

## DEVOLVING POWER TO SUB-STATE GROUPS: SOME WORRIES ABOUT THE WORRIES

### *1. Liberal States and the Problem of Calls for Devolution*

We live in a world of states: a world in which the dominant form of “persisting structure” for the wielding of political power is characterized by territorially concentrated power exercised through political institutions that exert sovereign control in the sense of being able to exclusively command compliance.<sup>1</sup> Within such a world, calls for reorganization of the way these institutions are organized so as to devolve power to groups oppressed or marginalized within existing structures are inevitable.

For proponents of liberal states, such calls for devolving power pose a problem. Proponents of liberal states are committed to the possibility of reforming or reorganizing states so that the exercise of political power through institutions that encompass the entire territory can rightly command compliance from everyone within its jurisdiction. When sub-state groups call for a reorganization in which power is devolved rather than reformed, they seem to deny that it is possible for institutions that encompass the entire territory to rightly command compliance from the groups’ members at least. Calls for devolution imply that within some portions of the state’s territory, or for certain of the state’s inhabitants, state-level political institutions cannot rightfully command compliance, or at least, cannot do so exclusively.

Proponents of liberal states might respond to this problem by letting go of the need for exclusive command. This would require the development of models of liberal states or other structures for wielding political power that are compatible with a plurality of sources of rightful commands for compliance at least some of which are horizontally rather than vertically related. Avery Kolers’s theory of territorial rights, Margaret Moore’s emphasis of jurisdictional authority, and Ayelet Shachar’s

concept of “joint governance” may be read as steps toward developing such models.<sup>2</sup>

However, for many proponents of liberal states, the prospect of a competing source of rightful command that may assert priority over decision making that applies to the entire territory is impractical, and conceptually difficult to sustain.<sup>3</sup> An alternative response, one that preserves the pre-eminent position of institutions that encompass the state’s entire territory and population, is to insist that such institutions have a vital role in ensuring that the decision making of sub-state groups meets minimal conditions of moral equality and respect for human rights. Reserving these powers for state officials is argued to be unproblematic insofar as even groups who might legitimately reject state-level political institutions as rightfully commanding compliance in many or even most spheres of life must accept the requirement that policies be developed and applied in a way that preserves individual members’ moral equality and respects and secures their basic human rights.<sup>4</sup> Given this, state-level political institutions may rightfully compel all individuals living within a territory to observe minimal standards of political equality and respect for human rights, even those who may plausibly claim to be exempt from rightful command by such institutions in other regards in virtue of their membership in an oppressed or marginalized nonstate group. Regardless of the grounds on which a sub-state group calls for devolution of power, political institutions at the level of the state may legitimately compel compliance with directives aimed at securing the moral equality and human rights of the group’s membership; and so states may legitimately reserve to themselves powers of oversight or remedy in relation to groups calling for power to be devolved.

Emphasizing the role of institutions that encompass the entire territory in guaranteeing minimal conditions of moral equality and respect for human rights seems promising, but it cannot provide a satisfactory account of the desirability of empowering state officials to exercise powers of oversight, and so it cannot justify reserving such powers in the face of calls for power to be devolved. This is most obvious in relation to oppressed and marginalized groups; even when state officials recognize and repudiate historical injustices and accept the rightful claims of oppressed and marginalized groups for redress and empowerment, they cannot reasonably expect members of such groups to accept them as

credible guarantors of moral equality or human rights.<sup>5</sup> This problem aside, there is a basic problem with the way decision making is conceived of in arguments for the importance of reserving powers of oversight. Groups calling for devolution of power are not susceptible to the kind of characterization that state officials would have to engage in to effectively gauge whether to intervene to secure moral equality and human rights and how intervention would impact members. To see this it is useful to distinguish between two grounds on which we might argue for the importance of reserving powers of oversight: worries about the decision-making outcomes that devolving power might produce; and worries about the mechanics by which a group's decisions will be produced. In the first instance the justification for reserving powers is that this ensures that the content of the group's decisions will be minimally acceptable; in the second instance the justification for reserving powers is that this ensures that the mechanisms through which the group makes decisions are minimally acceptable.

