

# An Institutional Theory of Autonomy

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**Abstract.** We all have a right to sovereignty over our personal sphere. We have a right to author our own lives, to have special control over our personal domain. But how should these rights be understood? I advance an institutional account of such autonomy rights. The idea is that we each have an interest in seeing our values manifest in the world. This interest is crude and unstructured: it could, in principle, be satisfied by giving you control over my life just as much as over your own life. Nonetheless, we have collective obligations to promote people's autonomy interests; to help them get their values manifest in the world. We cannot effectively satisfy these obligations by directly making each person promote other's autonomy in every situation. But we can set up and maintain norms, or institutions, that generally promote autonomy. And when we have such institutions, we have a fair share duty to comply with them. Thus, the fine-grained structure of autonomy rights derives from the contingent, often peculiar, structure of our actual institutions.

**Keywords.** Autonomy · norms · property · privacy · bodily integrity

## 1. Introduction

Autonomy rights are important. We all have weighty rights to control our personal sphere; we have rights to sovereignty over our personal domain. These rights have an immense influence on how we should interact with other people: we shouldn't coerce, manipulate or deceive others, because doing so violates their autonomy. We should respect people's bodily integrity, their privacy and plausibly their property, because they have moral sovereignty over their personal domain. Politically, the state shouldn't enforce its favored religion or repress disfavored speech, because doing so violates its citizens' autonomy. The liberal tradition is rooted in the import of autonomy rights.<sup>1</sup> The case for democracy, too, is rooted in autonomy: citizens have a right to author their social and political affairs, thus states should be democratic.<sup>2</sup> Autonomy rights, the right to control a certain sphere, matter enormously both to the appropriate form of interpersonal

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<sup>1</sup> For different ways of spelling out liberalism, see Mill (1859), Raz (1986) and Rawls (1993).

<sup>2</sup> This view flows from Rousseau (1968), For a more recent defense of it, see Lovett and Zuehl (2022).

interactions and to the proper nature of the state. They are at the heart of much contemporary moral and political theory.

Yet autonomy rights are also peculiar. To start with, the boundaries of these rights are difficult to understand. You have special rights to control your personal sphere, but where does your personal sphere begin and end, and why there? Intuitively, some things are clearly within your personal sphere. You have the right to control what career you pursue or whether to accept your suitor's marriage proposal. You have the right to control how you do your hair and what clothes you wear. But why do you have a right over these things and not other things? As we'll see in detail later, it's not because you care especially about them, or that they matter enormously to your well-being. You might be indifferent to your hairstyle; it might have no influence on how well your life goes. Yet you should still have control how you do your hair. Your suitor might care enormously about whether you accept their marriage proposal, but they still have no right to determine whether you accept their proposal.<sup>3</sup> We have sharply defined autonomy rights; we clearly have rights over some things but not rights over others. But why we have autonomy rights over exactly the things we do seems opaque.<sup>4</sup>

Autonomy rights are peculiar, too, in what they protect you from. Autonomy clearly protects you from coercive interference. If the state threatens to throw you in jail unless you cut your hair, it violates your autonomy. But other sorts of interference can also violate your autonomy. Obviously, manipulation and deception can be such violations; when someone deceives you into dyeing your hair blonde, they infringe your autonomy. Yet, also, remarkably, merely giving someone advice can be an invasion of their personal sphere. Suppose a stranger notices that you're pregnant and strikes up a conversation about it. They start giving you minute advice on what to eat and drink, on whether to play your unborn child Mozart and how to lie down when you sleep (on your side, they say). You tell them to stop, but they persist; they advise you over your objections. This is a trespass into your personal domain. None of this is any of the stranger's business, and a proper respect for your autonomy would mandate that they keep their unsolicited opinions to themselves. But that is very hard to understand. How can giving someone good-natured advice be a violation of their autonomy?<sup>5</sup>

Further peculiarities of autonomy rights concern their interaction with time and modality. Suppose, on Tuesday, you consent to be kissed on Wednesday, but when the time comes you've changed your mind: you dissent. Then it'd be violation of your autonomy to kiss you on Wednesday; your present dissent

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<sup>3</sup> For this case, see Nozick (1974, 269).

