is appropriate for the self-determination of different sorts of groups, e.g., we don't think it's overly meddlesome to require that workplaces advertise widely when they decide to acquire new members, whereas this would be grievous infringement for families.

Families, clubs, and other associations can meaningfully be said to be self-determining, but it's clear that self-determination for these groups is much more limited than the self-determination at the state level. For one thing, these associations all operate within states, so they're all limited by law and public policy.<sup>16</sup> We may allow a state to be self-determining without independent statehood if we acknowledge the powers of devolved governments as sufficient for self-determination, but this reduced degree of state self-determination still permits some control over laws and/or public policy. The associative groups under consideration here do not have even these reduced controls. Still, as long as they are granted some range of powers appropriate to their context, we can meaningfully claim that they exhibit self-determination. It's commonly the case, for instance, that as members we vehemently defend the decision that our

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<sup>16</sup> Miller, *Is Self-Determination a Dangerous Illusion?* p.99

family or community makes when non-members try to override it, even when as individuals we disagree with the decision ourselves. We often prefer our interpersonal groups to be relatively free to make their own decisions (and their own mistakes) rather than make the decision that we ourselves believe will make everyone better off.

Miller illustrates this idea with an example.

“...imagine a residential street containing many households with children. Currently, the street is regularly used as a cut-through by speeding cars. It would be much better for the residents if the traffic could be slowed by barriers and the street enhanced by planting greenery and creating small areas where children could play. Then think of two ways in which such a plan could be put into effect. The residents themselves could come together and create an association within which they could discuss the pros and cons of various ways forward, eventually deciding, perhaps after a vote, on a blueprint for humanizing the street. Alternatively, a local official could be sent to ask the residents for their views, perhaps administering a questionnaire, after which the official would propose a development plan. Why might we think that the first alternative, which embodies local self-determination, is better than the second?”<sup>17</sup>

After canvassing various alternatives, he concludes that the local self-determination of the community group is intrinsically valuable, and he identifies the following as the intrinsic value of self-determination: “...the value of belonging to a group that can act so as to make a difference to the world in accordance with the formed will of its members.”<sup>18</sup> On the face of it, this is a value that seems straightforwardly applicable in small-scale and large-scale groups. However, as Miller is quick to note himself, there are numerous important differences between the sort of interpersonal groups where we may be willing to admit that self-determination seems valuable for its own sake, and larger counterparts where we may be more skeptical. The challenge for Miller is to assuage concerns that those differences are enough to show that small-scale self-determination and large-scale self-determination are not on the same normative continuum, and so the large-scale version cannot inherit the intrinsic value of the small-scale one.

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<sup>17</sup> Miller. p.33

<sup>18</sup> Miller. p.36



What are those differences? The neighborhood community group is a good example because like nation-states, it is territorially defined. The community group has local issues which those that live nearby will quite naturally have a special interest in resolving. We can comprehend how a member of the neighborhood group might disagree with what the group wanted, but would defend the right of the group to make that decision over a body outside the neighborhood making the decision on their behalf. If self-determination can be intrinsically valuable for groups like this, why not for nation-states too?

One big difference with the neighborhood group is that we can assume that all its members are more causally efficacious as members of the group. The group has a degree of power that no individual has on their own. Here, I'm not referring to how causally efficacious the group is, however, I'm referring to the connection between an individual member's actions and the group's actions. Each individual member of the community group can shape the group's decision in some way. If an individual raises an issue at a meeting, say, she can get an immediate response, engage in discussion, and even if she doesn't get her way, her comment has been aired publicly and has garnered recognition. Minimally, she is owed a reason in response and – all going well – she has received it. Even if the group's final decision doesn't embody the concerns she raised, their decision is partly shaped in response to her contribution. Furthermore, it's easy to see how, if she had gotten her way, her requests would be made manifest. It's simply a matter of the group agreeing with her and responding appropriately.

Individuals can depend on being causally efficacious in small-scale, interpersonal groups, but this is too idealistic in large-scale, nation-states, so one may object that membership is not merely a difference in degree between these two sorts of group. This sort of consideration leads Miller away from the value of the causal efficacy of membership toward the value of

participation. Look at protests, for instance.<sup>19</sup> Not only might the protest not achieve its aims, but my presence as a protestor makes no difference to the protest whatsoever. Whether or not I'm there will have no impact on whether the protest goes ahead and whether or not it succeeds has no ties to how loud I chant, or how determined my resolve. Still, we can make sense of the protestor who is cognizant of both these facts and yet finds value in participating in the protest. Mere participation, in this case, is sufficient for her to feel proud of being a member. Participation is a much lower bar than causal contribution, so it seems as equally attainable in large-scale groups as it is in small-scale groups. As Miller notes, however, participation looks very different in different sorts of groups, so the worry that nation-states exhibit a difference in kind persists.

The protest group moves beyond the interpersonal scale, but it is tied to the neighborhood community group through both having a singular purpose. In both cases, the groups are formed with a particular goal in mind which unifies all involved.<sup>20</sup> Moreover, there are a large range of decisions that fall outside the purview of these groups.<sup>21</sup> Hence, in both groups, there is broad agreement around the collective project and there is broad agreement around the irrelevancies that need not be considered. In contrast, nation-states are marked by fundamental disagreements, so members may not consider participation to be valuable. Quite the contrary, the current government may be committed to projects that are anathema to what you hold dear. Rather than being considered valuable, one's participation in a group that undermines one's deeply held commitments is alienating, even shameful. The biggest challenge for Miller, then, is to describe how large-scale liberal democracies, marked by fundamental disagreement, could consider membership -- understood as mere participation -- in the group to be intrinsically valuable rather

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<sup>19</sup> Miller. pp.41-42

<sup>20</sup> Miller. pp.42-43

<sup>21</sup> Miller. pp.52-53

than alienating.<sup>22</sup> Why would members consider a protected sphere of decision making for this sort of group to be akin to the value of self-determination that we recognize in the smaller, interpersonal arena?

To answer this question, it's useful to focus on a group that isn't causally connected to group outcomes. Entrenched minorities have little reason to believe that their input is politically effective, so if they value their membership and self-determination, then it must be for some sort of participatory value. What sort of value could this be?

#### **1.4: Entrenched Minorities and Two Concepts of Self-Determination**

Entrenched minorities perpetually lose out in political affairs. What could cause them to nonetheless see the political community as valuable? What could lead them to value the decisions the group makes even when the decisions are never what they would prefer them to be? Miller makes 'critical use' of Jeremy Waldron's distinction between two families of answer to this question.<sup>23</sup>

Waldron distinguishes between a territorial and an identity-based conception of self-determination.<sup>24</sup> The territorial conception recognizes that individuals who live out their lives near others inevitably conflict. From time to time, they will become adversarial. How ought we address these disputes? One solution is brute force, which we want to avoid for obvious reasons. Another is regulation by fair and equal rules and procedures. If disputants can find a fair and

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<sup>22</sup> Miller. p.43

<sup>23</sup> Miller. p.51

<sup>24</sup> Waldron, 'Two Conceptions of Self Determination'.

equal resolution, then violence can be avoided. Waldron doesn't use the term, but for ease I'm going to claim that disputants require an impartial resolution. Hence, the problem of proximate others results in an interest in impartial rules to resolve disputes.

Furthermore, it's easier if we have the same set of impartial rules for any dispute we are likely to engage in, and clear markers to understand if there are any rule changes, so territorially defined areas where sets of impartial rules apply are requirements to avoid disputes leading to violence. Finally, we have interests in being part authors of these impartial rules, so a connection between the rules and our agency is preserved. On Waldron's Kantian account, disputants have a point of view on how their disputes ought to be resolved and this ought to be respected.<sup>25</sup> Hence, we want to have impartial rules to resolve inevitable disputes peacefully, we want some uniformity in how our likely disputes are to be resolved, and we want to have some say in how these rules are formed. One way to undermine our connection to these rules is to permit those who are not members of the community to make the rules for us, so to guard against this, we want the impartial rules the community decides upon to enjoy protected status. We want a right of self-determination.

The territorial conception is too thin according to Miller because it's unclear how the problem of proximate others is sufficient to establish self-determination as valuable. Why can't dispute resolution be regulated by the rules implemented by a benign colonizer? Furthermore, Miller doubts whether impartial rules can resolve disputes between different ethnic groups. He argues that the majority ethnic group is likely to use the impartial rules to secure more advantages for themselves at the expense of the minority ethnic group.

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<sup>25</sup> Waldron. p.411

Instead, Miller prefers the identity-based conception of self-determination. On identity-based accounts, members have a shared cultural identity which unifies them across time. This provides them with a shared set of reference points that they can appeal to when making decisions. A shared language, history, or common set of experiences can be taken for granted and used as unifying features to overcome knotty issues. Furthermore, identity sharing is valuable because it bonds members emotionally as well as practically. This makes everyone more strongly motivated to find ways to deal with conflicts that are acceptable to everyone. Finally, Miller argues that sharing a nationality is linked with greater trust between members and this is socially beneficial in a myriad of ways, including encouraging members to give sincere reasons in support of policy and adhere to compromises.<sup>26</sup>

Miller recognizes that shared identity is not sufficient for self-determination, however. For instance, he argues that the members of a truly self-determining community ought to be held responsible for the decisions that the community makes, but the fact that community members all identify with one another isn't enough to hold them responsible. Identarian self-determination ought to be supplemented by a decision-making process that adequately connects individual members to group decisions. Miller's preferred connection here is mini-publics.<sup>27</sup> That is, small groups of citizens taken from all walks of society attempt to resolve the political issues that motivate them. These discussions are then factored into representative democratic politics. This process is supposed to make the group's decisions better connected to bottom-up processes. Note that this solution is independent of the identity-based account, it supplements it; it's not grounded in identarian concerns.

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<sup>26</sup> Miller, *Is Self-Determination a Dangerous Illusion?* pp.54-58

<sup>27</sup> Miller. pp.63-70

Miller's account seems plausible for interpersonal groups, but the identarian account must do more to show why entrenched minorities will find their membership valuable. Families, e.g., are bonded by a shared history and individual members are easily connected to group-level decision making. Something similar can be said of friendships and community groups. However, this picture is complicated by these groups commonly having a common purpose and/or the range of options they decide together being limited. That is, the fact that the community group has a common goal, or the fact that community groups only decide on a narrow range of options, means that it is disanalogous to a large-scale group like a nation-state. As Miller notes himself, mere participation is sufficient in the neighborhood community group, or the protest valuable to us, but their singular purpose sets them apart from the fundamental disagreements that are baked into nation-states. What resources does the identity-based conception have to answer the member of an entrenched minority in a society marked by fundamental disagreement?

I take it the identarian answer is the following. You may be losing out politically because your minority position will not be brought about, but at least the cultural perspective that you share with the majority has been given a voice. As an individual, you cannot speak on behalf of the whole cultural group, and the decision-making procedure we've chosen has resulted in an outcome you don't endorse, but at least the decision has been made by those that partially share your perspective by dint of sharing your cultural identity. Often you want an important decision about family affairs to be made by a family member, for instance, because there is a presumption in favor of the family member acting in the family's best interests, aided by an understanding of the sort of outcome the family all want. Similarly, the thought goes, political decisions have ramifications for the health of the culture, so you want representatives of the culture involved in these consequential decisions to ensure that one's cultural perspective is preserved. Again, I may disagree with the outcome, but I can be appeased that a perspective that I share with those who

made the decision has been given a voice. That has value to me even though I may believe that the outcome makes us worse off overall.

The first thing to notice about this account is that it shares a commitment with the territorial conception of self-determination in the sense that it too relies on impartial procedures. An entrenched minority, under the identarian conception, will gain little solace from participation in an unfair, partial decision-making procedure that's designed to elevate the preferences of others. If I am treated disrespectfully, it is often worse, not better, if I bear a special relationship to the person or group that treated me that way. Whomever is included in the decision-making process must be able to contribute on the same grounds as everyone else otherwise it is unfair and illiberal, so liberal nationalists must find a way to marry special normative dispensation to particular groups with due respect for impartial procedures.

One way to go would be to only permit certain identities the privilege of participating in the impartial procedure, but of course this would be grossly unjust. When an outcome of a decision procedure applies to all, e.g., a public political decision, then it only pays lip service to impartiality if the participation in that procedure is only permitted through a highly selective process. Hence, democratic procedures must include all citizens not simply all citizens of a certain identity. The best a liberal nationalist can hope for is that the majority of those within the boundaries of the political unit the democratic procedure ranges over share a national identity.

The fact that the identarian account makes use of impartial procedures is important because it shows that any identity-based conception must value impartial procedures to some degree, whereas the territorial conception isn't obliged to acknowledge identity-based concerns. This asymmetry works in favor of the territorial account. We can see this by looking at the sort of complaints that an entrenched minority can raise as understood from each conception. Under the

identity-based conception, I may be disgruntled by my political impotency, but appeased that at least my cultural group is given a voice. However, if I am treated unfairly in the decision-making procedure, will I still find solace in the fact that I share an identity with those who were allowed to participate on equal grounds? Perhaps. It's not unimaginable that our relational loyalties will override our sense of fairness, so we can overlook this sort of treatment. However, this is the sort of personal preference that our public politics cannot require.

It is overly perfectionistic for the state to demand that I ought to be loyal to my culture, and it is even more extreme for the state to demand that I should be loyal to my culture at the expense of my equal treatment alongside others. Perfectionist political views reject what they see as overly stringent state neutrality.<sup>28</sup> Instead, perfectionists hold that it's apt for the state to implement and promote particular ideals of the good life. Rather than being in the business of promoting autonomy, for instance, the perfectionist state ought to promote valuable forms of autonomy by closing off bad options and promoting good ones.<sup>29</sup> Numerous grounds are offered for why states are objectionably coercive or disrespectful to members of their jurisdiction by enforcing perfectionist laws.<sup>30</sup> It's beyond the scope of this paper to adjudicate between perfectionists and non-perfectionists. The only claim I need here is that even the identarian conception requires fair and equal procedures, and while it's possible that individuals may value being treated fairly and equally less than political decisions being made by those who share their cultural identity, this is not the sort of value judgement that a liberal state ought to be in the

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<sup>28</sup> Jonathan Quong, *Liberalism without Perfection* (Oxford: Oxford University Press, 2010), <https://doi.org/10.1093/acprof:oso/9780199594870.001.0001>.

<sup>29</sup> Joseph Raz, *The Morality of Freedom*, First Paperback Edition edition (Oxford University Press, 1988).

<sup>30</sup> John Rawls, *A Theory of Justice*, 2nd edition (Cambridge, Mass: Belknap Press: An Imprint of Harvard University Press, 1999); John Rawls, *Political Liberalism*, Expanded edition (New York: Columbia University Press, 2005); Thomas Nagel, *Equality and Partiality* (New York: Oxford University Press, 1995), <https://doi.org/10.1093/0195098390.001.0001>; Brian Barry, *Justice As Impartiality*, Oxford Political Theory (Oxford University Press, 1995), <https://www.amazon.com/Justice-Impartiality-Oxford-Political-Theory/dp/0198279132>.



business of enforcing. If I am not permitted to vote on an issue that affects me, for instance, I may deem my voice sufficiently represented if my cultural group voted, but this is not the sort of judgement the state can make for me. Even for nationalists, procedural equality and fairness must take priority over cultural identity.

This helps to bring two groups that have special grounds of complaint to the fore. First, members who culturally identify with the majority decision-making group, but disagree with them politically. Second, those who don't identify with the culture of the majority decision-making group, either because they have no grounds to, or because they have some grounds but don't see themselves in that way. On what basis do these individuals intrinsically value their participation in the group and so want protected normative status for the group's decisions? The identity-based conception of self-determination claims that entrenched political minorities still hold their membership to be valuable, even though they persistently and predictably lose out in the political process, because at least the cultural perspective they share with the group has been given public expression in the political process. But what of those members of the entrenched minority who culturally identify, but care less about their cultural identification than getting the political outcome they'd prefer? What resources does Miller have to address this group? He can claim that they're wrong in their value ascriptions, but he's already endorsed a Millian view of intrinsic value. That is, the best evidence of intrinsic value is that people actually value the object that way. However, if we are to take people's experiences at face value like this, surely the fact that many don't value a thing a certain way ought to be taken seriously too.

Similarly, what about those who don't or can't identify with the majority cultural group? The act of identification is at least partly experiential, so those who don't, but have grounds to, culturally identify can hardly be told that they are experiencing things the wrong way. It seems highly dubious for the state to claim that an individual ought to prefer some political outcome

because she identifies with the group that made it. To do so would be overly perfectionistic because the state would be telling citizens what they ought to value. Even if the state is right, and it could somehow encourage her to value the group in that way, then wouldn't it be paternalistic to do so? A liberal state shouldn't be in the business of telling people what to value, so it's difficult to see in what way a member of an entrenched political minority would feel value in merely participating in political life because those that make the decisions alongside her share an identity she doesn't value and make group decisions she disagrees with. Moreover, the fact that the identity-based conception is utterly silent toward those that have no grounds to identify with the group means that it cannot avoid being politically exclusionary to some who are legitimately engaged in the political process. If the cultural majority uses its voice to choose outcomes that are against your political interests, what could make you see special normative protections for those decisions as valuable?

One may object that these problems equally apply to the territorial conception of self-determination. The difference is, however, that the territorial conception only appeals to values that are already embedded in the political process. This is undeniable from the perspective of the identity-based conception because their view also relies on impartial concerns. Entrenched political minorities, on this view, are not just offered the comfort of cultural identification, but that their view was fairly and equally considered alongside everyone else's.

There are other objections the territorial conception must address, however. Recall, Miller had two objections to the territorial conception. First, disagreements with proximate others are insufficient to justify self-determination because a benign colonizer could solve that problem just as well. Second, Miller worries that if different identity groups use impartial procedures to settle their disputes, then the majority identity group will always bias the supposedly impartial rules in their favor.