## *2. Content and Mechanism as Sources of Worry*

Arguments that appeal to the importance of ensuring that a group produce decisions with a certain content focus on the policies or institutions that a group is expected to use devolved powers to produce. The focus is not how the group is likely to make decisions about policy or institutional structure but on what is expected to issue from that process. In contrast, arguments that appeal to the importance of a group's adopting certain mechanisms for generating policies and institutions focus on the processes or means that a group is expected to use in generating policies and institutions. The focus is not on what the group is expected to do, but on how they are expected to decide to do it.

For example, we might object to a plan to devolve power to a group on the grounds that the system of family law the group prefers and is likely to apply will negatively impact women. This would be a content-based worry about the devolution of power. The crux of the objection is not *how* the group will go about developing and applying family law but what *the result* of that process will be. The state's role in guaranteeing moral equality and basic human rights will thus be ensuring that this unacceptable result does not come about. If constraints on the way decisions about family law are made can accomplish this, state officials may

discharge their responsibilities by imposing limits on how decisions are made. But the explanation of why state officials are justified in imposing these constraints refers not to the importance or value of making decisions in a certain way, but on the instrumental role of decision-making constraints in avoiding unacceptable outcomes. If it remains possible for the group to use acceptable mechanisms to produce unacceptable decisions, state officials may have to act directly on outcomes. At base, it is the necessity of ensuring that certain outcomes are avoided that explains the importance of reserving powers to the state.

For example, Brian Barry argues that states ought not to devolve power over linguistic instruction to minorities because this can be expected to produce policies that negatively impact on the employment prospects of minorities' children.<sup>6</sup> This is a content-based argument: the reason for resisting calls for devolution of power is a problem with the policies that are expected to follow from such devolution. In contrast, Ayelet Shachar argues that there are circumstances in which the interests of women will be better served by an arrangement in which powers to determine the division of family property in divorce are devolved to religious communities.<sup>7</sup> This is a content-based argument for accepting mechanisms for making decisions about family law that in themselves may seem problematic: the argument for accepting the decision making forms appeals to the importance of securing better outcomes for women.

Yet we might object to a plan for devolving power not because we object to the family law the group is likely to adopt and apply, but rather to the way in which the group is expected to produce that choice. For example, we might worry that about Shachar's proposal for devolving power because even though the expected outcomes of the group's decision making are good for women, the mechanisms by which those decisions will be produced are not acceptable mechanisms for producing decisions that have the force of law. This would be a mechanism-based worry about devolving power. The crux of the objection is not *what* the group's decisions in the area of family law are likely to be but how those decisions will be generated. In this case the state's role in guaranteeing moral equality and basic human rights will be ensuring that whatever the group decides with respect to family law, those decisions issue from an acceptable process.

Content-based worries focus on the uses to which a group puts (or is likely to put) powers that are devolved. Mechanism-based worries are concerned with what a group does with powers only insofar as such information constitutes evidence of a problem in the decision-making mechanisms. In arguments that appeal to worries about mechanism, ensuring that a group cannot produce certain decisions is important only insofar as certain decision-making outcomes may furnish evidence that the mechanisms are problematic—that the mechanisms the group uses to generate decisions fail to meet minimal conditions of moral acceptability. If the fact that a group's family law disadvantages women constitutes grounds for oversight, this is not because of the disadvantage as such, but rather because the fact that disadvantage is widespread indicates that the group's women members have not been acceptably integrated into decision making.

For content-based worries to make sense, we have to say that the group exhibits a disposition or propensity toward making undesirable decisions, either globally or with respect to some particular issue; and that this disposition is not present, or is present to a lesser degree, among officials of the state. If the disposition is not absent or of a lower degree among state officials then they will be as likely to produce undesirable decisions as the group and so they will not be credible guarantors. Evidence for the alleged disposition might be empirical: we might cite characteristics or beliefs of a large number of group members that strongly correlate with undesirable decisions. Or, evidence might be constitutive: we might point to a characteristic or feature of group identity that entails undesirable decisions. The key is that reserving powers of oversight is supposed to reduce the likelihood of undesirable decisions.