<sup>4</sup> For a discussion of some of these issues, see Enoch (2017, 31–35; 2022).

<sup>5</sup> Tsai (2014) raises this issue. For further discussion, see Davis (2017).

trumps your prior consent. Equally, your present dissent trumps future consent. It doesn't matter whether in the future you'll retroactively consent to a kiss. If you dissent now, you may not be kissed. And present dissent trumps hypothetical consent. It doesn't matter that you would consent to a kiss were you fully informed: if you actually dissent, the kiss is impermissible. Yet hypothetical consent does matter sometimes. Imagine you're in a car accident and you're unconscious, but you would consent to a blood transfusion were you *compos mentis*. It's no violation of your autonomy to give you the transfusion. How do we explain all this? How do we explain that present consent trumps past, future and hypothetical consent, but that at least hypothetical consent matters sometimes?<sup>6</sup>

A final peculiarity of autonomy rights is that they are relative to culture. Consider, for example, personal space. In Romania, people generally stand 1.4 meters away from one another in conversation; stand closer and you invade people's personal space. In Argentina, people generally stand 0.76 meters away from one another (Sorokowska et al. 2017). Standing one meter away from someone is no invasion of their personal space. It doesn't look like either Romanians or Argentinians are making a mistake here. It simply seems that people in Romania have special control rights over more space around their body than do people in Argentina. Or think about familial relationships. In China, family members will often question younger scions of the family intensely about their romantic lives. They will give them advice about dating and strongly recommend that they get settled down. They will often make give them advice about exercise and their appearance and their diet, all in service of their romantic pursuits. All this is verboten in many Western countries; it is an invasion of adult children's personal sphere. One might say that ordinary Chinese people are simply getting things wrong here; that they are disrespecting their younger relative's autonomy. But I'm reluctant to baldly claim that Westerners have it right. I am at the least open to the idea that the Chinese and the English (for instance) simply have different conceptions of the personal sphere, and neither is right or wrong. Yet it is not obvious how our autonomy rights could be so dependent on our culture.

The general picture is clear enough: autonomy rights have very definite contours, but these contours seem utterly arbitrary. It is mysterious why autonomy rights have the contours that they do. And that puts us in a very unsatisfactory position. It suggests we do not understand a notion central to personal morality and political thought. In this paper, I aim to explore a theory of autonomy rights that gets us out of this position. The theory's core idea is that we have actual institutions that grant us conventional control rights over things. These actual institutions, due to contingent and historical reasons, are often very peculiar. But

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<sup>6</sup> For discussion of time, see Dougherty (2014), and for modality see Enoch (2017).

when these institutions are good enough, we have moral reason to respect the control rights that they grant. Humanly crafted conventional norms can generate moral reasons. Thus, the peculiar contours of our actual institutions generate the peculiar contours of autonomy rights.<sup>7</sup> I'll call this the institutional theory of autonomy.

My aim is to articulate and defend this theory. We'll start, in section 2, by looking at some alternative theories. These fail, I'll argue, to adequately capture the contours of autonomy rights. In section 3 I'll lay out the building blocks of the institutional theory. In section 4, we'll explore some objections to the theory. By the end of this we will have a fairly comprehensive, and I think quite plausible, picture of how autonomy rights work.

## 2. What might explain autonomy rights?

We've already alluded to the simplest way of explaining autonomy rights. Perhaps we have a basic right to control something when we care about it more than other people do, or perhaps when it impacts our well-being especially. This could explain why most of us have a right to control what career to pursue or where to live: most of us care enormously about career and location, and they matter enormously to our well-being. For simplicity, let's focus on the version of this view that emphasizes well-being, that says we have autonomy rights over something when that thing affects our well-being more than the well-being of others. This position has very straightforward appeal. Well-being is clearly of deep normative significance. It is tempting to explain the normative significance of one thing, autonomy, in terms of that of something which clearly matters. So it is simple and natural to understand autonomy rights in terms of well-being.