This second point isn't so much an objection as skepticism toward the possibility of impartial resolution of disagreements. It might be true that some groups may take advantage of their position of relative power in order to promote a façade of impartiality while they benefit themselves, but this would simply be unjust. I see no reason to believe that these injustices are unavoidable, but it's undeniable that these injustices happen. This doesn't necessitate abandoning the possibility of impartial procedures that range over identity groups, however. It's consistent with the territorial conception that cultural identities may become deeply politicized, polarized, and that one group may treat the other unjustly on identarian grounds, but the unjust treatment of an identity group on identarian grounds is sufficient on its own to justify self-determination. Persistent injustice, at least against a territorially defined identity group, is widely accepted as sufficient grounds for independent statehood, so *inter alia* self-determination too.<sup>31</sup>

On the other hand, Miller gets something correct when he points out that disagreement with proximate others is not enough to establish a need for self-determination. We may be likely to fall into disputes with those near to hand, but it's not true that the only solution is self-determination. A benign colonizer, at least in principle, could do as good a job. In reply, we could point out that we have interests in being a part author in the rules that govern us. This may be true, but it's hardly an argument for self-determination because it simply restates what self-determination is and claims we have an interest in it.

A better response, I argue, is to note that there are different sorts of disagreements that we are prone to. On the one hand, we contravene norms or interpret them in different ways. In this sort of case, we just need an impartial arbitrator, which could plausibly be a benign colonizer. On the other hand, we have disagreements about how to use our cooperative energy, the sort of

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<sup>31</sup> Allan Buchanan has one of the least permissive views of self-determination and even he permits self-determination on the grounds of injustice. See Buchanan *op cit*.

government we should have, and who should be in positions of power. If we don't resolve these sorts of disagreements ourselves, then we will end up dedicating our time to projects that are not our own. I'll illustrate with an example.

Imagine a group of friends want to go to a restaurant together. Some want Italian and some want Mexican. A third party may intervene and claim that the group's discussions are getting nowhere, she's going to flip a coin, and let the issue be settled that way. The group may complain that they didn't flip the coin themselves or that they didn't consent to that particular procedure, but the method and the final decision is still fair and impartial. We can imagine them going along with it.

If, on the other hand, the third party threw everyone a sandwich and told them to go bowling instead, we can imagine there would be more protests. The friends want to spend their time together at a restaurant and they're not interested in games. Rather than provide the means to overcome a collective hurdle, the decision of the third party takes command over how they should spend their time. So, yes, Miller may be right that disagreements with proximate others may not be sufficient to establish a need for self-determination, if the only disagreements we are considering are those that require impartial arbitration, but many disagreements are not procedural in this way. Many disagreements are about the cooperative projects we ought to engage in, and if these are given their content by anyone apart from the group members themselves, the members will end up spending their time on projects that are in no sense their own. They will be working at the behest of others. In this way, we want not just individual autonomy, but collective self-determination too.

Thus, Miller's identity-based conception of self-determination has significant problems, and his objections to the territorial conception are not as strong as they first seem. The territorial

conception still has a case to answer, however. Miller's concerns do draw attention to the primary case that a theory proposing the intrinsic value of self-determination must deal with. Why should an entrenched political minority intrinsically value self-determination when one of its upshots is to deny them their political preferences? I've argued that the identity-based conception's answer to this question is inadequate. What about the territorial conception?

### **1.5: The Territorial Conception and Bloodlessness**

One charge against the territorial conception is that it is too thin and bloodless to bond the group in such a way that participation alone is intrinsically valuable to members. Consider another restaurant choice example. A group of friends meet regularly to eat. They tire of bickering over where to go, so agree to vote at the beginning of every meeting. Amy has somewhat idiosyncratic tastes and always votes for the same place. It just so happens that the place she favors is low on everyone else's preferences. She needs a simple majority to support her choice to ensure that she gets it. Week after week, this never happens. Everyone agrees that the procedure is democratic and impartial, but after a year of this it's easy to see how Amy will become tired of this process that, from her perspective, feels like a formalized way to ignore her wishes. I take it that there is something amiss with this group of friends if they don't scrap the voting procedure on at least one occasion and all decide to go to Amy's preferred spot. I take this example to show that while impartial, democratic procedures do recognize everyone equally, their formality can be bloodless and alienating. There's only so many times that the group can reassure Amy that her view matters, the voting procedure accounts for it, and so she has no grounds for complaint.

It wouldn't be appropriate to defer to the minority position on the national scale in the way that it is appropriate within a group of friends. The bonds of friendship are more substantial and can require more of us, but if the perception of alienation scales up, then the problem of using impartial procedures as a means to ignore minority positions scales up. The problem, then, is that the impartial, democratic procedures that are supposed to unite us, according to the territorial conception, actually alienate large swathes of the population under certain circumstances. What can be said in defense of the territorial conception?

In the friendship case the group acknowledges that the relational bonds are more important than strict adherence to the impartial procedure by periodically bypassing the impartial procedure. This signals to Amy that she isn't being ignored. The group recognizes that she continually loses out in their decision-making process and they ignore the procedure in order to make her feel included and acknowledged. Again, it wouldn't be appropriate in case of the democratic state to override the impartial process in order to go with the minority position, but there are other ways to acknowledge and include entrenched minorities.

Democratic processes are not limited to voting procedures and democracies ought not simply go along with majority decisions at the expense of the minority. The majority needn't use formal democratic procedures to silence minority groups. Of course, there will be differences of opinion and the minority group will lose out on some things, but the majority can still negotiate with them to assess ways to compromise or find mutually beneficial projects. In general, the value of self-determination lies in how it is an extension of autonomy, so the majority ought to engage entrenched minorities in ways that give them more opportunities to express and actualize their needs and desires. Impartial democratic procedures are not only tools that the majority has to engage the political agency of relatively powerless groups.

Perhaps unsatisfyingly, I don't have answers as to how this should be done, that would require empirical research. Miller himself, however, gives one example that might be fruitful. The democratic mini-publics he describes are not only useable by national groups. They can be a way of understanding the needs of all of society because they represent all of society in an interpersonal-scale discussion where all views have to be listened to. This has the potential to provide entrenched minorities with a way to amplify their concerns and negotiate solutions. Whatever the particular solution might be, it must move beyond formal impartial procedures not by bypassing them, but by supplementing them. In this way, entrenched minorities can feel meaningfully included in society and that their concerns are respected. Mere participation can be intrinsically valuable, not because of inherently exclusionary identarian relationships, but because overly formal, but egalitarian, impartial procedures can be supplemented in ways that make entrenched minorities feel that society is also working for them.

Democratic societies ought to preserve and promote dialogue between concentrations of power and those who lack the capacity to politically gain from impartial decision-making procedures. In keeping with this, as a speculative suggestion, we may change the intrinsic value of self-determination from Miller's "the value of belonging to a group that can act so as to make a difference on the world in accordance with the formal will of its members" to the value of belonging to a group that acts so as to make all members feel heard and acknowledged. We might think of this as a change in focus away from self-determination as a protected sphere of action and toward a protected sphere of complaint. It certainly sounds less romantic, but treating people fairly, equally, and ensuring their voices are heard provides them a substantive degree of respect.

## 1.6: Conclusion

Any defense of self-determination that relies on it being efficient means to some further ends cannot claim robust normative protection for its privileges. This normative protection is central for liberal nationalists because their ideal is separate self-determining national groups. Seceding power beyond national boundaries threatens the cultural unity that's central to the nationalist project. Therefore, establishing self-determination as intrinsically valuable is an important part of the nationalist project.

I've argued that the most difficult case to answer, for any non-derivative defense of self-determination, is to show why entrenched minorities would support special normative protections for group level decisions, since this would ensure their own political impotency in democratic procedures. As Miller asks, what makes mere participation in a well-functioning liberal democracy valuable?

Miller provides two answers. First, when we turn to the real world, we see national groups seeking self-determination for no other reason than for self-determination itself. These groups include political minorities, so even if we don't have an argument showing the intrinsic value of self-determination, the fact that they value it that way should be sufficient to show that it is intrinsically valuable. I claimed that this explanation overlooks the fact that self-determination provides a way for entrenched minorities to regain political agency. They may not be able to get the political outcomes they want as part of one group, so they look to form another whose population has a greater percentage of people that share opinion. Rather than seek it for its own sake, minority groups in well-functioning democracies may see a chance to achieve their narrower political aims if they succeed in gaining more independence.



Second, collective self-determination is intrinsically valuable for analogous reasons that individual autonomy is intrinsically valuable. Miller spends a lot of time arguing how interpersonal groups value self-determination for the same reasons that individuals value autonomy. He then defends the similarities and explains away the differences between interpersonal groups and large-scale nation-states. His argument hinges on the idea that identarian cultural relations can play the same unifying role that close bonds play in interpersonal groups. Because entrenched minorities prefer those bonds over political gains, self-determination is intrinsically valuable to them. However, this response has no resources to appeal to those who don't already hold those values, and it's not the business of a liberal state to tell citizens that they must value their own culture. Because personal identity is at the center of this account there is no way to get around its exclusion of those who are different.

The territorial conception of self-determination rivals Miller's preferred identarian conception. He is correct to charge it as bloodless. Impartial procedures can do little to persuade entrenched minorities that the group's decisions are more important than their own political projects. However, even though democratic procedures themselves must be impartial, democracy is not exhausted by its formal procedures, so they can be supplemented by outreach programs to engage political minorities in order to ensure that their dissent is more meaningfully heard. Formal democratic procedures ensure that everyone may participate equally, and supplementary programs can address the relative lack of political agency that entrenched minorities may feel. Ideally, this provides a sense of inclusion, belonging, and/or acknowledgement. The value of being heard alongside everyone else has a better chance at unifying diverse liberal societies than exclusionary identarian allegiances.

## Chapter 2: Vaccine Nationalism and Basic Rights

By March of 2022, ‘more than 10.5 billion [COVID-19] vaccine doses have been administered globally, “enough to protect the entire world population from severe symptoms, hospitalization and death,” said UN High Commissioner for Human Rights Michelle Bachelet.’<sup>32</sup> Despite staggering scientific and manufacturing achievements, global vaccine rollout has been described as a ‘monumental international policy failure’ and the world is ‘on the brink of a catastrophic moral failure.’<sup>33</sup> I claim this moral failing happened, is ongoing, and is rooted in a failure to uphold basic human rights.

### 2.1: Nationalism and Basic Rights

I claim that nationalist hoarding of scarce medical resources violates human rights. Some of what I will say generalizes to any sort of scarce medical resource, but I will focus on COVID-19 vaccinations, so inevitably some arguments depend on facts about deadly infectious disease and treatment by vaccination. I will assume the most favorable conditions for nationalism, including

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<sup>32</sup> ‘UN Rights Chief Leads Call for Global COVID-19 Vaccine Equity’, UN News, 10 March 2022, <https://news.un.org/en/story/2022/03/1113672>.

<sup>33</sup> Samuel Lovett, ‘Vaccine Inequality “Monumental International Policy Failure,” Says Gordon Brown’, The Independent, 8 February 2022, <https://www.independent.co.uk/news/world/covid-vaccine-doses-gordon-brown-b2010443.html>; ‘WHO Director-General’s Opening Remarks at 148th Session of the Executive Board’, accessed 10 January 2022, <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-148th-session-of-the-executive-board>.

the truth of *liberal nationalism*, the most plausible form of thoroughgoing nationalism.<sup>34</sup> I aim to show that, even from a nationalist perspective, the hoarding of COVID-19 vaccinations is impermissible. This result is multiply overdetermined because vaccine nationalism violates various duties derived from requirements to uphold human rights. Nationalists may object to the set of rights that cosmopolitans, and others, assert. Since I am assuming a nationalist perspective, I will ground the duties I discuss in the basic right to subsistence. The undeniability of this core right provides a robust basis to firmly reject vaccine nationalism.

Some forms of nationalism are morally abhorrent and so obviously false. Let's call the unqualified prioritization of one's co-nationals over others, *chauvinistic nationalism*.<sup>35</sup> This view denies the moral equality of persons and instead permits massive favoring of insiders at whatever costs to outsiders. Because outsiders are simply worth less, the chauvinistic nationalist is willing to sacrifice any number of outsiders to further the interests of the only membership that counts. On this view, there is no minimal level of treatment owed equally to all by dint of personhood. Outsiders can be assaulted, starved, tortured, or killed if it serves the comfort of one's co-nationals. This is a common form of nationalism in popular culture, but it's not worth serious moral consideration, so it's not my target here.

*Liberal nationalism*, on the other hand, assents to the moral equality of persons. Liberal nationalists do not argue that one's co-nationals have unqualified priority over outsiders. Instead, they hold that individuals are due a certain degree of equal consideration, and in addition each national group is permitted to advance its own interests.<sup>36</sup> Liberal nationalists worry that rampant

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<sup>34</sup> Eilidh Beaton et al., 'Crisis Nationalism: To What Degree Is National Partiality Justifiable during a Global Pandemic?', *Ethical Theory and Moral Practice* 24, no. 1 (2021): 285–300, <https://doi.org/10.1007/s10677-021-10160-0>.

<sup>35</sup> Tan, 'Liberal Nationalism and Cosmopolitan Justice', 445.

<sup>36</sup> Kyle Ferguson and Arthur Caplan, 'Love Thy Neighbour? Allocating Vaccines in a World of Competing Obligations', *Journal of Medical Ethics* 47 (2021): 3, <https://doi.org/10.1136/medethics-2020-106887>.

individualism is morally inadequate to account for the prominent role played by national membership in shaping our individual identities and the greater moral and political landscape.<sup>37</sup> Some argue that liberalism cannot function without this nationalist component.<sup>38</sup> Strong national bonds are required to foster the trust and group unity needed for the sacrifices members must make for one another as required by, e.g., a social security system and democratic politics.<sup>39</sup> National membership is not a choice, they claim, it is inextricably bound up with who we are. My identity is unavoidably shaped by national history, language, and culture. To abstract away from these facts in the name of moral equality distorts what impartiality actually demands and unacceptably impoverishes moral and political theorizing. Liberal nationalists recognize that all of humanity can make legitimate claims against us, but in the same way that ignoring the intrinsic value of our special relationships to friends and family leads to an impoverished view, ignoring the intrinsic value of our special relationships to our fellow co-nationals leads to an impoverished view. Many reasons to doubt liberal nationalism have been discussed by its critics, but for the purposes of this paper my target is the practice of vaccine nationalism, not nationalism itself, so I will assume liberal nationalism to be true since showing that vaccine nationalism is very limited, even from this perspective, provides the most convincing case against it. Hence, I will assume a

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<sup>37</sup> Miller, *On Nationality*; Miller, *National Responsibility and Global Justice*; Kymlicka, *Liberalism, Community, and Culture*; Kymlicka, *Multicultural Citizenship*; Kymlicka, *Politics in the Vernacular*; Tamir, *Liberal Nationalism*; Thomas Hurka, 'The Justification of National Partiality', in *The Morality of Nationalism* (Oxford, New York: Oxford University Press, 1997); Margaret Moore, *The Ethics of Nationalism* (Oxford University Press, 2001); Margalit and Raz, 'National Self-Determination'; Raz, 'Multiculturalism', 1994; Raz, 'Multiculturalism', 1998.

<sup>38</sup> Tamir, *Liberal Nationalism*.

<sup>39</sup> David Miller, 'Democracy's Domain', *Philosophy & Public Affairs* 37, no. 3 (2009): 201–28, <https://doi.org/10.1111/j.1088-4963.2009.01158.x>; Miller, *Is Self-Determination a Dangerous Illusion?*, 54–58.

key aspect of the debate in favor of nationalists: that there can be a genuine conflict between our special duties to co-nationals and our general duties to humanity.<sup>40</sup>

Since one cannot favor one's own at the expense of the basic rights of others, however, I will argue that nationalists only have the wiggle room to engage in vaccine nationalism in rare circumstances: only when vaccine nationalism doesn't needlessly threaten basic rights, and insiders and outsiders face an equal health risk, may nationalists permissibly favor their own. Much of this paper will consist in arguing that these circumstances are rare. Almost all the vaccine nationalism that countries have engaged in is impermissible. One prominent exception is the very early stages of distribution, when a basic rights contravening distribution is unavoidable between individuals who face an equal health risk. That is, in circumstances where cosmopolitans would agree that an arbitrary distribution such as a lottery or a coin-flip are permissible, then – from a nationalist perspective – vaccine nationalism is permissible. Again, I will argue that almost all self-interested vaccine distribution fails to meet this standard.

My strategy will be to argue that vaccine nationalism violates the moral minimum that even liberal nationalists hold is owed all of humanity regardless of national membership.<sup>41</sup> This moral minimum is provided by the moral and legal recognition of human rights. There is much debate over which human rights ought to be protected and why, but since I will assume the truth of liberal nationalism (hereafter *nationalism*), I will only base my argument in the most minimal set of rights. My project here, therefore, is distinct from – yet consistent with – arguments that aim at establishing an unqualified human right to health, so I aim to argue for a more modest human right to subsistence health, and by doing so I hope to avoid the challenges that face a more

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<sup>40</sup> Samuel Scheffler, 'The Conflict Between Justice and Responsibility', *Nomos* 41 (1999): 86–106; Ferguson and Caplan, 'Love Thy Neighbour?'; Kyle Ferguson and Arthur Caplan, 'Phantom Premise and a Shape-Shifting Ism: Reply to Hassoun', *Journal of Medical Ethics* 47, no. 11 (2021).

<sup>41</sup> Nicole Hassoun, 'Against Vaccine Nationalism', *Journal of Medical Ethics* 47, no. 11 (2021): 773–74, <https://doi.org/10.1136/medethics-2020-107193>.

full-bodied right to health.<sup>42</sup> This is not to say that nationalists are necessarily committed to only the most minimal set of human rights, but insofar as they are committed to any rights at all they must be committed to *basic rights*.

Following Henry Shue, basic rights are those rights that must be protected for us to enjoy any rights at all.<sup>43</sup> Security and subsistence rights are contenders for basic rights, for instance, while rights to education or free association are not. This is because security and subsistence rights are *logically* prior to education or free association rights. I cannot enjoy a right to education, e.g., unless I am free from threats of assault, murder, torture, etc. Similarly, without at least a subsistence level of food, water, shelter, and health, then access to a classroom will mean little to me. Threat of starvation, dehydration, exposure, and severe illness remove the possibility of any meaningful educational aims. Basic rights are not necessarily more important, in some sense, than other sorts of rights, it's just that they are logically prior to other rights. They must get priority when it comes to rights provision. So, again, any view that agrees there are any human rights at all must agree to at least the basic rights.