Given that the worry is about a group calling for power to be devolved, the relevant set of people must be those who will make decisions should power in fact be devolved. So for a content-based worry to be plausible, we must be able to plausibly say of a set of persons who are calling for power to be devolved that that *set* of people has a disposition or propensity to produce unacceptable decision-making outcomes that can be alleviated by oversight. There has to be a set, then, to whom the decision can be attributed, and so we have to presuppose a way of identifying the set to whom the attribution is made independently of the

structures that produce their decisions. If it turns out that the only way to attribute decisions to a group is to attribute it to the decision-making procedure, content-based worries will collapse into worries about mechanism.

Moreover, because content-based worries rely on our being able to compare the likelihood of unacceptable decisions with oversight versus without oversight, such worries require us to make sense of a group's propensity to bad decisions in terms of characteristics or features other than the decisions themselves. For content-based worries to be plausible, we must attribute dispositions and characteristics to the set of persons to whom power is to be devolved on the basis of which we may assess the likelihood of unacceptable decisions being made. Bhikhu Parekh, Katha Pollitt, Uma Narayan and others have pointed out that such arguments leave a lot of space for Orientalizing, imperialist, and other problematic assumptions to come into play.<sup>8</sup> However, before even getting to the question of whether we may trust the assumptions behind the propensities or dispositions that are attributed, it is worth asking how, as attempts to characterize a phenomenon in the world, these attributions are supposed to work. What is being said to us about a group when we are asked to accept that it is more likely to make bad decisions than are state officials?

### *3. Attributing Decisions to Groups*

Groups are just collections of people. It is easy enough to see how we could attribute a decision to a collection of persons by attributing it to social or decision-making structures that link their individuated actions or decisions.<sup>9</sup> But what would it be to attribute the decision to the group beyond or behind these social or decision-making structures? To attribute decisions to the group in separation from the social structures that links its membership or the decision-making structures from which the decision issued, we must be saying that there is something about *that set of persons* that accounts, at least in part, for the decision that was produced.

Attributing properties to a set of persons is not in itself problematic and there are a number of straightforward strategies we can pursue in assessing such ascriptions' truth or falsity.<sup>10</sup> Yet it is important to remember that attributing dispositions or properties to a group is, at the end of the day, a statement in a language; and so the first step in determining whether such an attribution holds is determining what is actually

being claimed. In particular, we have to determine who the attributed disposition or property is supposed to be true of, and what it is about that subject (or set of subjects) that is alleged.

Consider the statement “Canadians are monarchist.” A speaker making this claim may expect us to accept it as truthful because she has good evidence that all of the persons that an ordinary speaker’s use of the term “Canadians” indicates to her audience value and support the monarchy. But she may expect us to accept it on other grounds: because the political and social relationships in which Canadians stand to one another have the effect of supporting the monarchy and conferring value on it; because the people indicated by ordinary language use of “Canadians” support and value the monarchy when they are together, or act “as Canadians” even though many of them do not support or value the monarchy when they are apart; or because she is using supporting and valuing the monarchy to define (in part or in whole) who she takes the group “Canadians” to encompass.

The point here is that the first issue in determining whether the dispositions, propensities, or decisions attributed to a group are plausible is determining what, exactly, is being said. In particular, it is crucial to determine who, exactly, an attribution is supposed to encompass, and what, exactly, it is about those encompassed that is supposed to make the attribution plausible. The primary intellectual task in analyzing claims about the likelihood that a group’s members will be subjected to unacceptable decision-making outcomes in the absence of oversight is determining what, exactly, is being said.