Simple and natural it is; tenable, unfortunately, it is not. It just isn't true that we have special control rights over what impacts our well-being especially. On the one hand, things can have an especially big impact on your well-being without you having a right to control them. Imagine your adult child is deciding where to live. They could live in either London or New York. Both are roughly equally good place to live, from their point of view. Yet it would make your life, as a Londoner, much better if they lived in London. You can make this point to them, and even request that they move closer to you. But you don't have a right to control where

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<sup>7</sup> There are other institutionalist theories of moral phenomena in the literature, although mine takes a distinctive form. For discussions of institutionalist theories about promises, see Scanlon (1990), Kolodny and Wallace (2003), and Taylor (2013). For a discussion of such theories of both promises and property see Nieswandt (2019) and Murphy (2020). For one about familial obligations see Owens (2017). And for more general institutionalist views see Valentini (2021) and Owens (2022).

they live. It is no violation of your autonomy if they choose to live in New York. There are many cases with the same upshot. Think of your decision to pursue a paramour or apply to a job or open a coffeeshop in a particular area. These choices might affect the well-being of your competition more than they affect your own. Yet your competition has no autonomy rights over your decisions. Something can especially implicate someone's well-being (or, parallelly, what they care about) without giving them control rights over it.

On the other hand, you have control rights over some things that don't matter much to your well-being. Here consider your physical appearance: how you dress, how you do your hair, whether you smile a lot. These matter a lot to some people's well-being: some people have important projects bound up in how they look. Yet for others they matter much less. I might simply be indifferent to whether I have a mullet or a mohawk; I might not care whether I wear red or black. And, accordingly, these things might not matter much to my well-being. They might matter to someone else's well-being much more; perhaps my colleagues are deeply depressed by my dreary exterior. Nonetheless, surely it would be an autonomy violation to supersede my control over such matters. Imagine the state demanded I cut my hair or wear colorful clothes or smile more often: each would be a very severe violation of my right to control my personal domain. So we can have very weighty autonomy rights over things that do not implicate our well-being (parallelly: what we care about).<sup>8</sup>

Let's turn to a second theory of autonomy. One might, especially when focused on the case of advice giving, think autonomy violations are wrong for expressive reasons.<sup>9</sup> When a stranger gives advice to a pregnant woman, perhaps he is expressing a negative judgement about her ability to look up and act on information relevant to her. The idea is that providing such unwanted advice has a denigratory meaning; it expresses a negative appraisal of her rational capacities. This could extend to other autonomy violations, too. When the state foists its religion on its citizens, or makes them pursue a particular career, perhaps it is denigrating their capacity to wisely choose their own religion or intelligently sieve through their career options for themselves. It is expressing the judgement that they have poor, childlike rational capacities. But generally, one might think, we have weighty moral reasons not to express negative appraisals of people's rational capacities. We have weighty reasons not to insult or denigrate people. And so we have weighty reason not to violate people's autonomy.

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<sup>8</sup> Nozick (1974, 269) raises similar cases.

<sup>9</sup> Versions of this idea come from Quong (2011) and Tsai (2014). They don't, to be clear, intend it as a full theory of autonomy rights. But the idea is worth considering, as expressive theories of normative phenomena have wide currency throughout moral and political philosophy.

This view is hard to sustain. On the one hand, I can denigrate someone's rational capacities without violating their autonomy. You can go on the internet and call Donald Trump an idiot without violating his rights to control his personal domain. Calling your colleagues blinkered or foolish might be rude and unprofessional, but it does not violate their autonomy. On the other, I can violate someone's autonomy rights without expressing a negative appraisal of their rational capacities. Suppose I hit you with a crowbar and take your money. By violating your bodily integrity, I've violated your autonomy; But I needn't have denigrated your rational capacities. My violence was not motivated by the belief you couldn't reason about your options, but rather by my weighing my own interests above yours. So we shouldn't think of autonomy rights primarily in expressive terms.<sup>10</sup>

Let's consider a third, rule-consequentialist, account of autonomy rights. This account asks us to consider the consequences of widespread acceptance of different rules. Consider rules like "don't touch people without their permission" or "don't force people to choose the careers you think are best for them." Plausibly, violating these rules often has bad consequences: it often, for example, means people are stuck in careers that aren't very good for them. So the widespread acceptance of these rules would plausibly have good consequences. That means if everyone internalized these rules, if they took them as a guide for their own behavior, this would be good. More generally, the view is that we have all and only the autonomy rights granted by the ideal system of rules. The ideal system of rules is that which, were it widely accepted, would have the best consequences. On the rule-consequentialist view, we have special control rights over something when, and because, this system would grant us such rights.<sup>11</sup>