I claim that COVID-19 vaccinations ought to be part of the healthcare measures that result from a basic subsistence right to health, and that COVID-19 vaccine hoarding violates various duties we have to uphold this right. A basic right to subsistence health describes a moral minimum that we owe to all humanity. It's clear that the threat the unvaccinated face from COVID-19 is sufficient to push them below the threshold of subsistence health. We only need to look at the severity of the measures that numerous governments justifiably implemented in 2020

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<sup>42</sup> Jonathan Wolff, 'The Human Right to Health', in *Global Health and Global Health Ethics*, ed. Gillian Brock and Solomon Benatar (Cambridge: Cambridge University Press, 2011), 108–18, <https://doi.org/10.1017/CBO9780511984792.010>; Jonathan Wolff, 'The Demands of the Human Right to Health', *Proceedings of the Aristotelian Society, Supplementary Volumes* 86 (2012): 217–37; Jonathan Wolff, 'The Content of the Human Right to Health', in *Philosophical Foundations of Human Rights* (Oxford: Oxford University Press, 2015), <https://doi.org/10.1093/acprof:oso/9780199688623.003.0028>.

<sup>43</sup> Henry Shue, *Basic Rights* (Princeton University Press, 2020).

and beyond in response to the threat that the virus posed their populations. Huge sums were spent supporting individuals to stay in their homes. Non-basic rights, such as education and free association, were routinely sacrificed to keep the population safe, and to limit the threat posed to the basic subsistence health of those necessary to keep the essentials running. ‘Unskilled workers’ became ‘essential workers’ and those risking the highest exposure were ‘on the front lines’ highlighting how they were like soldiers in combat fighting for our survival. Just as an ongoing military campaign makes it too risky to go outside by threatening my basic security rights, the COVID-19 pandemic makes it too risky for the unvaccinated to engage in ordinary activities by threatening their basic subsistence health rights.

Fulfilling a basic subsistence right to health involves more than healthcare provision since many determinants of health fall outside what we normally consider healthcare.<sup>44</sup> Clearly, for instance, food, water, and shelter are relevant for basic subsistence health, even though these are not normally considered part of healthcare. Furthermore, what sort of healthcare ought to be included in one’s basic subsistence right to health is a complex question. Countervailing considerations, such as cost, mean that even when there are treatments available to permit me to enjoy a subsistence level of health, this doesn’t always mean that I have the right to demand it. Sadly, even this minimal level of health cannot be achieved for everyone. Some treatable ailments may keep someone below a subsistence level of health, but if the treatments have formidable costs, they are beyond what an individual can rightfully demand of others to provide for them. What this threshold ought to be is not a question I will address here, even though I will argue that – wherever this threshold lies – protection from COVID-19 is a component of our basic right to subsistence health.

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<sup>44</sup> Jonathan Wolff, ‘Health Risk and Health Security’, in *Medicine and Social Justice*, 2nd ed. (New York: Oxford University Press, 2012), <https://doi.org/10.1093/acprof:osobl/9780199744206.003.0006>; G. Wester and J. Wolff, ‘Health and Health Care, Need For’, in *Encyclopedia of Health Economics*, ed. Anthony J. Culyer (San Diego: Elsevier, 2014), 333–39, <https://doi.org/10.1016/B978-0-12-375678-7.00201-7>.

This is to say that a basic right to subsistence health doesn't entitle everyone to cutting-edge healthcare, and a precise specification of what healthcare we're entitled to demand is beyond the scope of this paper. As a rough guide I will, again, draw on Shue. For him, a basic right to subsistence health means that everyone ought to have available '...for consumption what is needed for a decent chance at a reasonably healthy and active life of more or less normal length.'<sup>45</sup> It's clear that the widespread, persistent threat of an easily transmissible disease like COVID-19, with its high risk of severe illness and death, is a sufficient threat to a decent chance at a reasonably healthy and active life of more or less normal length. Furthermore, the cost-effectiveness of current vaccines makes them a treatment that everyone is entitled to demand.

Provision of a vaccine doesn't suffer from prohibitive costs, nor is it subject to other countervailing considerations that are strong enough to count against its availability as part of basic healthcare entitlements grounded in a right to basic subsistence health. In general, vaccines are perhaps the single most cost-effective treatment available, as they are cheap to produce and generally offer lifelong protection. One pre-COVID study estimates that childhood vaccination in low- and middle-income countries (LMIC) against various infections offers returns of between 16 and 44 times the amount invested.<sup>46</sup> While, in 2015, the estimated annual costs of four vaccine-preventable diseases was \$26.5 billion in the US alone.<sup>47</sup> Whether any particular vaccine is cost-effective depends on its effectiveness on disease, its uptake within the population, and what costs are considered to be offset, amongst other things. It's safe to say that COVID-19 vaccination is

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<sup>45</sup> Shue, *Basic Rights*, 23.

<sup>46</sup> Sachiko Ozawa et al., 'Return On Investment From Childhood Immunization In Low- And Middle-Income Countries, 2011–20', *Health Affairs* 35, no. 2 (February 2016): 199–207, <https://doi.org/10.1377/hlthaff.2015.1086>.

<sup>47</sup> John M. McLaughlin et al., 'Estimated Human and Economic Burden of Four Major Adult Vaccine-Preventable Diseases in the United States, 2013', *The Journal of Primary Prevention* 36, no. 4 (2015): 259–73, <https://doi.org/10.1007/s10935-015-0394-3>.



robustly cost-effective or cost-saving.<sup>48</sup> This is unsurprising given how cheap and effective many COVID-19 vaccinations are and how threatening COVID-19 is. One study estimates that in the absence of a vaccination program in the US, by the end of 2021, ‘there would have been approximately 1.1 million additional COVID-19 deaths and more than 10.3 million additional COVID-19 hospitalizations.’<sup>49</sup> If persons are entitled to any medical treatment at all, they are entitled to vaccinations, COVID-19 vaccines included.

## 2.2: Basic Rights and Corresponding Duties

For all I’ve said so far, a nationalist could agree that we have a basic subsistence right to health, but assert that this doesn’t result in a duty to provide vaccines for those in need. The issue is that there is broad ranging disagreement about what duties such a right would entail. Some argue, for instance, that the only duties that demand respect are negative duties to refrain from harm or interference, whereas positive duties to provide aid are commendable, but not required. Provision

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<sup>48</sup> Arnold Hagens et al., ‘COVID-19 Vaccination Scenarios: A Cost-Effectiveness Analysis for Turkey’, *Vaccines* 9, no. 4 (18 April 2021): 399, <https://doi.org/10.3390/vaccines9040399>; Krishna P. Reddy et al., ‘Clinical Outcomes and Cost-Effectiveness of COVID-19 Vaccination in South Africa’, *Nature Communications* 12, no. 1 (29 October 2021): 6238, <https://doi.org/10.1038/s41467-021-26557-5>; Zhanwei Du et al., ‘Modeling Comparative Cost-Effectiveness of SARS-CoV-2 Vaccine Dose Fractionation in India’, *Nature Medicine*, 24 February 2022, 1–5, <https://doi.org/10.1038/s41591-022-01736-z>; ‘COVID-19 Vaccination Predicted to Be Cost Effective in USA’, *Pharmacoeconomics & Outcomes News* 871, no. 1 (2021): 10, <https://doi.org/10.1007/s40274-021-7448-y>; Atefeh Vaezi and Alipasha Meysamie, ‘COVID-19 Vaccines Cost-Effectiveness Analysis: A Scenario for Iran’, *Vaccines* 10, no. 1 (29 December 2021): 37, <https://doi.org/10.3390/vaccines10010037>; ‘Vaccines Are Not Cost-Effective, Vaccinations Are | Health Affairs Forefront’, accessed 16 March 2022, <https://www.healthaffairs.org/doi/10.1377/forefront.20220202.717744/full/>.

<sup>49</sup> ‘The U.S. COVID-19 Vaccination Program at One Year: How Many Deaths and Hospitalizations Were Averted?’, 14 December 2021, <https://doi.org/10.26099/3542-5n54>; Umair Irfan, ‘The Extraordinary Success of Covid-19 Vaccines, in Two Charts’, *Vox*, 27 January 2022, <https://www.vox.com/22894978/covid-19-vaccine-lives-saved-deaths-avoided-omicron-chart>.

of vaccines to LMICs by high-income countries (HIC), for instance, is praiseworthy benevolence but doesn't fall under what LMICs can claim as rightful entitlements. I will argue that the vast majority of COVID-19 vaccine nationalism violates at least three sorts of duty, including positive and negative duties, so that no matter one's stance on the sort of duties that correspond to a basic subsistence right to health, the vast majority of COVID-19 vaccine nationalism is impermissible.

Basic rights provide their bearers with legitimate claims or demands they can make of others. That is, basic right claims create corresponding duties in others. What sort of duties? Official United Nations human rights declarations talk about the duties to *respect*, *protect*, and *fulfil*.<sup>50</sup> Shue discusses a similar set of duties under different labels.<sup>51</sup> The *duty to respect* is a negative duty not to violate the rights of others. It demands that we not attack, kill, starve, cause suffering, etc. That is, we ought to refrain from eliminating a person's security or ability to subsist. The *duty to protect*, on the other hand, is our duty to enforce the duty to respect, including the creation of institutions aimed at upholding our duty to respect. In a perfect world, the duty to protect would be redundant, but in the world as it is we ought to put measures in place to incentivize and, when required, coerce persons to uphold our duty to respect. We ought to create institutions, such as the police, with powers to stop parents from starving their children, for instance, or to stop nefarious actors deliberately infecting others with deadly disease. It's not enough to simply not violate the rights of others ourselves, we must also make sure that the vulnerable are not easily preyed upon.

Finally, our *duty to fulfil* is our positive duty to aid the deprived. This may be owed because of a failure of either of the previous duties, a special relationship that one has with the

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<sup>50</sup> This is very similar to Shue's duties to avoid depriving, duties to protect, and duties to aid. In fact, in *The Content of the Human Right to Health*, Jonathan Wolff cites a dissertation that argues that the UN's human rights documentation was directly influenced by Shue's writing. I will consider these to be interchangeable.

<sup>51</sup> Shue, *Basic Rights*, 55–60, for example.

deprived, or simply because of some natural disaster. So if a government is deliberately attacking its own residents, or if it is incapable of providing basic needs, we have a duty to act in support of the individuals under threat. Plausibly, this duty may fall first to the friends, family, and co-nationals of the deprived, and perhaps there are duties unique to these groups too. With natural disasters, even the most well-prepared government's institutional structure may be crippled by the very disaster that's causing deprivation in the first place. Our duty to fulfil includes a Samaritan duty to provide emergency aid in dire situations of immediate threat. So when individuals enjoy basic rights, this means that others have these duties to uphold these rights and that rights bearers can demand these duties be upheld. Some may argue that basic rights provide some more limited set of corresponding duties, but there is no view that can deny all of them. Next, I will argue that COVID-19 vaccine nationalism violates each of these duties, so even those who argue for a more limited set must be forced to admit that vaccine nationalism is impermissible in the vast majority of cases.

## **2.3: Duties to Respect, Protect, and Fulfil and Vaccine Nationalism**

### **2.3.1: The Duty to Fulfil**

If vaccine distribution is left to the open market alone, it's clear that HICs will secure almost all the available vaccinations.<sup>52</sup> From the beginning of the pandemic, richer nations have used their greater relative purchasing power, diplomatic pressure, and whatever legal means at their disposal to secure more vaccines and other scarce lifesaving resources for their populations.<sup>53</sup> Even with current institutional countermeasures, such as COVID-19 Vaccines Global Access (COVAX), in place vaccine distribution skews heavily toward HICs.<sup>54</sup> Many HICs have administered three doses to a high percentage of their population and some are even rolling out fourth doses. In February of 2022, the Financial Times reported that ‘the number of boosters given in high income countries outnumbers the total of first and second doses given in those low-income countries — and the gap is widening.’<sup>55</sup> Moreover, from very early on, HICs hammered out deals to procure enough vaccinations to cover their populations many times over.<sup>56</sup> In fact, in some HICs, this relative abundance has led to hundreds of millions of doses surpassing their use-by-date and

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<sup>52</sup> Ezekiel J. Emanuel et al., ‘What Are the Obligations of Pharmaceutical Companies in a Global Health Emergency?’, *The Lancet* 398, no. 10304 (2021): 1015–20, [https://doi.org/10.1016/S0140-6736\(21\)01378-7](https://doi.org/10.1016/S0140-6736(21)01378-7); Megan Twohey, Keith Collins, and Katie Thomas, ‘With First Dibs on Vaccines, Rich Countries Have “Cleared the Shelves”’, *The New York Times*, 15 December 2020, sec. U.S., <https://www.nytimes.com/2020/12/15/us/coronavirus-vaccine-doses-reserved.html>.

<sup>53</sup> Donato Paolo Mancini, ‘Countries Weigh How to Buy Vaccines for the next Pandemic’, *Financial Times*, 1 February 2022, <https://www.ft.com/content/9147b3e4-7426-479d-881d-6b8731f3dba2>; ‘Vaccine Purchases | Launch and Scale Speedometer’, accessed 16 March 2022, <https://launchandscalefaster.org/covid-19/vaccinepurchases>; Mark Jit et al., ‘Multi-Country Collaboration in Responding to Global Infectious Disease Threats: Lessons for Europe from the COVID-19 Pandemic’, *The Lancet Regional Health – Europe* 9 (2021), <https://doi.org/10.1016/j.lanpe.2021.100221>; Erin Banco, ‘Trump Plan Favored Giving Vaccines to Israel, Taiwan over Poorer Countries’, *POLITICO*, 2022, <https://www.politico.com/news/2022/01/27/trump-plan-favored-vaccines-isreal-taiwan-00002893>.

<sup>54</sup> OECD, ‘Access to COVID-19 Vaccines: Global Approaches in a Global Crisis’, 2021, <https://www.oecd.org/coronavirus/policy-responses/access-to-covid-19-vaccines-global-approaches-in-a-global-crisis-c6a18370/>.

<sup>55</sup> Mancini, ‘Countries Weigh How to Buy Vaccines for the next Pandemic’.

<sup>56</sup> ‘Vaccine Purchases | Launch and Scale Speedometer’; Asher Mullard, ‘How COVID Vaccines Are Being Divvied up around the World’, *Nature*, 30 November 2020, <https://doi.org/10.1038/d41586-020-03370-6>; Congressional Research Service, ‘Operation Warp Speed Contracts for COVID-19 Vaccines and Ancillary Vaccination Materials.’, 2021, <https://crsreports.congress.gov/product/details?prodcode=IN11560>.

being destroyed.<sup>57</sup> Contrast this to many LMICs, where – even now, more than two years into the pandemic – the percentage of the population who have had a first dose is just 5% and ‘only 11 percent of the whole population in Africa has received two shots.’<sup>58</sup> It’s clear that the current stark inequalities would be rendered even worse without the equitable distribution efforts of COVAX, but it’s striking that even with such measures in place, the concentration of vaccinations in the hands of the world’s wealthiest nations is high.

LMIC’s, simply do not have the resources to compete for vaccine access. Without vaccine access their residents face a continued threat of imminent death and suffering. Hence, LMIC’s are unable to secure basic subsistence health for their residents. With rare exceptions, they are also crying out to be provided with vaccines.<sup>59</sup> Given these facts, it seems clear that HIC’s are failing in their duty to fulfil emergency medical aid to millions of vulnerable individuals.

Given this context, it seems difficult for HIC’s to justify providing extra doses to further reduce their population’s risk to health when the risk to health in many LMICs remains unaddressed.<sup>60</sup> Even providing a single dose has ‘maximal impact on severe disease in settings with constrained vaccine supply and low coverage, where high seroprevalence often coexists with delivery constraints.’<sup>61</sup> Models have also predicted that protection against severe disease is high

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<sup>57</sup> Lovett, ‘Vaccine Inequality “Monumental International Policy Failure,” Says Gordon Brown’; Denis Campbell and Nicola Davis, ‘Covid Booster Jabs in England to Be Thrown Away as Demand Falls’, *The Guardian*, 14 January 2022, sec. Society, <https://www.theguardian.com/society/2022/jan/14/covid-booster-jabs-in-england-to-be-thrown-away-as-demand-falls>.

<sup>58</sup> Lovett, ‘Vaccine Inequality “Monumental International Policy Failure,” Says Gordon Brown’.

<sup>59</sup> ‘Key Lessons from Africa’s COVID-19 Vaccine Rollout’, WHO | Regional Office for Africa, accessed 14 January 2022, <https://www.afro.who.int/news/key-lessons-africas-covid-19-vaccine-rollout>; Christian T. Happi and John N. Nkengasong, ‘Two Years of COVID-19 in Africa: Lessons for the World’, *Nature* 601, no. 7891 (January 2022): 22–25, <https://doi.org/10.1038/d41586-021-03821-8>.

<sup>60</sup> The Lancet Infectious Diseases, ‘COVID-19 Vaccine Equity and Booster Doses’, *The Lancet Infectious Diseases* 21, no. 9 (2021): 1193, [https://doi.org/10.1016/S1473-3099\(21\)00486-2](https://doi.org/10.1016/S1473-3099(21)00486-2).

<sup>61</sup> Peter B. McIntyre et al., ‘COVID-19 Vaccine Strategies Must Focus on Severe Disease and Global Equity’, *The Lancet* 399, no. 10322 (2022): 1–2, [https://doi.org/10.1016/S0140-6736\(21\)02835-X](https://doi.org/10.1016/S0140-6736(21)02835-X).

after the first dose, so ‘vaccine strategies maximizing supply of first doses are favoured across a range of settings.’<sup>62</sup> Finally, even in countries with high risk populations, increasing two-dose coverage as a much greater effect than booster doses in fully vaccinated populations.<sup>63</sup>

Nationalists have a ready reply to this line of reasoning: conditions of absolute scarcity mean that the basic rights of residents of HIC’s are equally threatened as those of LMIC’s. Since the threat is equal on both sides, and HIC’s happen to be in possession of vaccinations, nationalists are permitted to let their relationship to their fellow co-nationals be a difference maker. Under moderately scarce conditions resources aren’t abundant, so there isn’t an endless supply, but there’s enough to go around if goods are distributed well. This is ordinary conditions for most everyday goods. Under conditions of absolute scarcity, on the other hand, some must do without. There’s not enough to go around no matter how well goods are distributed. Food is absolutely scarce during a famine, for instance, and many life-saving medical resources, including vaccines, are absolutely scarce during the pandemic.