When we look at what is being said, the projected content of a group’s decisions does not present a plausible motivation for reserving powers of oversight. For content-based worries to be plausible, we must be able to identify the group that is supposed to be making decisions without presupposing the dispositions, propensities, or decisions that generate our worries about devolving power. As noted above, however, whether such attributions are plausible importantly depends on what the group name communicates to the audience. Consequently, the plausibility of a content-based worry will depend as much on facts about the audience to whom a claim is addressed as it does on facts about the group about which that claim is made. This introduces prudential worries about how asymmetries of power may play out in arguments for the importance

or expected benefits of oversight by institutions encompassing the entire territory of a state.

Such prudential worries aside, however, there is a fundamental problem with the conception of groups as decision-makers are being conceived of. Earlier I noted that groups are just collections of persons. This is important to remember but easy to overlook. For a group often exhibits properties or has dispositions that are not true of its constituent members; and individuals often exhibit properties and have dispositions only while participating in a group. When it comes time to attribute decisions to a collection of persons, however, it must eventually be possible to explain how those decisions relate to the group's individual constituents.<sup>11</sup> This is especially so when a group's dispositions or decisions are used as a basis for resisting calls for full devolution of powers. When we insist on reserving powers to institutions that encompass the entire state, we are insisting that not just the group but the individuals who constitute that group take encompassing institutions to rightly command them. And so we owe an explanation of why these individuals should give the judgements of state officials' priority over sub-state decisions. Part of that explanation must be not only how the group's disposition or decision relates to those of the individuals who constitute it, but why that relationship is a proper grounds for allowing their collective decisions to be superseded by those of another collectivity.

Suppose the group in question is "residents of Clarington municipality," the power to be devolved is the power to set the curriculum for all students attending high school in a set geographic region, and the unacceptable outcome is to adopt textbooks that distort minority histories. What is actually being said when the agency that is currently empowered to set the curriculum for high school students in the region reserves for itself the right to review or invalidate particular exercises of curriculum-setting power by residents of the municipality of Clarington on the grounds that there is a risk these decisions will distort minority histories? The agency seems to be saying the following: "You (persons who make up the set "residents of Clarington") may not exercise powers over your curriculum without oversight from the region because there is something about you as a set that makes outcomes of curriculum decisions more likely to distort minority histories."

I and several other residents of Clarington may have a disposition to make decisions that do not distort minority histories—dispositions that make it more likely, in fact, that our decisions will lead to the use of textbooks that give a less distorted view of minority histories than the textbooks chosen by the regional agency. These dispositions are true of us only individually, however; and so our demonstrating this about ourselves would be irrelevant to the argument against the importance of reserving powers over our group. What if this disposition is true of a *majority* of members of the group? Intuitively, it seems as though this ought to make a difference to the case for oversight. However the nature of the case for oversight is such that how many people within the group have dispositions as individuals to produce acceptable decisions is irrelevant. Once a disposition to produce unacceptable decisions is attributed to a group it becomes extremely difficult to marshal evidence rebutting it. For to be relevant, the evidence will have to establish facts about the group's dispositions in the absence of oversight; but the group has not yet had free scope to make decisions and, so long as the charge of a disposition to bad decisions is accepted, may not be given such scope.

So long as we residents of Clarington are subject to oversight, we must produce our decisions with an eye to how the regional agency will interpret our decisions: in order for our decisions to be effective they must conform to the regional agency's conception of an acceptable outcome. Yet even perfect conformity with this conception will not serve to rebut the charge that we cannot be trusted to make decisions without supervision because so long as the agency exercises powers of oversight it may plausibly be claimed that this oversight, rather than the trustworthiness of the group, accounts for our producing acceptable outcomes. We find ourselves in a Catch-22. Producing decisions that are acceptable (and so do not require intervention) demonstrates that oversight is doing its job and reinforces the argument that oversight is important to ensure group members' moral equality and respect for human rights. Producing decisions that are judged by the regional agency to be unacceptable confirms the prediction that we will make unacceptable decisions and reinforces the argument that oversight is important. There is no decision our group can make that does not vindicate the decision to reserve powers of oversight.