Conditions of absolute scarcity are intuitively favorable toward nationalist outcomes. We can see this by comparing two cases that only differ by the context of scarcity in which distribution occurs. Intrinsically valuable relationships seem morally irrelevant, on the whole, under moderate scarcity, but can be a difference maker under absolute scarcity. First, moderate scarcity. Both my mother and a stranger are starving. I am reasonably well off and have some food, which is moderately scarce. Whom ought I give my food to? I suggest that I ought to provide food for both my mother and the stranger. Why? Both face severe deprivation. Starvation

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<sup>62</sup> McIntyre et al., 3; See Seyed M. Moghadas et al., ‘Evaluation of COVID-19 Vaccination Strategies with a Delayed Second Dose’, *PLOS Biology* 19, no. 4 (21 April 2021): e3001211, <https://doi.org/10.1371/journal.pbio.3001211>; and Dongwoo Kim and Young Jun Lee, ‘Vaccination Strategies and Transmission of COVID-19: Evidence across Advanced Countries’, *Journal of Health Economics*, 20 January 2022, 102589, <https://doi.org/10.1016/j.jhealeco.2022.102589>.

<sup>63</sup> McIntyre et al., ‘COVID-19 Vaccine Strategies Must Focus on Severe Disease and Global Equity’, 3; See Minal K. Patel, ‘Booster Doses and Prioritizing Lives Saved’, *New England Journal of Medicine* 385, no. 26 (2021): 2476–77, <https://doi.org/10.1056/NEJMe2117592>.

poses such a dire threat to health and life that both fall below the minimal level of subsistence living. They need immediate emergency aid, I have precisely what they need, and I can provide it at minimal cost to myself, so I ought to provide them both with what they require. Moreover, I am duty bound to provide food to both. Choosing to keep the food for myself, or to only provide food to one of them, is to needlessly let the hungry waste away. While it's plausible that it may be worse to withhold from my mother than to withhold from a stranger, withholding from either violates my duty to uphold their basic subsistence rights, due simply by dint of being persons.

Second, absolute scarcity. The situation is the same except now food is absolutely scarce, so we're under famine conditions. This time either my mother or the stranger must do without. I may be reasonably well-off, but this makes little difference when there's simply no more food for me to procure. Both my mother and the stranger face basic rights violations because both are unable to subsist without aid. I take it that it's permissible, if not required, to favor my mother with my food. It's permissible that my relationship to my mother is a difference maker under these desperate conditions. Absolute scarcity forces us to choose who should do without, and absolute scarcity in life-saving resources forces us to choose who gets the opportunity to live. When choosing between equally perilous violations of basic subsistence rights, it seems permissible to let our intrinsically valuable relationships tip the balance. For nationalists, our relationships to our co-nationals are intrinsically valuable in an analogous way to our relationships to friends or family. The COVID-19 pandemic creates a global threat to the basic subsistence health of everyone. Live-saving medical resources are absolutely scarce, and HIC's are often put in the position of whether co-nationals or strangers ought to be provided with vaccines. Since the threat to co-nationals' basic rights is equally perilous to those of strangers, nationalists can let their relationship to their co-nationals be a difference maker and reserve vaccinations for themselves. Hence, the health threats imposed by the pandemic, combined with

absolute scarcity in life-saving medical resources, results in conditions that are more favorable to nationalist tendencies.

Insofar as the basic rights of co-nationals and strangers are *equally* threatened, nationalists have a strong countervailing reason to excuse them from upholding a duty to fulfil aimed at protecting the basic rights of strangers. For some time now, however, it's far from true that the basic rights of co-nationals and strangers are equally threatened. Disparity in global vaccine distribution is vast. It's implausible for HIC's to justify further hoarding of scarce medical resources when a large proportion of their populations are fully vaccinated with two doses, or received their third or fourth booster, and many LMIC's have barely begun providing their first. Furthermore, even if it were true that the threat to basic subsistence health was equal for co-nationals and others, this wouldn't mean that the relative wealth of HIC's wouldn't provide them with other ways to discharge their duty to fulfil. Nationalists in emergency conditions may have justified defeaters to realize the duty to fulfil by providing vaccinations, but the continued threat to the basic subsistence health to those in LMIC's still demands other measures, such as providing income, suspending or writing off debt, materials, training, and whatever else may alleviate the ongoing emergency e.g., '...cash for trucks, fridges, safety boxes and the other equipment needed to get them [vaccines] to the people in need.<sup>64</sup> Similarly, private pharmaceuticals could choose to loosen proprietary restrictions.<sup>65</sup> I wish to set these points aside, however, as my task here is to explore the limits of vaccine nationalism assuming favorable

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<sup>64</sup> Andy Bounds, Hannah Kuchler, and Kiran Stacey, 'EU to Provide €125mn to Help Covid Vaccine Distribution in Africa', *Financial Times*, 9 February 2022, <https://www.ft.com/content/f98c9081-76bb-47d7-8dd5-14b81690d1f7>; 'Debt Service Suspension Initiative', World Bank, accessed 16 March 2022, <https://www.worldbank.org/en/topic/debt/brief/covid-19-debt-service-suspension-initiative>.

<sup>65</sup> 'One Year after the First Shot, Pharma Must Urgently "Share the Tech" of COVID-19 Vaccines', Médecins Sans Frontières Access Campaign, 7 December 2021, <https://msfaccess.org/one-year-after-first-shot-pharma-must-urgently-share-tech-covid-19-vaccines>; The Lancet Infectious Diseases, 'The Rocky Road to Universal COVID-19 Vaccination', *The Lancet Infectious Diseases* 21, no. 6 (2021): 743, [https://doi.org/10.1016/S1473-3099\(21\)00275-9](https://doi.org/10.1016/S1473-3099(21)00275-9); 'WHO Director-General's Statement on Tanzania and COVID-19', 20 February 2021, <https://www.who.int/news/item/20-02-2021-who-director-general-s-statement-on-tanzania-and-covid-19>.



conditions for nationalists. Hence, let's imagine that the threat to basic rights is equal. This needn't stretch the imagination, of course, as this was true early in the pandemic, and it may be true again if a new variant of Sars-Cov-2 emerges that current vaccines provide no protection against. As I'll argue, even under these favorable conditions, vaccine nationalism can still violate the basic subsistence health rights of others by renege on our duty to respect and our duty to protect.

### **2.3.2: The Duty to Respect**

Recall that the negative duty to respect basic rights demands that we refrain from acting in ways that violate the basic rights of others. Most clearly, we ought not attack, kill, starve, etc. On first pass, one may think that the hoarding of scarce medical resources doesn't pertain to the duty to respect. After all, the hoarding of goods focuses on not providing aid rather than, say, removing goods that are already enjoyed. Hijacking vaccines on route to others, or forcibly commandeering a manufacturing plant abroad may count, but – so the complaint goes – if vaccine hoarding is wrong, it is because it is a failure to aid rather than a failure to not interfere. The problem with this response is that the duty to fulfil and the duty to respect aren't so neatly divided. Even if, as I suppose above, it's permissible to renege on our duty to fulfil, it turns out this results in an unacceptably high risk of needlessly violating our duty to respect, because vaccine hoarding significantly increases the chances of new Sar-Cov-2 variants emerging. These new variants have the potential to be much more deadly because of higher transmission rates, greater vaccine resistance, and/or a generally more dangerous pathology.

Significantly increasing the risk of more dangerous variants recklessly risks prolonging or worsening emergency conditions. I've already described how the emergency conditions imposed by the pandemic alter the normative landscape by creating demand for scarce life-saving medical resources. Another such change is that we acquire a duty to hasten the end and lessen the severity of the emergency conditions themselves. Straightforwardly, this is because the emergency conditions the pandemic creates cause widespread suffering and death. I distinguish the pandemic from the emergency conditions that it creates because the pandemic may never recede, yet it will hopefully cease to be a serious disaster. All things being equal, if we can shorten or otherwise alleviate emergency conditions and we choose not to, then we have partly caused unnecessary suffering and death. In other words, we are partly responsible for needlessly violating the basic rights of others. Failing to provide flood defenses increases the risk to a low-lying population, for instance. One may get lucky, and the rains may never come, but the low-lying population will be rightfully aggrieved that their basic security was treated so flippantly. Moreover, if the rain does come, then those who failed to provide the flood defenses when the opportunity arose are partly responsible for the death and suffering that results. It is now widely accepted that vaccine nationalism imposes significant risk of worsening and lengthening emergency conditions.<sup>66</sup> Perhaps surprisingly, in this way, positive and negative duties are connected. Failure to discharge our duty to aid either results in being objectionably flippant with the lives of others, or it results in a failure of our duty not to deprive.

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<sup>66</sup> OECD, 'Access to COVID-19 Vaccines'; Rachel M. Burckhardt et al., 'Are COVID-19 Vaccine Boosters Needed? The Science behind Boosters', *Journal of Virology* 96, no. 3 (2022), <https://doi.org/10.1128/jvi.01973-21>; Joia Mukerjee, Haniya Abbasi, and Michelle Morse, 'Global Vaccine Inequity Led To The COVID-19 Omicron Variant: It's Time For Collective Action', *Health Affairs*, 26 January 2022, <https://www.healthaffairs.org/doi/10.1377/forefront.20220124.776516/full/>; Denise Roland and Felicia Schwartz, 'More Covid-19 Vaccines Are Reaching Poorer Nations, but Slowly', *Wall Street Journal*, accessed 17 January 2022, [https://www.wsj.com/amp/articles/more-covid-19-vaccines-are-reaching-poorer-nations-but-slowly-11640692804?mod=article\\_inline](https://www.wsj.com/amp/articles/more-covid-19-vaccines-are-reaching-poorer-nations-but-slowly-11640692804?mod=article_inline); Daniela Hernandez Douglas Sarah Toy and Jason, 'The Covid Race to Watch: Vaccines vs. Variants', *Wall Street Journal*, 15 January 2022, sec. US, <https://www.wsj.com/articles/covid-race-vaccine-vs-variants-11641915035>.

COVID-19 vaccine nationalism creates the conditions that make the emergence of a new vaccine variant of SARS-COV-2 more likely, which significantly increases the chances of a virus with a higher transmission rate and/or resistance to current vaccines. Significantly increasing the chances of creating a variant with a higher transmission rate and/or resistance to current vaccines is likely to unnecessarily lengthen and deepen the severity of emergency conditions, so it is impermissible. What's the evidence? Wagner et al, for instance, modeled two regions: one with high access to vaccines, and one with low access to vaccines.<sup>67</sup> They modelled scenarios where the high access region shared vaccines and scenarios where they did not. (They also considered other variables such as whether there is immigration between each region and when there is not). The most relevant result for my discussion: 'When the waning of natural immunity contributes most to evolutionary potential, sustained transmission in low-access regions results in an increased potential for antigenic evolution, which may result in the emergence of novel variants that affect epidemiological characteristics globally.'<sup>68</sup> What does this mean? When (1) there is a high incidence of the virus interacting with persons who were previously infected, but whose natural immunity has waned, and (2) when this population has low access to vaccines, this creates conditions that are ripe for new strains to emerge. Hence, since not sharing vaccines creates unvaccinated populations that, over time, have a high incidence of those whose natural immunity has waned, the virus's continued interaction with this population creates the conditions under which new vaccine resistant variants have a higher chance of emerging.

It's worth noting that the model predicts that if the region with high vaccine access shares its doses, it will see an increased infection rate in the short term. These increases are not excessive, however, and the increased potential for greater transmission and antigenic evolution

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<sup>67</sup> Cf. Hamed Mamani, Stephen E. Chick, and David Simchi-Levi, 'A Game-Theoretic Model of International Influenza Vaccination Coordination', *Management Science* 59, no. 7 (2013): 1479–1724.

<sup>68</sup> Caroline Wagner et al., 'Vaccine Nationalism and the Dynamics and Control of SARS-CoV-2' 373, no. 6562 (2021): 1, <https://doi.org/10.1126/science.abj7364>.

in the longer term, make vaccine nationalism a strategy that seriously risks violating the basic subsistence rights of both co-nationals and strangers for temporary gains for co-nationals. This last point is important. Vaccine nationalism puts strangers *and* co-nationals at excessive risk.<sup>69</sup> Vaccine nationalism is drastically short-sighted.

It's true that vaccine nationalism has the chance to only impose risk on the global population but secures guaranteed gains for co-nationals. Hence, one may object that the nationalist has room to accept guaranteed gains for their own over imposing some degree of risk on the global population. It's true that the level of risk imposed must pass some threshold to be significant enough to become impermissible to impose. I contend that the new variants that have actually emerged, and the increased global threat they have posed, is evidence enough that we ought to take actions that increase the threat of new variants of concern very seriously. Furthermore, it's worth stressing that vaccine nationalism benefits one population, but it doesn't simply increase the risk that new variants will emerge in one location, it delays a meaningful response to need in an array of locations across the globe. The longer the vaccination rate remains low at each of these locations, the more opportunities the virus has to evolve in ways deleterious to health. Finally, it's crucial to not only bear in mind the degree of risk, but the kind of risk. If a new variant of concern emerges, it poses an irreversible and permanent threat. There is no way to turn back the clock. As we have already seen, there is no containing or irradiating Sars-Cov-2. It will spread and establish itself globally despite our best efforts. New variants have required reversals of lockdown measures, caused more people to become seriously ill, and have caused many additional deaths. This has drastically increased the severity of emergency conditions and plausibly lengthened them by months, if not years. It's difficult to imagine what sort of

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<sup>69</sup> Donna Lu, 'World Better Protected against Covid If Rich Nations Donated 50% of Vaccines to Low-Income Countries', *The Guardian*, 31 January 2022, sec. Australia news, <https://www.theguardian.com/australia-news/2022/feb/01/world-better-protected-against-covid-if-rich-nations-donated-50-of-vaccines-to-low-income-countries>.

extraordinary, but local, threats a nationalist could cite to justify prioritizing the short-term needs of co-nationals in the face of such significant longer-term threats to both co-nationals and the rest of the global population.

I have argued that vaccine nationalism is impermissible because it violates basic subsistence health rights. It does this by renegeing on our duty to fulfil and our duty to respect. Moreover, renegeing on our duty to fulfil causes us to impose unacceptable levels of risk, or fail in our duty to respect, so it's no defense to claim that positive duties to fulfil are less stringent than negative duties to respect. Nor is it a defense to make the stronger claim that we are only bound by duties to respect and not by duties to fulfil. Facts about infectious disease and vaccine nationalism show that vaccine nationalism is not only bad for outsiders but for insiders too. It not only leads to violating the rights of strangers, but it is against national self-interest as well. I take it that this provides a very strong case against vaccine nationalism, especially considering that my strategy has not been to argue against nationalism, but assume its truth. This shows that even nationalists ought to abhor vaccine nationalism. I'll finish by discussing the duty to protect because this will show that the case against vaccine nationalism is multiply overdetermined. I will also make the case that given current institutional structures, some degree of vaccine nationalism might be difficult to avoid.

### **2.3.3: The Duty to Protect**

Currently, it seems clear that vaccine nationalism is rampant, and nations are failing in duties to uphold basic subsistence rights. I want to finish, however, by suggesting that even if nations were

much more compliant with COVAX and other international institutions, they would still fall short of impartially upholding basic rights. The duty to protect is our duty to enforce the duty to respect, including the creation of institutions aimed at upholding our duty to respect. That is, since duties to respect are so important, and the world is imperfect, it's insufficient if we only abide by our own duties to respect, we must also establish institutions to incentivize, promote, and make efficient their discharge by all. When it comes to COVID-19, it seems like compliance with the capable institutions we have is all that's required.

COVID-19 Vaccines Global Access (COVAX), is co-lead by the Coalition for Epidemic Preparedness Innovations (CEPI); the GAVI Alliance; and the World Health Organization (WHO).<sup>70</sup> For hundreds of millions of people, it is the best hope they have of getting access to any vaccine whatsoever. It's true that COVAX has faced many criticisms: a lack of transparency; failure to include LMICs in governance; too much deference to HICs and private organizations; lack of a democratic mandate; and over reliance on a narrow vaccine portfolio.<sup>71</sup> Hence, there are structural improvements that COVAX could engage in, but arguably these structural changes aim at warding off the unbridled self-interest of private actors and the vaccine nationalism of countries.<sup>72</sup>

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<sup>70</sup> CEPI, 'Enabling Equitable Access to COVID-19 Vaccines Summary', accessed 16 March 2022, <https://cepi.net/documents/enabling-equitable-access-to-covid-19-vaccines-summary/>; 'COVAX Explained', accessed 16 March 2022, <https://www.gavi.org/vaccineswork/covax-explained>.

<sup>71</sup> Médecins Sans Frontières, 'COVAX: A Broken Promise to the World', 21 December 2021, <https://msfaccess.org/covax-broken-promise-world>; Cf. Michel Sidibé, 'Vaccine Inequity: Ensuring Africa Is Not Left Out', Brookings, 24 January 2022, <https://www.brookings.edu/blog/africa-in-focus/2022/01/24/vaccine-inequity-ensuring-africa-is-not-left-out/>.

<sup>72</sup> Cf. Ann Danaiya Usher, 'A Beautiful Idea: How COVAX Has Fallen Short', *Lancet (London, England)* 397, no. 10292 (2021): 2322–25, [https://doi.org/10.1016/S0140-6736\(21\)01367-2](https://doi.org/10.1016/S0140-6736(21)01367-2); Médecins Sans Frontières, 'COVAX', 10.

Many of COVAX's failures are the result of rich countries failing to provide the funding, or the vaccine doses required, for COVAX to deliver on its aims.<sup>73</sup> One of the biggest setbacks to COVAX vaccine rollout was the Indian government appropriating its vaccine manufacturing capacity for its own residents.<sup>74</sup> Regardless, this still happened in the context of HIC's withholding funds and vaccines. For these reasons, COVAX missed its first deadline of delivering a billion vaccines by the end of 2021, and this shortfall was especially pronounced across African countries.<sup>75</sup> Moreover, by some estimates it is 'highly unlikely' to meet its current target of 70% immunization coverage by mid-2022.<sup>76</sup> However, it's easy to imagine a COVAX that could address these concerns. Under such conditions, we might think that if a country were to do its fair share in delivering needed resources to COVAX, then this may permit some degree of favoring its own residents with the remainder. Plausibly, countries are only duty-bound to deliver their fair share of support to the global vaccination drive. Surely, abiding by the demands of COVAX would be sufficient for a country to discharge its duties to fulfil, respect, and to protect.

There is some reason to believe, however, that compliance with these institutions still runs the risk of indulging basic rights violating nationalism. I want to make clear at the outset that COVAX does fantastic work, and an ideal institutional set-up would probably contain something very like COVAX. My only point is that the current international institutional structure, which

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<sup>73</sup> Ben Doherty, 'Australia Urged to Spend More on Covax Program amid Criticisms of "Vaccine Diplomacy"', *The Guardian*, 30 January 2022, sec. Australia news, <https://www.theguardian.com/australia-news/2022/jan/31/australia-urged-to-spend-more-on-covax-program-amid-criticisms-of-vaccine-diplomacy>; Donato Paolo Mancini, 'Cash Shortages Mean Covax Cannot Accept New Doses, Says Executive', *Financial Times*, 25 January 2022, <https://www.ft.com/content/d8506581-81a3-4cd2-bf3c-073eca9a0ae4>.

<sup>74</sup> Stephanie Findlay, Michael Peel, and Donato Paolo Mancini, 'India Blocks Vaccine Exports in Blow to Dozens of Nations', *Financial Times*, 25 March 2021, <https://www.ft.com/content/5349389c-8313-41e0-9a67-58274e24a019>; Stephanie Findlay and David Pilling, 'Indian Vaccine Maker Extends Freeze on Export of Covid Jabs', *Financial Times*, 18 May 2021, <https://www.ft.com/content/63fbb79-f657-4e6c-b190-cffd0d630593>; 'Covid-19 Vaccinations: African Nations Miss WHO Target', *BBC News*, 31 December 2021, sec. Reality Check, <https://www.bbc.com/news/56100076>.

<sup>75</sup> 'Covid-19 Vaccinations'.

<sup>76</sup> Muizz Akhtar, 'Is Covax Finally Going to Vaccinate the World?', *Vox*, 13 January 2022, <https://www.vox.com/future-perfect/22872438/covax-omicron-covid-19-vaccine-global-inequity>.

COVAX is a part, may lean toward favoring HICs at the expense of LMIC, so avoiding all vaccine nationalism requires HIC's to not only be diligent about the impact of their own actions, but the institutional context from which they act. My aim in this section is not to establish that support for current international institutional structures alone violates basic subsistence health rights. Instead, I only wish to point out the various hurdles facing a view which claims that support of current global health institutions is sufficient to discharge our duty to protect.

Global health governance, according to Jeremy Youde, comprises all the formal and informal institutions, rules, and processes which various state and non-state actors use to rise to the health challenges that require international collective action.<sup>77</sup> He discusses four major contributors to global health governance: the World Health Organization (WHO); the International Health Regulations (IHR); Development Assistance for Health (DAH); and the Bill & Melinda Gates Foundation (BMGF). I could make my argument by focusing on any one of these institutions. I will concentrate on the WHO alone as it provides a particularly rich example.

Since 1948, the WHO has been the United Nations' (UN) special agency for international health. All 194 UN member states, except Liechtenstein, have accepted its Constitution in accordance with their domestic legal procedures. The Constitution states the WHO's aim is 'the attainment by all peoples of the highest possible level of health' with a mandate to 'act as the directing and co-ordinating authority on international health work.'<sup>78</sup> Only states can join the WHO, but the Executive Board can enter into 'official relations' with non-state actors. As Youde points out, this allows for non-state actor involvement, but it does so entirely on the WHO's terms without providing procedural transparency on how it does so. In 2016, the WHO tried to address

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<sup>77</sup> Jeremy Youde, *Globalization and Health*, 1st edition (Lanham: Rowman & Littlefield Publishers, 2019), 65.

<sup>78</sup> World Health Organization, 'Constitution of the World Health Organization', 1948, 2, <https://www.who.int/about/governance/constitution>.



these transparency concerns by adopting the Framework of Engagement with Non-State Actors (FENSA). While the WHO remains the coordinating agency for international health concerns, FENSA recognizes that the WHO's policy aims can be furthered by collaborating with non-state actors. In theory, constructive collaborations toward these policy aims are surely commendable, but in practice the worry is that this enables private groups to associate with the WHO for whitewashing and use their influence for regulatory capture.<sup>79</sup>

Capture occurs when a public authority makes rules to promote special interests rather than the public interest. As Ayelet Berman points out, regulatory capture can take three different forms.<sup>80</sup> The WHO may lack its own expertise in a given area and so be vulnerable to *informational capture* (think of the tobacco industry's influence on cancer science or the oil industry's influence on climate science); insofar as certain groups are better represented in decision-making the WHO is vulnerable to *representational capture*; finally, *resources capture* may occur for many reasons e.g., a sense of loyalty to a funder or funds being given on the condition that they're earmarked for a certain purpose. However, the WHO is not just at risk of regulatory capture from private actors, but states too. After all, we may ask 'in whose public interest?' National public interest or global public interest? States may exert an outsized influence over the WHO on information distribution, decision-making, or financial contributions for their own national public interest which need not be in the global public interest.

The WHO is not a wealthy organization.<sup>81</sup> Its budget for 2020-2021 was \$5.84 billion.<sup>82</sup> That's a little less than US spending on 'casual dining furniture' in 2020; less than a third of US

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<sup>79</sup> Youde, *Globalization and Health*, 66–71.

<sup>80</sup> Ayelet Berman, 'Between Participation and Capture in International Rule-Making: The WHO Framework of Engagement with Non-State Actors', *European Journal of International Law* 32, no. 1 (2021): 228, <https://doi.org/10.1093/ejil/chab014>.

<sup>81</sup> As Youde points out, the 2018-2019 budget of \$4.42 billion is roughly the same as what Americans spend annually on Alkaline batteries. (2019, p.68)

Father's Day spending in 2021; and about the same as US spending on mobile app games in the third quarter of 2021.<sup>83</sup> Broadly, the WHO receives two types of funding: assessed contributions and voluntary contributions. Assessed contributions come from member states and is determined by factors such as population size and GDP. Pursuant with the WHO's aims, it has discretion on how it uses assessed contributions. Voluntary contributions, however, come from a broad range of actors and are earmarked for specific goals as described by the donor. A small percentage of voluntary contributions are given toward the WHO's core programming, but the vast majority is tailored toward the donor's aims, e.g., polio eradication or HIV/AIDS treatment. As a percentage of its budget, assessed contributions have declined from as high as 80%.<sup>84</sup> In recent years, they've consistently been at less than 20% of the WHO's overall funding.<sup>85</sup> A higher percentage of its budget coming from voluntary contributions results in the WHO having less control over its operations and being more beholden to the interests of its donors. Around half of voluntary contributions comes from non-state actors and the other half comes from member states.<sup>86</sup>

When its assessed contributions and voluntary contributions are combined, for instance, the US was the biggest contributor to the WHO's budget in 2018-2019. Followed by the UK; BMGF; GAVI Alliance; Germany; UN Office for the Coordination of Humanitarian Affairs; Japan; European Commission; Rotary International; National Philanthropic Trust; UN Central Emergency Response Fund; Kuwait; World Bank; Norway; China; Sweden; Canada; Republic of

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<sup>82</sup> 'Invest in WHO', accessed 8 March 2022, <https://www.who.int/about/accountability/budget>.

<sup>83</sup> 'Spending on Casual Dining Furniture U.S. 2025', Statista, accessed 8 March 2022, <https://www.statista.com/statistics/983708/consumers-spending-casual-dining-furniture-us/>; 'U.S. Father's Day Expenditure 2007-2021', Statista, accessed 8 March 2022, <https://www.statista.com/statistics/305796/father-s-day-expenditure-in-the-us/>; 'Quarterly U.S. Consumer Spending App Categories 2021', Statista, accessed 8 March 2022, <https://www.statista.com/statistics/1272175/quarterly-us-app-consumer-spending-by-category/>.

<sup>84</sup> Berman, 'Between Participation and Capture in International Rule-Making', 243.

<sup>85</sup> WHO, 'Assessed Contributions', accessed 8 March 2022, <https://www.who.int/about/funding/assessed-contributions>.

<sup>86</sup> Berman, 'Between Participation and Capture in International Rule-Making', 243.

Korea; Australia; and France.<sup>87</sup> We ought to worry about regulatory capture by private actors, and one may also worry about non-democratic philanthropic organizations having such a large influence over the WHO, but here I will focus on the possibility of large voluntary contributions gaining outsized influence for national interests. After all, with some important exceptions, the above list of major funders skews heavily toward western high-income countries. Of course, there are very good reasons why the richest nations do (and ought) to contribute the most. My claim is that we should be clear-eyed about the associated risks and consider mitigating strategies.

Perhaps the best illustration of how the WHO may be influenced by its public and private donors was in 2006 when the Indonesian minister of Health, Siti Fadilah Supari, invoking ‘viral sovereignty’.<sup>88</sup> To understand the viral sovereignty case, we need some context.

The first recorded case of H5N1 influenza, also known as ‘bird flu’, infecting humans was in 1997 in Hong Kong, where 18 people were infected and 6 died. The next known human case was in 2003, in China, where 3 people were infected and 2 died. In the ensuing years many millions of birds died due to H5N1 or were killed due to worries about its spread. Still, it spread all over Asia and it reached Europe, Africa, and the Middle East. More people died too, and several prestigious individuals and institutions projected disastrous outcomes. According to Youde, a pre-presidential Obama partnered with another senator in 2005 to warn that an H5N1 pandemic would ‘kill millions, destabilize Southeast Asia, and undermine governments.’<sup>89</sup> The British Civil Contingency Secretariat called the H5N1 threat as serious as terrorism. In 2004, WHO officials estimated that 2-7.4 million people could die of H5N1. After being criticized for

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<sup>87</sup> ‘WHO Results Report 2018-2019 - Driving Impact in Every Country’, accessed 8 March 2022, <https://www.who.int/about/accountability/results/2018-2019>.

<sup>88</sup> Youde, *Globalization and Health* Chapter 5.

<sup>89</sup> Youde, 123.

being too conservative, the WHO altered the upper range to 50 million and claimed that 7 million deaths was the ‘best case scenario.’<sup>90</sup> There was clearly a lot of fear around what H5N1 might do.

Politically, the process that H5N1 was undergoing is called ‘securitization.’ The securitization of global health refers to how some health issues are framed. It makes a difference, for instance, if something is framed as a humanitarian crisis, a legal issue, or a threat to national and international security.<sup>91</sup> If policymakers convince others that a health issue is a security issue, then this elicits different reactions. It’s likely to raise the prominence of the issue and intensify the response ‘because it can turn a disease on the other side of the world into a security threat for faraway countries—or for the world as a whole.’<sup>92</sup> The securitization of H5N1, in particular, encouraged states to hoard vaccines and treatments; alters the actors involved in planning and response; and caused states to pay a lot more attention to the Global Influenza Surveillance Network (GISN).<sup>93</sup>

The WHO created GISN in 1952 to monitor global influenza strains in human populations.<sup>94</sup> It relies on member states to share influenza strains with various Collaborating Centers around the world. This is particularly important for early identification of new strains with pandemic potential. There’s no legal backing to enforce the GISN, but since all states benefit from pandemic preparedness, they all willingly share samples.

Indonesia’s first cases of H5N1 were in 2005 when 25 people were infected and 13 died. In 2006 there were another 55 cases and 45 deaths. Globally, the virus’s spread was limited

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<sup>90</sup> Youde, 123.

<sup>91</sup> e.g., Aina Ojonugwa and THEWILL, ‘Investing In Health Is Investing In National Security – Adesina Tells African Leaders’, 9 February 2022, <https://thewillnigeria.com/news/investing-in-health-is-investing-in-national-security-adesina-tells-african-leaders/>.

<sup>92</sup> Youde, *Globalization and Health*, 124.

<sup>93</sup> Youde, 124–25.

<sup>94</sup> Since 2011, the GISN has been called the Global Influenza Surveillance and Response System (GISRS), but its function remains the same (Youde, 2020, p.115)

because there was no human-to-human transfer. All infections were due to close contact with chickens. There was grave concern, however, that the virus was mutating. In Indonesia, in May 2006, the WHO identified a family cluster who all died of H5N1 in quick succession. This led to worries of human-to-human transmission, but this couldn't be determined by epidemiological data alone, so the WHO requested virus samples from Indonesia.

It's in this context that Supari invoked 'viral sovereignty' and declined to share the samples. She claimed the samples were part of Indonesia's biological heritage and used the 1992 Convention on Biological Diversity, which states that countries have a right to determine access to their biological resources, to make her case. It's easy to see her actions as endangering the world for the sake of personal or national self-interest. After all, it would likely have personal consequences for Supari as Minister for Health, as well as national consequences, if Indonesia was identified as the epicenter of a new pandemic. Supari's stated justifications were quite different. First, she claimed the WHO and GISN presented the results of sample analysis at various international meetings without the permission or involvement of Indonesia. This, she claimed, was unethical and contravened the WHO's own guidelines. Second, she claimed the WHO violated its own guidelines around intellectual property rights (IPR) and undermined trust through seeking patents on modified H5N1 samples that GISN had obtained from Indonesia. Third, she claimed that GISN violated the trust of Indonesia and other LMIC's by maintaining a system that only benefited Western states and denied LMIC's the same access. Fourth, the WHO was already sharing previous Indonesian samples with an Australian pharmaceutical company, Commonwealth Serum Laboratories, which intended to make a patented H5N1 vaccine. She argued this was also against WHO standards, and that it was unfair that a private Western company would profit from Indonesia's samples when Indonesians wouldn't receive, and couldn't afford, any vaccine that might result. Instead of sharing the virus samples with GISN,

Supari said she would share them with two Indonesian institutions for identification and she announced that Indonesia was in talks with a US-based pharmaceutical company, Baxter Healthcare, who would let Indonesia retain IPR and ensure access to any vaccines that result.

It's easy to initially read Supari's actions as objectionable nationalism, but it can also be seen as a criticism, and response to, an institutional context of nationalism – that favors the interests of rich western nations and certain pharmaceuticals – created by the institutions of global health governance. GISN is an instrument of the WHO that's ostensibly for the global public good of health. However, practices like the WHO's patent attempt, and its talks with a private pharmaceutical company to develop a vaccine with exclusive access, belies the WHO's possible regulatory capture by HIC's, and private pharmaceutical companies. The securitization of H5N1 is a potential a mark of this bias as well as an opportunity for Indonesia, on behalf of all LMIC's, to try to regain some control.

The securitization of global health tends to favor HIC's because it focuses primarily on infectious disease threats, which – however inaccurate the perception – are seen as emerging from LMIC's with the possibility of infiltrating HIC's to attack their populations. This focus is not only at the expense of non-communicable diseases, but communicable diseases, like malaria, which aren't seen as threatening to rich, western nations. Smallpox illustrates this point well. The US eradicated smallpox from within its borders, so stopped vaccinating its population. It was only after a traveler brought smallpox back to New York, and the following panicked snap vaccination of millions, that the US and other HIC's realized that purely protecting their own wasn't enough. The virus remained a threat to Americans wherever in the world it persisted, so – the eventually successful – global eradication of smallpox began. The securitization of health continues this pattern of targeting diseases that are viewed as threats to HICs, at the expense of diseases that compose the largest global health burden.

As Supari's viral sovereignty case illustrates, the securitization of health also provides an opportunity for LMIC's to push back. The increased threat profile of H5N1 made the Indonesian samples more valuable. The fear of H5N1 permitted Supari to use access to the samples as political leverage to instigate change. Understood as providing a global public good, the GISN relies on voluntary participation to achieve its ends, but if those ends skew toward certain groups, those left out are incentivized to withdraw cooperation.

One may argue that it is reckless for Supari to threaten the success of achieving the good of global public health. However, it's worth noting that even during the height of the viral sovereignty case, Indonesia continued to report to the WHO about human infections, permitted other WHO virus sharing collaborations to continue, and never interrupted its sharing of H5N1 virus samples from chickens.<sup>95</sup> Moreover, recall that Supari also pledged to send the contested samples to Indonesian institutions and began a favorable bilateral deal with a US pharmaceutical, so it could be claimed that she aimed to minimize any potential global threat as well as obtain a deal favorable to LMIC's.

It seems like Supari's actions had some success. A new Pandemic Influenza Preparedness Framework (PIPF) was unveiled in 2011. It addressed 'questions of multijurisdictional surveillance and benefit sharing' and 'inequities around access to needed vaccines.'<sup>96</sup> Youde lists four changes. First, it changed the name of GISN to the Global Influenza Surveillance and Response System (GISRS). Second, member states agreed to virus sharing consistent with new standard material transfer agreements (SMTA), and GISRS committed to sharing data, analyses, and trackability information with labs *and* originating states. Third, candidate vaccines must be shared with manufacturers and member-states that requested them. It would aid collaboration

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<sup>95</sup> Youde, *Globalization and Health*, 122.

<sup>96</sup> Youde, 130.

between the Global North and the Global South, vaccines were directed to be stockpiled, and some proportion earmarked for LMIC's. Fourth, it created two SMTA's, which governed virus sharing between member states and laboratories, and other organizations outside GISRS, like vaccine manufacturers. This meant that private companies that received samples were required to make financial and/or vaccine contributions, which total half of GISRS's annual operational budget. Companies also agreed to other commitments like donating a percentage of their vaccine production to the WHO; granting licenses to generic pharmaceutical manufacturers; and reserving anti-viral output for LMIC's at reduced prices. This leads Youde to claim that 'Supari and the Indonesian government can rightly take credit for pushing the global community to negotiate the agreement which created the PIPF.'<sup>97</sup>

Hence, the viral sovereignty case shows how full compliance with the institutions of global health governance isn't always enough, and how their reform can require resistance and further action. Importantly, it shows how compliance with the most well-meaning of institutions can inadvertently prop up global institutional structures that bias nationalistic concerns, and thus it shows just how vigilant international actors ought to be to protect against such measures. This, of course, doesn't show that COVAX is biased in a similar way, but it shows the relevant concerns that must be addressed before full compliance with such institutions can be deemed an adequate discharge of our duty to protect.<sup>98</sup>

Moreover, it highlights further, perhaps overlooked, dangers of COVID-19 vaccine nationalism. After all, if LMIC's perceive that the institutions of global health governance are biased against them, then what's to stop them resisting collaborative measures against COVID-19? The securitization of health shows how HIC's rely on LMIC's to cooperate for their own

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<sup>97</sup> Youde, 131.