A key element of the problem is that once the disposition to make unacceptable decisions is successfully attributed, the burden of proving that it is safe to devolve powers lies with the sub-state group. For sub-state groups, then, a key issue is identifying the evidence that would make such an attribution rationally compelling. If we think of the “groupness” as a property that emerges from relations between a set of individuals, or between individuals and their social and physical environment, then the regional agency might point to a correlation between social or institutional structures that define the set “residents of Clarington” and unacceptable curriculum decisions. However, a problem for the agency is that such an argument would be most convincing retrospectively, as an argument that a set of persons who has been making decisions can no longer be permitted to do so, and not prospectively, as an argument that a set of persons who are insisting on the opportunity to make decisions be limited in their capacity to do so. Prior to the residents of Clarington actually having decision-making powers, the social and institutional structures on the basis of which the relevant dispositions may be attributed will not exist. Arguments appealing to group’s dispositions will thus be inherently speculative: given the expectation that the group’s decision making will reflect a particular set of social and institutional structures we may attribute a disposition to make unacceptable decisions. Moreover once residents of Clarington begin making curriculum decisions under oversight, the institutions and social structures that subject their decisions to vetting by the regional agency will be among the features that make it plausible to attribute dispositions or properties (this is part of what generates the Catch-22).

The puzzle here is how we make sense of attributing decision-making propensities to a group that does not yet exercise decision-making powers when the structures that produce decisions are a key component of attributing decisions to a group in the first place. For worries about the decisions a group will make to figure in an argument for reserving powers of oversight, we have to be able to identify features of the set that constitutes a sub-state group that are closely bound up with it making sense to treat that set as a candidate for devolved powers in the first place (so that we can tell that it is the set of people to whom power is to be devolved who will produce the problematic decisions), but not so closely related to the outcomes we worry about that the features that make the group a

candidate for devolved powers appear to explain our worries about bad decisions. It has to be the case that the regional agency's argument for reserving powers appeals to features of the residents of Clarington that are close enough to what makes them plausible candidates for exercising powers over the curriculum in the first place but does not use these features (for example, their desire for a different curriculum or for different methods of setting the curriculum) as evidence that their decisions will be unacceptable.

The challenge here is to keep (normative) arguments for treating a set of people as a group for the purposes of devolving power distinct from (empirical) arguments regarding the uses to which a group is likely to put devolved power in the absence of oversight by institutions encompassing the state's entire territory. Until a group is actually empowered to construct and act through institutions of their own devising, the most reliable basis for predicting decision-making outcomes are the group's mechanisms for producing those outcomes. However, it is not clear that arguments for reserving powers to oversee or impose decision-making mechanisms are best justified by appeal to ensuring or securing outcomes. As I argue below, mechanism-based worries are most persuasive when understood as worries from a third-person point of view, and in particular from the point of view of a third person whose primary motivation is to preserve their own moral integrity.

Even if mechanism-based worries are persuasively understood as justified by their ensuring that decisions have acceptable content, this would suggest that insofar as they are plausible, arguments for reserving powers of oversight are arguments for ensuring that decisions get made in an acceptable way, and not for ensuring the acceptability what a group actually decides. The one aspect of content-based worries that may seem to remain distinct is the general concern that devolving power to a sub-state group ought to be good for the individuals who constitute a group, or at least ought to be no worse than having power remain in the hands of state officials. In this context reserving powers of oversight to institutions that encompass the entirety of the state's territory is intended as a protection against the possibility that people within the group will be worse off for power's being exercised by the group rather than the state. The concern that devolving power be at least not worse for the people that constitute a group does establish duties to ensure that there are structures in

place that guarantee minimal levels of participation and respect for human rights. But recall that what is at issue is not whether sub-state groups should be subject to *some* oversight or forum in which their membership may contest or compel a remedy. What is at issue is whether this oversight or forum must or may happen within institutions encompassing the entire territory and population of the state. Arguments for preserving a role for state officials are arguments for preserving the pre-eminence of state institutions over those of sub-state groups in at least some spheres.