<sup>98</sup> For the case that COVAX is similarly biased see Médecins Sans Frontières, 'COVAX'; and Usher, 'A Beautiful Idea'.



safety. Imagine a situation where a LMIC, in desperate need of vaccines, refuses to share data regarding a new variant of concern with the WHO. I'm not claiming that they would be justified in doing so, but insofar as LMIC's have legitimate grievances, and HIC's engage in vaccine nationalism, then HIC's are at least partly responsible for further endangering global public health. The drive for global public health requires cooperation and HICs endanger this goal by withdrawing cooperation in favor of unilateral self-interest. It would be no surprise if LMICs respond in kind.

## **2.4 Conclusion**

Permissible nationalism can never happen at the expense of the basic rights of others. COVID-19 vaccine nationalism violates our positive duties to aid those in LMICs. Furthermore, failing to discharge our positive duties toward LMICs violates our negative duty not to needlessly prolong and deepen the severity of the pandemic. Together these provide very strong reasons against COVID-19 vaccine nationalism. Finally, vaccine nationalism is multiply overdetermined and protecting against it requires diligence. Even if a country would fully comply with current international institutions pertaining to vaccine distribution, this is not enough if support of those institutions tends to burden LMIC's in ways that focus the benefits on rich countries.

## Chapter 3: Eco-sabotage as Defensive Activism

### 3.1: Introduction

Founded in 1977, the Sea Shepherd Conservation Society (SSCS) has sabotaged many whaling expeditions, resulting in some minor injuries but no deaths. At sea, SSCS have damaged propellers with entangling lines, thrown butyric acid on deck (a product of rancid butter, it's a nauseating skin and eye irritant), and rammed ships.<sup>99</sup> In port they have scuttled (empty) whaling ships and sunk them using limpet mines. They claim responsibility for sinking at least 10 whaling ships and causing millions of dollars of damage.<sup>100</sup> Their tactics are effective. Japan's whalers, alone, admit to many hundreds' fewer whales caught year on year because of SSCS's activities and they withdrew from Antarctic waters entirely because of Sea Shepherd's efforts.

The 1,172-mile-long Dakota Access Pipeline (DAPL) currently transports 750,000 barrels of oil a day and aims to increase capacity to 1.1 million. Proponents claim it is the 'safest and most efficient' way to transport crude oil.<sup>101</sup> Opponents protest that oil extraction and use, especially at this scale, emits massive amounts of environmentally destructive greenhouse gases (GHG), pipe leaks and bursts threaten the water supply and broader environmental disaster, and indigenous groups object to the desecration of culturally important land.

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<sup>99</sup> Raffi Khatchadourian, 'Neptune's Navy', *New Yorker*, 2007, <https://www.newyorker.com/magazine/2007/11/05/neptunes-navy>.

<sup>100</sup> The Telegraph Media Group, 'Paul Watson: Sea Shepherd Eco-Warrior Fighting to Stop Whaling and Seal Hunts', *The Telegraph*, 17 April 2009, <https://www.telegraph.co.uk/news/earth/5166346/Paul-Watson-Sea-Shepherd-eco-warrior-fighting-to-stop-whaling-and-seal-hunts.html>.

<sup>101</sup> 'Dakota Access Pipeline Facts', accessed 20 September 2021, <https://www.dapipelinefacts.com/>.

On July 24th 2017, Jessica Reznicek and Ruby Montoya claimed responsibility for burning \$2.8 million of DAPL's construction machinery, and using oxyacetylene torches and gasoline-soaked rags on the pipeline itself. 'Some may view these actions as violent, but be not mistaken.' They claimed. 'We acted from our hearts and never threatened human life nor personal property.'<sup>102</sup> According to Stop Fossil Fuels, Reznicek and Montoya caused around \$6 million in damages and delayed oil flow for 2 months. Reznicek has been sentenced to 8 years in prison. Montoya awaits sentencing.

Eco-sabotage is always illegal, commonly involves property destruction, and aims to protect animals or the environment.<sup>103</sup> I will assume that eco-sabotage is prima facie morally impermissible. However, just as property destruction is prima facie impermissible, yet destroying an attacker's weapon in self- or other-defense is permissible, I will argue that eco-sabotage can be permissible as an act of defense. This is not just an analogy or metaphor. I mean to argue that eco-sabotage can actually be a form of defense, and this can provide grounds for its moral and political justification. Not all acts of eco-sabotage are justified, and perhaps not all justified acts of eco-sabotage are justified because they are acts of defense, but I aim to show that – pace critics – defensive theories of eco-sabotage are morally and politically sensible, so need not only be the purview of extremists, and that defensive theories can provide a more appealing justification than rival theories.

Permissible eco-sabotage challenges the idea that a just society can only be maintained by adherence to a strict form of pacifism, that property rights have equal priority alongside other

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<sup>102</sup> 'Statement of Jessica Reznicek & Ruby Montoya on DAPL 7-24-17 « Bill Quigley', accessed 20 September 2021, <https://billquigley.wordpress.com/2017/07/25/statement-of-jessica-reznicek-ruby-montoya-on-dapl-7-24-17/>.

<sup>103</sup> Sabotage denotes two things. On the one hand, it is property damage or destruction that thwarts or obstructs some plan of action. On the other, it is to thwart or obstruct a plan of action that doesn't necessarily involve property damage or destruction. Primarily, I will concentrate on eco-sabotage involving property destruction because if it is justified, then presumably eco-sabotage without property destruction is justified too.

important rights, and it raises difficult questions regarding the boundary between bypassing deliberative democratic ideals to impose one's view on others and rightfully holding society to account for moral transgressions. Furthermore, whenever political property destruction makes headlines, heated debates over whether certain events are riots, protests, or something else ensue. Getting clear about the limits of permissible activism may help us gain clarity on these issues and, by implication, what a healthy democracy looks like. I have two aims. First, frame eco-sabotage as defense using just war theory. Second, argue that my version of defensive eco-sabotage is more justified than rival theories.

If permissible, eco-sabotage is an illegal yet morally permissible act, is eco-sabotage a form of civil disobedience? According to Rawls, civil disobedience occupies a space between conscientious objection and revolt. The former is illegality based on one's private morality and the latter is an outright rejection of government. Civil disobedients, by contrast, appeal to a public sense of justice. By publicly announcing their intentions and willingly submitting to arrest, they draw attention to the injustice of the law they reject. For Rawls and others, civil disobedience is an illegal, yet public, nonviolent, and conscientious act done with the aim of changing the law.<sup>104</sup> Moreover, it is an act of last resort. Only after all legal means have been exhausted can civil disobedience become an option and there are no further actions, short of revolt.

If eco-sabotage is permissible, it challenges Rawlsian civil disobedience. Eco-sabotage goes beyond civil disobedience because it is violent (if only toward inanimate objects).<sup>105</sup> Furthermore, it is often clandestine, not public. In many cases, eco-saboteurs would thwart their own aims by declaring their acts in advance. So, if permissible eco-sabotage is illegal action that

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<sup>104</sup> Rawls, *A Theory of Justice*; Hugo A. Bedau, 'On Civil Disobedience', *The Journal of Philosophy* 58, no. 21 (1961): 653–65.

<sup>105</sup> John Morreall, 'The Justifiability of Violent Civil Disobedience', *Canadian Journal of Philosophy* 6, no. 1 (1976): 35–47, <https://doi.org/10.1080/00455091.1976.10716975>.

appeals to the public sense of justice, it seems like civil disobedience but undermines the Rawlsian definition. If it's permissible illegality that isn't civil disobedience, then it still undermines a Rawlsian definition of civil disobedience by replacing it as an act of last resort.

As a violent act that bypasses legal means of dispute resolution, eco-sabotage may seem like terrorism. The US government, for instance, unequivocally classifies eco-sabotage as terrorism. Whether or not one thinks eco-sabotage (or even terrorism) is permissible, this position is problematic because insofar as eco-saboteurs only target inanimate objects, this puts them in a morally different category from those that target persons.<sup>106</sup> Many complain that lumping these groups under one banner both cheapens the charge of terrorism and is strategically counterproductive in combating extremism. One may think damaging propellers and burning holes in pipelines is morally impermissible, but the comparison to, say, bombing innocent civilians is gratuitous.<sup>107</sup> Lacking nuance here has serious implications since charges of terrorism permit a much more serious invasion of civil liberties. Not only does this violate the rights of environmental activists, but can plausibly lead to more extremism, not less, both due to indignance against an overblown invasion of civil liberties, and the concern that committed

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<sup>106</sup> For permissible terrorism see Ned Hettinger, 'Lawbreaking and Ecoterrorism', in *The Routledge Companion to Environmental Ethics*, ed. Benjamin Hale, Andrew Light, and Lydia Lawhon (New York: Routledge, 2022); Virginia Held, *How Terrorism Is Wrong: Morality and Political Violence*, Reprint edition (Oxford: Oxford University Press, 2011).

<sup>107</sup> Steve Vanderheiden, 'Eco-Terrorism or Justified Resistance? Radical Environmentalism and the "War on Terror"', *Politics & Society* 33, no. 3 (1 September 2005): 425–47, <https://doi.org/10.1177/0032329205278462>; Steve Vanderheiden, 'Radical Environmentalism in an Age of Antiterrorism', *Environmental Politics* 17, no. 2 (2008): 299–318, <https://doi.org/10.1080/09644010801936248>; Kirsten Christiansen, 'When Radical Becomes Terrorist: Law Enforcement and Eco-Sabotage', in *A New Understanding of Terrorism: Case Studies, Trajectories and Lessons Learned*, ed. M.R. Haberfeld and Agostino Hassell (New York, NY: Springer US, 2009), 87–98, [https://doi.org/10.1007/978-1-4419-0115-6\\_6](https://doi.org/10.1007/978-1-4419-0115-6_6); Steve Cooke, 'Animal Rights and Environmental Terrorism', *Contemporary Voices: St Andrews Journal of International Relations* 4, no. 2 (2013), <https://doi.org/10.15664/jtr.532>; David Thomas Sumner and Lisa M. Weidman, 'Eco-Terrorism or Eco-Tage: An Argument for the Proper Frame', *ISLE: Interdisciplinary Studies in Literature and Environment* 20, no. 4 (2013): 855–76, <https://doi.org/10.1093/isle/ist086>.

activists may decide to commit a crime befitting of their likely punishment. I will elaborate on the differences between permissible eco-sabotage and terrorism further in what follows.

I will divide the eco-sabotage literature into two camps. On the one hand, there are broadly consequentialist views. Michael Martin, for instance, writes that ‘there is no reason to suppose that some acts of ecosabotage could not be justified on consequentialist grounds, but I have concluded that advocates ... have not provided a full consequentialist justification of its use in concrete cases.’<sup>108</sup> This is primarily because nonviolent acts of what Martin calls ‘conscientious wrongdoing’, such as civil disobedience, ‘also cost the government and industry a large amount of money, and have publicity value.’<sup>109</sup> For Martin, eco-sabotage can be justified in principle, but in practice it falters because similar financial attrition can be achieved non-violently without threatening society’s perception of environmentalism.<sup>110</sup> Thomas Young broadly agrees with this position.<sup>111</sup> I agree that non-violent means should always be preferred, but since I argue for eco-sabotage as a form of defense, its justification primarily hangs on the preservation of some value, rather than public perception, or its effectiveness as a strategy of financial attrition. It is unreasonable to make all justified activism beholden to public opinion. We often honor past activists for going against the grain, resisting popular disapproval, and doing the right thing in the

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<sup>108</sup> Michael Martin, ‘Ecosabotage and Civil Disobedience’, *Environmental Ethics* 12, no. 4 (1990): 310, <https://doi.org/10.5840/enviroethics199012426>.

<sup>109</sup> Martin, 309.

<sup>110</sup> Interestingly, there is some evidence that public perception of eco-sabotage is conditional on the successes of environmental parties in democratic politics. If environmental parties make political gains, then eco-sabotage is viewed poorly, but if environmental parties fail to make political gains, then eco-sabotage is viewed more favorably. (Farrer and Klein, ‘How Radical Environmental Sabotage Impacts US Elections’; Farrer and Klein, ‘The Political Roots of Domestic Environmental Sabotage’).

<sup>111</sup> T. Young, ‘The Morality of Ecosabotage’, *Environmental Values* 10, no. 3 (2001): 385–93, <https://doi.org/10.3197/096327101129340886>.

face of an unjust status quo.<sup>112</sup> Our best theory ought to take stock of that fact and have the resources to justify unpopular acts.

On the other hand, there are defensive views. There are good reasons to be skeptical of defensive views.<sup>113</sup> This skepticism can take different forms. For instance, Derek Turner reconstructs an argument for a defensive view only to show that it's invalid and Federico Zuolo concludes that Tom Regan's argument for pacificism can be interpreted as a defensive view with a justificatory bar that can never be met.<sup>114</sup> I will focus on addressing the sort of skepticism that's best expressed by Steve Vanderheiden. His nuanced account of justified eco-sabotage also takes inspiration from just war theory even though he distances himself from a defensive position. He claims that eco-sabotage's primary strategies are financial attrition, economic disincentive, and gaining political capital, yet it is only justified if 'nothing less' would 'avert a serious wrong'.<sup>115</sup> This could be interpreted as providing a defensive view, but Vanderheiden is explicit that 'the rhetoric of defensive warfare is unhelpful' and he argues that likening eco-sabotage to self-defense is misguided.<sup>116</sup> This is because it comes with moral and pragmatic risks, such as harming persons, and alienating political allies. His worries are well founded. Because defense provides an exception to the prohibition of violence, nefarious and well-meaning actors use the rhetoric of defense to rationalize serious harm and killing of persons. Terrorist groups such as Individualities

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<sup>112</sup> Martin Luther Jr. King, 'Letter from a Birmingham Jail [King, Jr.]', 1963, [https://www.africa.upenn.edu/Articles\\_Gen/Letter\\_Birmingham.html](https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html); Mahatma Gandhi, 'Non-Violence', in *Civil Disobedience and Violence*, ed. J. G. Murphy (Wadsworth Publishing Company, 1971).

<sup>113</sup> Vanderheiden, 'Eco-Terrorism or Justified Resistance?'; Vanderheiden, 'Radical Environmentalism in an Age of Antiterrorism'; Derek D. Turner, 'Monkeywrenching, Perverse Incentives and Ecodefence', *Environmental Values* 15, no. 2 (2006): 213–32, <https://doi.org/10.3197/096327106776678870>.

<sup>114</sup> Turner, 'Monkeywrenching, Perverse Incentives and Ecodefence'; Federico Zuolo, 'Almost like Waging War: Tom Regan and the Conditions for Using Violence for the Sake of Animals The Respect Extended to Animals: Studies in Honor and in Memory of Tom Regan: Studies and Research Contributions', *Relations: Beyond Anthropocentrism* 7, no. 1–2 (2019): 77–92–94.

<sup>115</sup> Vanderheiden, 'Eco-Terrorism or Justified Resistance?', 441.

<sup>116</sup> Vanderheiden, 444; Vanderheiden, 'Radical Environmentalism in an Age of Antiterrorism', 313.

Toward the Savagery (ITS) have killed at least 37 people, supposedly in defense of wilderness.<sup>117</sup> Individuals like Ted Kaczynski, the Unabomber, used green politics in a similar way.

Academics are also guilty of rationalizing murder.<sup>118</sup> Lisa Kemmerer uses just war theory to develop a defensive view claiming '[w]arrior activists are engaged in an asymmetrical war of humanitarian intervention.'<sup>119</sup> 'Most U.S. citizens' Kemmerer claims 'are abusers and exploiters, destroyers and enablers who consume large quantities of flesh and support research on defenseless animals.'<sup>120</sup> According to Kemmerer, this makes most U.S. citizens legitimate targets of war, and while such 'tactics are likely to lead to serious injury or loss of life ... such means seem reasonable, expected, legitimate – even morally necessary in the realms of humanitarian intervention.'<sup>121</sup> Hence, I share Vanderheiden's concern that the rhetoric of defense may be coopted to rationalize morally abhorrent acts, but I argue that the tenets of just war theory actually provide the constraints that show why targeting property is permissible while targeting persons is not.

My strategy is the following. Taking inspiration from the principles of just war, which can be understood as principles that describe a form of defense, I will outline the conceptual space that different sorts of theories of defensive activism<sup>122</sup> may occupy.<sup>123</sup> In particular, I will individuate four different grounds of eco-sabotage by the value that it aims to protect. I propose

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<sup>117</sup> Paola Spadaro, 'Climate Change, Environmental Terrorism, Eco-Terrorism and Emerging Threats', *Journal of Strategic Security* 13, no. 4 (2020): 67, <https://doi.org/10.5038/1944-0472.13.4.1863>.

<sup>118</sup> In effect, Kemmerer endorses the first horn of the multiple inappropriate targets problem described by Hadley (2009). As I'll argue, my view avoids the dilemma by rejecting animal rights as a just cause for defensive activism through requiring that justified defensive activism must pass a personal and a political justificatory standard.

<sup>119</sup> Lisa Kemmerer, 'Just War and Warrior Activists', *Green Theory and Praxis* 4, no. 2 (2008): 39.

<sup>120</sup> Kemmerer, 46.

<sup>121</sup> Kemmerer, 42.

<sup>122</sup> As far as I can tell, Paola Andrea Spadaro (2020) is the first to use the phrase 'defensive activism', but she wasn't using it to describe a theory.

<sup>123</sup> Cf. Mark Rowlands, *Animals Like Us* (London: Verso, 2002); John Hadley, 'Animal Rights and Self-Defense Theory', *The Journal of Value Inquiry* 43, no. 2 (2009): 165–77, <https://doi.org/10.1007/s10790-009-9149-9>.



that threats to these values provide the *just cause* for property rights violations and therefore purportedly justified coercion.

I will argue for numerous conditions that eco-sabotage must meet but two, sometimes cross-cutting, standards are worth foreshadowing here.<sup>124</sup> On the one hand, eco-sabotage must pass a public justification because privately justified illegal acts are objectionably coercive toward democratic society; on the other hand, it must have a reasonable chance of success because futile defense is no defense at all. Defensive activism grounded in animal rights may have a reasonable chance of success, for instance, but I argue it does not pass a public justification, so it is impermissible. Defensive activism grounded in protecting persons from the dangers of climate change, however, can easily pass public justification because it can be uncontroversially grounded in human rights, but it struggles with showing that it has a reasonable chance of success because the problem of climate change is vast and almost any thwarted act of pollution pales in comparison. Finally, defensive activism that is either grounded in preventing an extinction or preventing suffering falls somewhere between these two extremes. Neither does particularly well or particularly badly at either a reasonable chance of success or a public justification. To understand these claims properly, however, I must develop my just war framing, and the four just causes.