If we resist the assumption that the onus lies with sub-state groups to show that their decision-making propensities are no worse than those of state officials, the salient questions look to be not whether a sub-state group can be trusted with devolved powers (for we have no antecedent case against their trustworthiness) nor whether a group is disposed to make bad decisions. Instead, the salient questions appear to be what the case for devolution is, and what decision-making structures would have to be in place for a group to plausibly claim that there was no more likelihood of bad decisions from them than from state officials. These are not really questions about what makes exercises of power safe or even what makes exercises of power good, but questions about what makes for a legitimate claim to jurisdiction and what authorizes third-parties to contest decisions that they dislike.

#### *4. Focusing on Decision Making*

Content-based worries focus on the importance of precluding and remedying decision-making outcomes. I have argued that to be plausible, such worries must posit a propensity or disposition of a group to produce unacceptable outcomes. If it is the mere possibility of producing unacceptable decisions that motivates the worry, then oversight by state officials will not help as the mere possibility of producing unacceptable decisions will also be present in such oversight. For example there is always the possibility that state officials will judge an unacceptable decision to be acceptable, or will subvert attempts to resist unacceptable decisions. If state officials are judged to have a lesser or no possibility of confirming a decision that is in fact unacceptable, then this must be either because of the mechanics of their decision making (in which case the worry is actually about mechanisms) or because of some difference in such officials' dispositions to produce unacceptable decisions.

Attributing a disposition to produce bad decisions is problematic. As a model of group decision making it casts individuals as passive recipients or vehicles of group decisions. Individuated decision making, and individuals' relationships to one another and to the decisions in question disappear as attention focuses on what may be attributed to the group *in toto*. This creates paradoxes of responsibility, especially when the motivation for members to treat a problematic decision of the group as more compelling than the decision of state officials reflects relationships with fellow members or the importance of group solidarity rather than commitment to or even approval of the decision itself.

Larry May and Christopher Kutz point out that these paradoxes can be dispelled by adopting a more sophisticated view of the relationship between individual and collective decision making.<sup>12</sup> However, to take advantage of this more sophisticated view, we must treat groups' propensities to certain actions or decisions as produced by a combination of individual dispositions and a structural context that combines those decisions in specific ways. For example, Kutz argues that the key to holding both individual actors and collectives responsible for harms such as global warming is to treat collective projects, information about what others are doing, and collective benefits as part of the structural context that an individual takes into account when she makes decisions.<sup>13</sup> This makes the problem in group dispositions to bad decisions not the group or its propensities but the way that decision making by those who constitute the group is being structured by the context in which those (individual) decisions are made. In the case of a sub-state group, an important element of that context is the insistence that institutions encompassing the entire territory of the state may rightly assert priority over those of the group.

Problems in establishing whether sub-state groups actually have the propensities to produce unacceptable decisions outcomes and what it is about a group that such propensities may plausibly be argued to reflect do not arise for mechanism-based worries. Arguments that justify reserving powers for state officials on the basis of worries about how decisions are made are consequently more compelling than arguments that depart from worries about content. However, unless moral equality and human rights are taken to be exhausted by procedural guarantees, it is difficult to see how insistence on a particular set of mechanisms could in itself guarantee the moral equality or human rights of persons within a group. Insofar as

mechanism-based worries may plausibly be thought to justify reserving powers over a sub-state group, the motivation is something other than guaranteeing the moral standing or human rights of the group's members.