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<sup>124</sup> Another way to cash out these cross-cutting justifications is by thinking about the imminent threats that can partially ground defensive acts and the long-term strategizing required by public-political action. Rowlands, 2002, pp. 184-187 describes these activities as conceptually distinct. My view challenges this approach by arguing that defensive acts can be a component of longer-term public-political action. I argue, for instance, that defensive acts can be used to change the law, promote deliberation by delaying hasty decisions, and be used to rally support for the cause. I agree with Rowlands that violent, defensive acts can be distinct from symbolic acts, but I argue that some political acts gain *extra* symbolic value because they are defending life and can be justified on those grounds independently.

## 3.2: Eco-sabotage and Just War

The conditions of just war theory can describe justified defensive action.<sup>125</sup> This tradition has the resources to justify eco-sabotage without slipping down the slope to rationalize serious harm and murder. I will focus on the conditions of *just cause*; *proportionality*; *necessity*; *discrimination*; and (in §3.2) *reasonable chance of success*.

Another important factor is that just war theory seeks to describe the conditions that justify a state of war (*jus ad bellum*) and the conditions that justify conduct in war (*jus in bello*). I will argue that some acts of eco-sabotage may only be justifiable as part of a broader environmental strategy, but fitting into a long-term plan is not the same as being justified under the banner of war. Furthermore, in just war, there is debate over whether the *jus ad bellum* and *jus in bello* conditions can be satisfied separately. The sets of conditions that I will describe as inspired by just war theory cannot be satisfied separately (there is no permissible act of eco-sabotage without just cause, for instance). For these reasons, my account will not make use of this distinction.

### 3.2.1: Just Cause

Just war and justified eco-sabotage both require just cause. Eco-sabotage is doubly *prima facie* wrong because, as I will assume, both property destruction and breaking the law are *prima facie* wrong. Without these assumptions, my justificatory burden is only made lighter. Which reasons

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<sup>125</sup> Cf. David Luban, 'War as Punishment', *Philosophy & Public Affairs* 39, no. 4 (2011): 299–330.

could provide just cause for eco-sabotage and make property destruction *ultima facie* permissible or even required? I will discuss four possibilities: eco-sabotage in defense of rights; in defense of species; defense against suffering; and defense against climate change.<sup>126</sup> For now, I'm proposing these as possible just causes. I will assess the relative merits of each later.

First, eco-sabotage as defense of rights. This could include non-human-animal rights or animate object rights, but I will only discuss animal rights. Threat of a rights violation can provide just cause for defensive action. Most obviously, persons enjoy various rights that can justify defensive killing, defensive bodily harm, or defensive property destruction. For instance, a right to life, bodily integrity, property rights, etc., may each justify various defensive actions that are normally impermissible. If you pose an imminent threat to my life, then killing you may be a permissible response. Sea Shepherd's anti-whaling activities, for instance, could be interpreted as protecting whales' right to life. If you pose an imminent threat to my property, I may justifiably thwart your action by, say, destroying your property first. For now, I only wish to point out that it's possible that if rights are actually threatened, then this could justify eco-sabotage.

Second, species-defense. Extinction due to human activity is presumptively morally wrong. It's difficult to explain why there is a presumption against classes of individuals no longer existing. Classes don't seem like the sort of thing that can have interests, for instance. Still, assuming extinction is forever, the loss of a species is irreversible, so some humility is recommended. Permitting extinction decides for current and all future generations. Even if we think the loss of the species is acceptable now, we can't be certain about the benefits the species may provide to us, or to the ecosystem more broadly. At a bare minimum, decisions to permit extinction shouldn't be flippant, and easily available alternatives should be pursued if possible.

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<sup>126</sup> These are just labels and are not meant to refer to the value being defended. As I will elaborate, it's not 'a climate change' that's being defended, for example, but eco-systems, animals, or people.

Without this minimal level of consideration, the presumptive value of species isn't given sufficient respect, so the eco-saboteur has a reason to intervene. SSCS plausibly engages in species defense when they sabotage whaling expeditions.

Third, some will hold that causing any degree of unnecessary suffering is unconscionable whether it's in non-human animals or humans.<sup>127</sup> Difficulties arise in what counts as necessary, what counts as suffering, and what sort of creatures can experience suffering, but there are many easy cases too. Operating on great apes without anesthetic, cruel and needlessly painful slaughter techniques, or other shockingly torturous acts provide reason to ground defensive eco-sabotage in protection against suffering. The ALF, for instance, broke into the University of Pennsylvania's head injury lab, destroyed property, and exposed the deplorable treatment of baboons. Sea Shepherd targets whalers to stop practices such as harpooning which can lead to a prolonged and torturous death.

Fourth, defense against climate change. The reason that climate change is bad may be parasitic on one of the just causes already discussed. Alternatively, it may be bad because of rights violations, suffering, death, or threat of extinction in current or future humans, so it deserves independent categorization.<sup>128</sup> Hence, even if you are skeptical about the other putative just causes, insofar as climate change can be directly tied to wronging humans, the case for eco-sabotage can still be made.

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<sup>127</sup> Ivar Hardman (pseudonym), 'In Defense of Direct Action', *Controversial Ideas* 1, no. 1 (2021), <https://doi.org/10.35995/jci01010002>.

<sup>128</sup> Jeff McMahan, 'Climate Change, War, and the Non-Identity Problem', *Journal of Moral Philosophy* 18, no. 3 (2020): 211–38, <https://doi.org/10.1163/17455243-1706A002>; Alan Carter, 'Can We Harm Future People?', *Environmental Values* 10, no. 4 (2001): 429–54; Jasmina Nedevska, 'The Non-Identity Problem in Climate Ethics: A Restatement', *Intergenerational Justice Review* 5, no. 2 (2019), <https://doi.org/10.24357/igjr.5.2.779>.

### 3.2.2: Proportionality

Just cause alone is insufficient for just war or just sabotage. Proportionality is also required. Breaking your leg may be necessary to halt your attack, but if your attack is merely a pinch, breaking your leg seems impermissibly disproportionate. I argue that considerations of proportionality do not rule out eco-sabotage, but permissible sabotage will partly depend on comparing seemingly incommensurable values.

In just war theory, determining *jus ad bellum* proportionality is fraught. As Michael Walzer asks ‘How do we measure the value of a country’s independence against the value of defeating an aggressive regime?’<sup>129</sup> Brian Orend adds that a moment’s thought deepens and multiplies the complexity.<sup>130</sup> How do we compare casualties to loss of sovereignty? Short-term and long-term benefits? Prudential and moral values?

Analogous problems arise when considering eco-sabotage. When just cause is present, weighty moral values are at stake. On the one hand, when comparing weighty moral values and relatively minor property destruction, the calculation seems straightforward. On the other hand, here are four reasons that illustrate how sabotage can have serious consequences: souring public perception of the environmental movement may result in worse moral sacrifices; individual acts of destruction may be insignificant but taken together they may encourage property insecurity;

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<sup>129</sup> Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 5th edition (New York: Basic Books, 1977). pp. xv-xxi.

<sup>130</sup> Brian Orend, ‘Michael Walzer on Resorting to Force’, *Canadian Journal of Political Science / Revue Canadienne de Science Politique* 33, no. 3 (2000): 523–47. p. 537

nefarious actors may feel emboldened to engage in wanton sabotage; and/or authorities may point to lawlessness to justify legislation inhibiting civil liberties.<sup>131</sup>

These are all important concerns and conscientious activists ought to be sensitive to pragmatic issues and weighing costs and benefits. It is a mistake, however, to always favor the route of least resistance. Upholding moral values is often costly, yet we believe it is worth it anyway. Often activists are working against the institutional grain because the most pressing problems are structural and wide-ranging. It is due to their disruptive impact in the face of adversity that we honor those involved in principled resistance in the past. We praise the social conscience of individuals and small groups of rabble rousers who were willing to upset complacent injustice. Hence, activists must be pragmatic, but cost benefit analysis (CBA) ought not always get priority.

A defender of CBA may press that eco-sabotage is inherently wasteful and inefficiency costs lives. I agree that there is room for CBA, but we should have some humility in our calculations. First, if just cause is a rights violation, then the right means little unless we're willing to make sacrifices to uphold it. Second, if just cause is species-defense, the stakes are very high. If our calculations are wrong, no monetary amount will bring the species back. Furthermore, calculating CBA over time is highly fraught and extinction is permanent. Are we so sure about the value of a species to future generations or the eco-system more broadly? Third, if just cause is defense against suffering, are we so sure of the supposed benefits that we are willing to impose

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<sup>131</sup> Spadaro, 'Climate Change, Environmental Terrorism, Eco-Terrorism and Emerging Threats'; Alleen Brown, Will Parrish, and Alice Speri, 'TigerSwan Responded to Pipeline Vandalism by Launching Multistate Dragnet', *The Intercept*, 26 August 2017, <https://theintercept.com/2017/08/26/dapl-security-firm-tigerswan-responded-to-pipeline-vandalism-by-launching-multistate-dragnet/>; Alleen Brown, 'The Green Scare: How a Movement That Never Killed Anyone Became the FBI's No. 1 Domestic Terrorism Threat', *The Intercept*, 23 March 2019, <https://theintercept.com/2019/03/23/ecoterrorism-fbi-animal-rights/>; Farrer and Klein, 'The Political Roots of Domestic Environmental Sabotage'; Farrer and Klein, 'How Radical Environmental Sabotage Impacts US Elections'; Vanderheiden, 'Eco-Terrorism or Justified Resistance?'; Vanderheiden, 'Radical Environmentalism in an Age of Antiterrorism'.

such egregious harm? Fourth, if just cause is protection against climate change, then calculations are even more fraught. How do we calculate the threat of a catastrophic chain of events or the looming threat to current and future generations?<sup>132</sup>

Could Sea Shepherd's anti-whaling measures or Reznicek and Montoya's pipeline sabotage pass a proportionality test? Sea Shepherd may find just cause in defense of rights, species defense, or defense against suffering. Insofar as their response is relatively minor property destruction that doesn't put life at risk, then it seems likely that the proportionality condition can be met, especially when those that bear the costs are well-off nation-states as in the case of the Japanese whalers.<sup>133</sup> Reznicek and Montoya, on the other hand, could appeal to defense against climate change to justify the 6 million dollars of damages they inflicted. According to Stop Fossil Fuels 'That's less than one sixth of one percent of the \$3.78 billion pipeline budget—amounting to a rounding error, and likely reimbursed by insurance.' Put this way, the cost seems insignificant. Moreover, the costs inflicted pale in comparison to the projected environmental damages from the use and the extraction of the oil, never mind the risks of leaks and spillage.

In short, costs matter and should be taken seriously, but unwavering faith in CBA in cases of just cause for eco-sabotage should be viewed with some skepticism. All acts of eco-sabotage are destructive, and some are risky. Given that sabotage is doubly *prima facie* wrong, the onus is on the eco-saboteur to carefully assess whether the risk is too great.<sup>134</sup> I contend that

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<sup>132</sup> Henry Shue, *Climate Justice: Vulnerability and Protection*, Reprint edition (Oxford: Oxford University Press, 2016).

<sup>133</sup> An interesting edge-case is illustrated by Sea Shepherd's targeting of the Makah, an indigenous people of the Pacific Northwest Coast. It's an interesting question whether the cultural self-determination of a small and relatively poor indigenous group, that plausibly depends on whale hunting for survival, would make Sea Shepherd's intervention impermissibly disproportionate.

<sup>134</sup> Ned Hettinger, 'Environmental Disobedience', in *A Companion to Environmental Philosophy* (John Wiley & Sons, Ltd, 2001), 498–509, <https://doi.org/10.1002/9780470751664.ch36>.

this will not rule out every case of property destruction on proportionality grounds, but this condition places a stringent check on defensive activists.

### **3.2.3: Necessity**

The condition of just cause establishes that there is something of considerable value under threat. Proportionality asks whether sabotage is an overreaction, and the condition of necessity ensures that eco-sabotage is used as sparingly as possible. There are many intuitively appealing illustrations of necessity. I may have just cause to stop you cutting down a tree, and destroying your chainsaw is proportionate to the harm threatened, but property destruction is still *prima facie* wrong, so if you'd be responsive to a request to desist, then it's impermissible to destroy your property when a request is sufficient. This requirement is especially pressing in democratic society because there are many legal, non-violent avenues to stop objectionable environmental destruction. This highlights how the necessity condition makes eco-sabotage the option of last resort. Ideally, only once all other avenues have been exhausted may eco-sabotage be permissible. Thus, ideally, all legal means are exhausted before one may resort to civil disobedience and only after that may one consider eco-sabotage. This ideal picture is complicated by differing interpretations of what counts as necessary and by imminent threats which don't wait for due process. There may be no time for political processes, or contacting the authorities, before irreversible damage occurs. The necessity condition may be fulfilled because I happen to be well placed to intervene by destroying your means to provoke just cause.



Imminent threats don't exhaust animal or environmental threats, however. Many environmentally destructive development projects are planned long in advance and may be responsive to feedback or public debate. If non-violent means have a reasonable chance of success and the threat to life isn't imminent, then eco-sabotage ought to be avoided. As these alternative means are exhausted, and the threat becomes more imminent, eco-sabotage becomes closer and closer to satisfying the necessity condition.

Could Sea Shepherd's anti-whaling measures or Reznicek and Montoya's pipeline sabotage pass the necessity condition? Sea Shepherd engage in the political process and even work alongside governments on some campaigns.<sup>135</sup> Despite a moratorium on commercial whaling in 1986, Japan continued to whale under the guise of scientific research and were unresponsive to diplomatic pressure. The International Whaling Commission declared the waters of the Southern Ocean around Antarctica a sanctuary in 1994 yet Japanese whalers continued whaling endangered species in this area. In the face of an ineffective political process, and the international community's failure to enforce their own treaties, Sea Shepherd stepped in. Moreover, they only sabotage hunts and property essential to hunts, so Sea Shepherd's anti-whaling measures plausibly pass the necessity condition.

Reznicek and Montoya see themselves as eco-saboteurs of last resort: 'After having explored and exhausted all avenues of process, including attending public commentary hearings,

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<sup>135</sup> 'Sea Shepherd Partners with the Government of Ecuador to Address Conservation Needs in the Galapagos Islands', Sea Shepherd Conservation Society, 11 March 2016, <https://seashepherd.org/news/sea-shepherd-partners-with-the-government-of-ecuador-to-address-conservation-needs-in-the-galapagos-islands/>; 'Vaquita Porpoise: Operation Milagro', Sea Shepherd Conservation Society, 9 May 2019, <https://seashepherd.org/milagro/>; 'Mexican Fisherman "Dies after Attack on Sea Shepherd Conservationists"', *BBC News*, 5 January 2021, sec. Latin America & Caribbean, <https://www.bbc.com/news/world-latin-america-55540506>; 'Mexican Fisherman "Dies after Attack on Sea Shepherd Conservationists"'; Wendy Fry, 'Mexico Considers Reducing Protections for Vaquita Porpoise in Gulf of California', *San Diego Union-Tribune*, 16 March 2021, <https://www.sandiegouniontribune.com/news/border-baja-california/story/2021-03-16/mexico-vaquita-porpoise-restrictions>.

gathering signatures for valid requests for Environmental Impact Statements, participating in Civil Disobedience, hunger strikes, marches and rallies, boycotts and encampments, we saw the clear deficiencies of our government to hear the people's demands.' Taking this claim on its face, Reznicek and Montoya's action is plausibly one of last resort. Was their action necessary to preserve the value under threat? The answer encompasses whether it has a reasonable chance of success. I'll discuss this at length in §3.2.

#### **3.2.4: Discrimination**

In just war theory, the discrimination condition states that targeting non-combatants is impermissible, while targeting combatants is permissible. Distinguishing between these two groups is required to capture the idea that even in war indiscriminate killing is morally objectionable. In defensive activism the discrimination condition doesn't apply. The operative question in war is 'when human life is threatened, what is permissible to do in its defense?' In defensive activism the operative question is 'when non-human animals or the environment are threatened in a way that provokes just cause, what is permissible to do in defense?' The stakes are different, there is no war or combat in anything other than metaphor, so there are no combatants or non-combatants. This is not enough to support my claim that persons are not legitimate targets for defensive activism, however. It's still open to an objector to insist that animate non-persons are sometimes of comparable value to persons. There are at least three ways to reply to this objection. One general reply and two specific to the theory defended here.

When, if ever, is the death of a person going to be considered proportionate to animal or environmental destruction? My answer here foreshadows an objection I cover in §3.1. If you do believe that foreseeably killing someone is proportionate to the threat posed, this cannot be grounded in a thin enough conception of morality that the activist could plausibly claim to appeal to democratic society's common commitments. Any view of the commensurability of the value of human life compared to other forms, or classes, of life will be based in some highly contentious moral view, so extra-judicial acts grounded in this basis must appeal to an idiosyncratic moral view and impose it on an unwilling public.<sup>136</sup> To avoid this, we should appeal to a justificatory base that it's impermissible to reject.

The next two replies draw on proportionality and necessity. First, to bring the proportionality condition into focus, I assume that killing a person is necessary to defend just cause. Recall the four reasons that sabotage may be considered disproportionate and therefore impermissible and note how they just become stronger if we're considering taking human life: souring public perception of the environmental movement; numerous killings will likely make everyone feel terrorized; nefarious actors may feel emboldened to engage in wanton killing; and/or authorities will likely point to lawlessness to justify legislation inhibiting civil liberties. I noted that parallel considerations required serious consideration in the case of property destruction for eco-sabotage. These considerations are even more weighty when put in the context of taking human life. Moving from property destruction to the taking of human life is not just a difference in degree, but a difference in kind. It's difficult to imagine cases where taking a life would be proportionate when we consider any one of these proportionality reasons. When taken together, they are mutually sufficient to show that targeting persons is impermissible.

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<sup>136</sup> Hardman (pseudonym), 'In Defense of Direct Action'. See for an argument in support of a broad view of what common sense morality entails for animal defense.

Second, to bring the necessity condition into focus, I will assume that killing a person is proportionate to protect the life under threat. When, if ever, could killing a person be considered necessary for animal or environmental protection? I submit that it's vanishingly rare that targeting a person would ever pass the necessity condition. This is because the sort of actions that provide a defensive activist with just cause are almost always mediated by inanimate objects such that targeting the object is sufficient to protect the life under threat. Therefore, property destruction is almost always present as a preferable alternative to targeting persons, so targeting persons will almost never pass the necessity condition.

I used 'almost' a lot in the last paragraph because I admit that, however unlikely, it's conceptually possible that targeting a person may be interpreted as necessary. For instance, it's possible that a person could wantonly wring the necks of the last pair of some species, so that just cause is triggered without property mediating the attack. There are two points to raise here. First, even if targeting a person is necessary in this rare sort of case, this will not countenance targeting them for killing since killing will not pass the proportionality condition. Second, even if the targeting of a person is necessary, restraint or other lesser harms than killing are likely to be available first. Hence, there are perhaps some conceptually possible yet unrealistic scenarios where we can imagine that targeting a person would pass the necessity condition, but the killing of a person is so far from the reality of real-world defensive activism that it's a hair's breadth from being conceptually ruled out. Moreover, democracy and proportionality provide individually sufficient reasons to rule out targeting, seriously injuring, or killing persons.

Do SSCS and Reznicek and Montoya pass the requirement to not target, injure, or kill persons? Paul Watson, of Sea Shepherd, often claims that they have 'never caused a single injury

to a single person' and he has called their approach 'aggressive non-violence.'<sup>137</sup> While they have never killed anyone, there are reports of Sea Shepherd causing minor injuries, and some attacks can be interpreted as unacceptably risky, however, it's clear that they go out of their way to avoid endangering persons. Reznicek and Montoya never killed or hurt anyone, and while it could be argued that their arson attacks put emergency services at risk, their statement reiterates their commitment to 'peaceful, nonviolent direct action' and they see themselves as acting in the tradition of the pacifist Catholic Worker's Movement.<sup>138</sup>

In sum, permissible eco-sabotage as defensive activism ought to be done with just cause, proportionality, necessity, and without targeting persons. Finally, a case can be made for both SSCS and Reznicek and Montoya's actions passing these conditions.

### **3.3: Objections**

#### **3.3.1: Democratic Objection**

If someone is impermissibly endangering life, then it is permissible to sabotage their efforts. Some may complain that this is objectionably coercive. Moreover, many acts that provide just cause, and so impermissibly endanger life, are legally permissible. We can interpret these acts as being democratically sanctioned in the sense that they've passed through impartial means of

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<sup>137</sup> Luke Buckmaster, 'Sea Shepherd Captain Paul Watson: "I Call What We Do Aggressive Non-Violence"', *The Guardian*, 26 July 2019, sec. Film, <https://www.theguardian.com/film/2019/jul/26/sea-shepherd-captain-paul-watson-i-call-what-we-do-aggressive-non-violence>.

<sup>138</sup> 'Dakota Access Pipeline: Activists Face Up to 20 Years for Eco-Sabotage - Rolling Stone', accessed 19 September 2021, <https://www.rollingstone.com/culture/culture-features/dakota-access-pipeline-eco-sabotage-jessica-reznicek-ruby-montoya-1173735/>.

dispute resolution that respects everyone equally. If one ignores democratically mandated laws, then it may be objected that one forcibly imposes one's personal moral view upon the rest of society. Living in a democratic society requires participants to respect views that they disagree with and to honor the results of impartial processes that aim to fairly resolve disputes non-coercively. In a democratic state, individuals ought not bypass impartial means to resolve moral disagreement by illegally and violently stopping an individual or group from achieving their legally permissible goal.<sup>139</sup>

I'm sympathetic to this objection. The key issue is whether the value that grounds the eco-saboteur's act is one that others may not value. For instance, when basic human rights are violated, it is no defense to point to how those basic rights violations were democratically mandated. Defending basic rights may involve coercing others through property destruction, but this is permissible, if not required, by appeal to a value it is impermissible to reject. Eco-sabotage is impermissible if its justification depends upon one's idiosyncratic moral view.<sup>140</sup> Permissible eco-sabotage must go beyond one's personal moral view and appeal to society's own moral standards.<sup>141</sup> Are any of the four just causes impermissible to reject in this way?

First, just cause as defense of rights. Despite being the most superficially similar to basic human rights, I contend that a rights-based view is the most vulnerable to the charge of being objectionably coercive. If we take our practices as evidence of our values, then it's clear that there is substantive disagreement over whether animals have, e.g., a right to life.

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<sup>139</sup> Robert Young, "Monkeywrenching" and the Processes of Democracy', *Environmental Politics* 4, no. 4 (1 December 1995): 199–214, <https://doi.org/10.1080/09644019508414233>.

<sup>140</sup> J. Hadley, 'Religiosity and Public Reason: The Case of Direct Action Animal Rights Advocacy', *Res Publica* 23, no. 3 (2017): 299–312, <https://doi.org/10.1007/s11158-017-9359-0>.

<sup>141</sup> Hadley (2017) points to many examples of where activists only explicitly refer to their personal moral view. If these were the only sorts of justifications that could be offered, then the activist's acts fail to pass the public political justification being argued for in this section.

Detractors may claim that this props up an extreme moral relativism. This misunderstands the moral relevance of disagreement in this case, however. The moral value of basic human rights is undeniable; animal rights are in a different position. Not because of mere capitulation to the majority position, but because of the sorts of grounds one can appeal to when justifying violence and serious rights violations. A case can be made to persuade others to the cause of animal rights, but people may disagree. For violent, extra-judicial activism, we should seek universal grounds.

Second, eco-sabotage as defense against extinction. On the one hand, large quantities of resources are spent on saving species from extinction and campaigning has long been done on the grounds of stopping extinction. On the other hand, dozens of species go extinct every day and one million species face extinction, so extinction seems like regrettable but accepted background noise. If avoiding extinction is particularly valuable, then people have a strange way of showing it. The prevalence of extinction is a sad fact, but I don't think this necessarily points to some deep disagreement over whether extinction is something to be accepted or avoided. Instead, people's willingness to drive species to extinction is evidence of how easily overridden the presumption against extinction is for some. Pursuit of their livelihood, for instance, can be enough, especially when the species threatened is 'just' a plant, is seen as a pest or threat, or lacks aesthetic majesty. Still, extinction is permanent and has unpredictable repercussions. If we are to choose to pursue some development that will likely lead to the extinction of some species, I submit that a case always needs to be made why pursuing this development is worth it. The choice to make extinct always needs explanation and if this explanation is wanting, then the high stakes of the situation can provide broadly held reasons to engage in defensive activism.

Third, eco-sabotage as defense against suffering is on firmer ground. There are already all manner of laws protecting animals against suffering and campaigns to end various practices

that cause suffering have been successful. Moreover, there are examples of eco-sabotage aimed at ending animal suffering that have enjoyed widespread support. When the ALF broke into the University of Pennsylvania's Head Injury Lab, they not only caused millions of dollars' worth of damage, but they also exposed the unjustifiable suffering of baboons which lead to public outcry and the end of the experiment.

Fourth, of the just causes surveyed, defense against climate change is the one that is most uncontroversial as part of a universally held morality. This is because the value of basic human rights is undeniable and climate change undermines the basic human rights of current and future generations.<sup>142</sup> The non-anthropocentric case can be made for why climate change is bad, but the current objection asks whether the value that grounds a violent intervention is one that others in society may be coerced to protect. Insofar as there is a causal connection between the release of greenhouse gases, say, and the death and suffering of people, then the eco-saboteur has a strong case for resorting to property destruction in their protection.

Hence, moving from most open to denial to most difficult to deny, the values that ground just cause are animal rights, defense against extinction, defense against suffering, and defense against climate change. Even after accepting the force of this objection, however, there is still firm ground for permissible eco-sabotage, particularly if it is grounded in defense against climate change, or defense against suffering. Admittedly the case gets more difficult to defend when considering defense against extinction and I think it becomes unjustifiably coercive when based on animal rights.

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<sup>142</sup> It's true that the relative value of future generations is plausibly as controversial as the relative value of other species, but given the harms from current GHG release are plausibly felt within one human lifetime, the wrong to persons from climate change needn't wholly depend on future generations.



### 3.3.2: Futility Objection

In the previous section, I argued that the easiest route to justified eco-sabotage is as defense against climate change. Defense against climate change, however, is especially vulnerable to the futility objection. Justified defensive acts provide permissible exceptions to moral and legal restrictions partly because they are required to preserve something of considerable value. For this reason, a further requirement of engaging in defensive actions is that they have a *reasonable chance of success*. In just war, for instance, one may have just cause to go to war, and going to war would pass conditions of *jus ad bellum* proportionality and necessity, but if the aggressor has vastly superior weaponry, such that sending one's soldiers to fight would simply be to send them to slaughter, then one ought to refrain from doing so.

Which acts of eco-sabotage are likely to have a reasonable chance of success? Defense of rights and defense against suffering seem straightforward since both refer to the value of individuals. It is easy to judge whether one's action will actually save the life or stop the suffering of an animal, for instance. It's less clear, however, whether defending one individual will do much to protect a species, and the situation is much worse when it comes to defense against climate change. In the scheme of things, does the temporary destruction of part of an oil pipeline, e.g., do anything to preserve the value under threat?

A key issue here is how the value being defended is understood. I will illustrate with three examples. First, if defense hangs on stopping climate change, we get the problem just canvassed. Second, instead of taking climate change writ large as the impermissible event that must be stopped, we may consider the egregious GHG emissions that the pipeline emits instead.

This would obviously get the result that the destruction of the pipeline is necessary to achieve this result. The difficulty, of course, is to explain why the level of GHG emitted by the pipeline is impermissible. One way to do this would be to link it to climate change by calculating what some population's fair share of permissible emissions are and then showing that the pipeline's emissions are way beyond any reasonable amount. Another way to do this would be to connect the level of GHGs that comes from the operating pipeline to actual harms in current or future persons. Both routes are promising but face significant controversy. Third, the problem arises when we consider the causal efficacy of isolated acts. It should be no surprise that individual acts face causal efficacy worries in combatting a problem on the scale of climate change. It's unclear, however, why individual acts must defend the value at stake on their own. It's undeniable that tackling climate change will require long term strategizing and coordinating large groups of people. Perhaps individual acts can be defended as a necessary component of a promising long-term strategy. This could increase the causal importance of the act of sabotage.

Did Reznicek and Montoya's sabotage have a reasonable chance of success? As mentioned, we can estimate the damages they caused at around \$6 million. According to Stop Fossil Fuels 'That's less than one sixth of one percent of the \$3.78 billion pipeline budget—amounting to a rounding error, and likely reimbursed by insurance.'<sup>143</sup> Understood differently, however, they delayed pipeline completion by around two months, roughly the same delay that the entire #NoDAPL campaign achieved with thousands of people. By Stop Fossil Fuels' calculations, Reznicek and Montoya stopped 30 million barrels with 10 'person months' of effort and around \$3000.<sup>144</sup> If hindering the transport of 30 million barrels of oil can be linked to saving lives and preventing suffering, then their action was justified. It seems plausible that this

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<sup>143</sup> 'Ruby Montoya & Jessica Reznicek: DAPL Ecosaboteurs', Stop Fossil Fuels, accessed 21 September 2021, <https://stopfossilfuels.org/ecosabotage/ruby-montoya-jessica-reznicek-dapl-ecosaboteurs/>.

<sup>144</sup> I only wish to use these figures for illustrative purposes, so I won't question their veracity.

conditional can be defended; however, for the sake of argument, let's say that it's insufficient. Could pipeline sabotage be embedded in a broader strategy? The Valve Turners provide a compelling case.

In 2016, in a coordinated attack over 4 states, 5 activists from Climate Direct Action forcibly accessed and turned the emergency shut-off valves on four pipelines that carry oil into the U.S from Canada. This involved accessing the fenced off emergency shut-off valves, using bolt-cutters to unlock the valves, warning the pipe operators that they were about to shut them off, and then turning the valve to shut off the oil. It's reported that this stops the flow of up to 2.8 million barrels of oil a day.<sup>145</sup> According to Stop Fossil Fuels, relative to the #NoDAPL campaign, the Valve Turners were a much more efficient use of people and time, but nowhere near as efficient as Reznicek and Montoya. One thing that sets the Valve Turners' action apart, however, is their plan to use the necessity defense in court.

Defendants may use the necessity defense to excuse themselves from criminal charges on the grounds that the illegal action prevented a greater harm from occurring. The defense was used in the UK in 2008 by the 'Kingsnorth six' a group of activists that caused criminal damage to the Kingsnorth coal power station. They successfully argued that the continued use of coal power would cause greater damage to property around the world.<sup>146</sup>

Of the four Valve Turner cases, only the one in Minnesota was granted permission to use the necessity defense. The State prosecutor appealed, and in July 2018 the Minnesota Supreme Court ruled in the Valve Turner's favor. Their legal representation, the Civil Liberties Defense Center (CLDC), claim this created a 'state-wide binding precedent regarding the standards that

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<sup>145</sup> Nia Williams, 'Activists Disrupt Key Canada-U.S. Oil Pipelines', *Reuters*, 11 October 2016, sec. Commodities, <https://www.reuters.com/article/us-usa-canada-pipelines-idUSKCN12B26O>.

<sup>146</sup> Others have attempted to establish this precedent in the U.S. E.g., Tim DeChristopher, the 'Lobster Boat Blockade', the 'Delta 5', and Karenni Gore.

must be applied when an activist asserts the necessity defense.’<sup>147</sup> In October 2018, however, the trial judge acquitted the defendant, so the CLDC were never able to mount the necessity defense.

It’s worth noting that the Valve Turners did not destroy property (apart from chains that secured the valves) to achieve their goals. Effective eco-sabotage need not involve property destruction. However, it does show how eco-sabotage that involves property destruction could fit into a broader and more effective environmental strategy because similar delays and costs could be accrued to a pipeline operator using property destruction. The most materially costly actions, and the most effective in environmental defense, need not involve property destruction, so this makes it even more unclear why property would be viewed as sacrosanct when considering the moral permissibility of defensive activism.<sup>148</sup> If both property damage and a lack of property damage result in similar material outcomes, then why consider property damage as so much worse?

Hence, we may think that individual acts of eco-sabotage are futile in stopping climate change. We may even hold (the somewhat extreme view) that individual acts that stop significant GHG release are not causally effective in preserving life, preventing suffering, or avoiding extinction. However, it seems to me that we cannot deny that some acts of eco-sabotage are necessary components of a broader strategy of environmental preservation. To deny the possibility of the effectiveness of a broader strategy is simply

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<sup>147</sup> Charles Denson, ‘Climate Necessity Defense | Civil Liberties Defense Center’, 15 July 2020, <https://cldc.org/climate-necessity-defense/>.

<sup>148</sup> The recent cybercriminal attack on Colonial Pipeline, which provides 45% of the gas to America’s east coast, may provide inspiration to other more principled actors. It’s easy to see how cyber-attacks that result in pipeline shutdown could be used by activists. This provides another example of eco-sabotage that could be devastatingly effective even without property destruction. It remains unclear just how effective such attacks could be, however. According to the New York Times ‘Colonial Pipeline would never have had to shut down its pipeline if it had more confidence in the separation between its business network and pipeline operations.’ (Pipeline Attack Yields Urgent Lessons About U.S. Cybersecurity, May 14<sup>th</sup> 2021).

to deny the possibility of having any effect on climate change whatsoever. Some hold this level of pessimism, but not only is it far from clear that all action on the climate is futile, but this is hardly an objection specific to eco-sabotage as a morally justifiable approach.

### **3.4: Conclusion**

My aim has been to develop a just war inspired defensive theory that justifies defensive activism even in the face of some negative outcomes for the environmental movement. I also hope to have shown how defensive theories need not lead to rationalizing murder or serious harm to persons. The conscientious defensive activist can only engage in permissible eco-sabotage when she acts with just cause as constrained by necessity, proportionality, with a reasonable chance of success, and without putting life at excessive risk. Permissible eco-sabotage must pass stringent conditions, but this is preferable to being unavailable as a strategy. Extreme situations call for the availability of extreme tactics lest activists be left impotent in the face of egregious wrongs.

This places a considerable burden on eco-saboteurs to justify their acts. This is a burden they ought to bear since all acts of eco-sabotage are illegal, so there's a sense in which they all bypass impartial means of conflict resolution. Appropriately constrained eco-sabotage doesn't bypass societal norms, however, but takes them to account. I've argued that this makes eco-sabotage based on defense of animal rights unjustified. Species defense is justifiable but doesn't have as strong a case as defense against suffering or defense against climate change.

Finally, eco-sabotage must also have a reasonable chance of success since futile defense is no defense at all. This objection has little effect on eco-sabotage as defense of rights or defense

against suffering because they are both about protecting individuals. Species defense and defense against climate change, however, are more complicated to defend. I've argued that the strength of this objection is reduced by placing the act of eco-sabotage in a broader environmental strategy.

Because defense against suffering doesn't face the full brunt of either objection, it is perhaps the most justifiable form of eco-sabotage. However, defense against climate change, and to a lesser extent species defense, remain in the conscientious activist's repertoire of permissible actions.

## APPENDIX

While each of these papers can be read independently, I will finish by pointing toward some of the broader themes and the direction of future work. Each paper argues for, or takes as given, that the ultimate unit of moral consideration is the individual. While individual autonomy is connected to collective self-determination, and this provides some basis for legal and moral protections on the global stage, this cannot provide the basis for prioritizing individual autonomy above all else. At minimum, we must ensure that the basic rights of all are protected irrespective of location, and this requires a substantial commitment to global institution building and reform. The institutions of global governance are subject to regulatory capture and while this is probably unavoidable, it can be mitigated. Attending to basic rights provides the focus for what the immediate aims of global institutional reform ought to be. We ought to form global institutions to serve the basic needs of everyone, and as individuals we ought to use all democratic and legal means to achieve this aim. When the institutions egregiously work against this aim, however, then we need not feel restricted by an extreme form of pacifism. Sometimes upholding or establishing just institutions permits violently coercive acts.

The first paper gestures toward an account of the value of democracy on the grounds that it preserves a means for everyone to meaningfully complain or work for change. The second paper highlights a project of assessing the institutions of global governance by the standard of basic rights provision. The third raises several questions about the limits of democratic action and the justification of activism. What can be said

of the health of a democratic process that leads to laws that sanction environmentally destructive acts? Can a climate necessity defense be legally and/or morally justified? Can the radical arm of a political movement be justified by making the less radical arm seem more attractive? What other sorts of justification are available? These papers, I hope, provide a starting point to address these questions.



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