To see this, consider the structure of a mechanism-based worry. Mechanism-based worries do not appeal to propensities to produce particular decisions; and so they do not have to make claims about the greater or lesser likelihood of avoiding unacceptable outcomes when state officials are involved. Moreover, mechanism-based worries invite us to distinguish between the group and those who constitute it, and the mechanics of how that group, as a set of persons, produce decisions. This allows for a departure point in the argument for reserving powers of oversight for the state that does not presuppose that institutions encompassing the entire territory of the state are a natural or credible site for such powers to be lodged. Consequently, arguments for oversight that focus on mechanism-based worries do not have to presuppose that the onus is on the sub-state group to prove it may be trusted with power. And they can accommodate and even put to use a distinction between how a group's decision making is structured and who dominates (or is positioned to dominate) decision making on the group's behalf.

These features of mechanism-based worries imply that what is actually at issue is not what conditions ensure that sub-state groups may be trusted with power, but what conditions make it possible to treat a group's decisions as binding for its members. If this is so, then the responsibility that state officials discharge in requiring that a group's decision-making mechanisms meet minimal conditions of transparency and responsiveness is not securing group members' moral equality and human rights vis à vis one another, but ensuring that they do not enable or otherwise become complicit in usurpation. Confronted with a call for power to be devolved, state officials must ensure that the boundaries of the group to whom power will be devolved encompasses everyone and everything proper to the powers it will exercise, and incorporates them into decision making on terms that make the outcomes binding for those to whom they apply. This requires state officials to reason about where the proper boundaries of decision-making units should be drawn and what kinds of decision-making relationships are acceptable or necessary within such units. It does not require them to reason about whether a group can be trusted with power.

*5. Devolution of Power and Proper Jurisdiction*

Ultimately, questions about whether a group may exercise political power come down to questions about jurisdictional boundaries, legitimate representation, and the responsibilities of third parties. At their heart, mechanism-based worries speak to a third-person perspective; and this is why they offer a more plausible basis for arguments that it is important to preserve the pre-eminence of institutions encompassing the entire territory and population of state as guarantors of moral equality and human rights. At the end of the day, however, worries about decision-making mechanisms are worries about whether a group's boundaries are the right ones for the decisions over which they seek control, and whether the decisions that are presented to outsiders as binding on a group's members ought in fact to be treated as so. These are worries about legitimacy and representation: about what makes social decision making binding and how we allocate power and jurisdiction.

So where does this leave arguments for reserving powers of oversight to institutions that encompass the entire territory of the state? As a strategy for responding to calls by sub-state groups for power to be devolved, the foregoing analysis suggests that such arguments are misguided. To the extent that they rely on worries about the content of sub-state groups' decisions, arguments for reserving powers of oversight will be prey to problems associated with attributing dispositions or propensities to groups. To the extent that such arguments rely in worries about mechanism, they justify imposing conditions on devolution, not reserving powers of oversight, and the motivation seems to be securing the moral integrity of those devolving power rather than securing the human rights of those to whom power is devolved.<sup>14</sup>

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## NOTES

1. The description of states in terms of a persisting structure is drawn from Buchanan (2004, 237). The description of states in terms of sovereign control and the ability to

compel compliance is drawn from Karen Knop's description of the International Court of Justice's *Western Sahara Advisory Opinion* (Knop 1975, 138–43).

2. Kolers (2009, 100–107); Moore (2004; 2005); Sachar (2001).
3. For arguments that overlapping jurisdictions are impractical see Jacob Levy (2000) and Miller (2000). For arguments that overlapping sovereignties are conceptually problematic see Dahbour (2003) and Christiano (2008).
4. Kymlicka (1995; 2000); Nussbaum (1999).
5. Spinner-Halev (2001).
6. Barry (2001, 104–108).
7. Shachar (2001, 49–60).
8. Parekh (2000); Narayan (2002); Pollitt (1999).
9. See for example Searle (1995); Tuomela (2005).
10. See for example Gilbert (1996); Bratman (1993), Tuomela (1992).
11. On this see Miller (1978).
12. May (1998; 1987); Kutz (2000).
13. Kutz (2000).
14. The author would like to thank Mary Butterfield, Kristen Hessler Alistair Macleod, Patrick Rysiew and the audience of the North American Society for Social Philosophy for comments on earlier drafts of this paper.

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