Unfortunately, there are some very serious problems for this view. The first is that seemingly irrelevant factors can determine the effects of widespread acceptance of a rule. Suppose China credibly threatens to invade Taiwan unless the Taiwanese widely accept rules forbidding criticism of China. A war would have extremely bad consequences: it would be extraordinarily destructive for the Taiwanese, and perhaps for much of the rest of the world. So the best thing (let's suppose) would be for the Taiwanese to accept the rules forbidding criticism. Thus, the rule-consequentialist view says that individual Taiwanese people are morally obligated to not criticize China. But that just seems incorrect. Taiwanese people still retain a right to free speech, even though accepting free-speech restricting rules have the best consequences. So one can have autonomy rights although the ideal system of rules wouldn't grant one such rights. (One can also easily tweak this kind of case

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<sup>10</sup> For some further objections to this view, see Enoch (2016).

<sup>11</sup> For a classic version of rule-consequentialism, see Hooker (2000). I take my discussion, though, to cover a wide variety of different rule-consequentialist views.

to get situations in which the ideal system of rules gives you a right to control something but, intuitively, you have no such right).

The second kind of problem for this view concerns noncompliance. This view asks us to imagine the consequences of the widespread acceptance of a system of rules, but worlds in which rules were widely accepted may be very different from our own. Consider, for example, self- and other-defense. Although usually I have a right against being touched without my permission, if you can only stop me from attacking others by restraining me, you may restrain me. Yet if everyone accepted rules protecting bodily integrity, we'd only very rarely be in a situation in which I needed to be restrained in order to stop my violent attacks. After all, in this world I would have accepted rules forbidding me from attacking people. So we might well not benefit from have rules permitting self- and other-defense; these rules have good consequences because, in the real world, people don't fully comply with moral norms. But in the ideal world just having them might be a bit too risky; better to forbid all violence instead. If so, according to the rule consequentialist view, we don't have rights of self- or other- defense. The problem is general: worries about noncompliance are entirely absent, or at least substantially lessened, in the ideal world. But in the real world they are very important. So rules that have good consequences in contexts of widespread acceptance often don't match what we seem to have rights over in the actual world.

None of these views, it seems, are extensionally adequate. They all get the boundaries of autonomy right wrong. Additionally, although I haven't elaborated on this point, they also often fail to explain the other peculiar features of autonomy. This motivates a different account of autonomy rights, which we will begin constructing now. We'll start, in the next section, by introducing the building blocks of the theory: these are the basic ideas the theory is made up of. Then, in section 3, we'll bring these blocks together to show how the theory can explain the peculiar contours of autonomy rights.

### 3. Building Blocks

#### 3.1. Block One: Autonomy Interests

Our first building block is an interest in autonomy. We all have some claim on getting our values manifest in the world. This is an interest in making a mark; in conforming reality to one's idea of how reality ought to be. To elaborate, the idea here is that we all have values. Some of us value justice, equality or freedom; some of us value having a big house or many cars; some of us value going to the moon or the bottom of the ocean. These values are mental states revealed in patterns of behavior and emotion. When we value something, we're disposed to try to bring

about what we value. When we fail to bring it about, or when it doesn't happen, we regret the failure. We're emotionally vulnerable to what we value.<sup>12</sup> Sometimes, our dispositions do bring about a value, and when it does that disposition manifests in the value. The autonomy interest is an interest in our values being so connected to the world. We have a claim on people that they help us imprint ourselves on the world.

Let's clarify the nature of this interest. First, what matters most is that our most central values are connected to the world. One might think of these in terms of higher-order endorsement: as those values we value having.<sup>13</sup> But I prefer to think of them in terms of causal webs. We each have a web of mental states: of beliefs, desires, intentions, hopes, fears and so on. Some of these mental states have more causal influence in creating and sustaining the rest than do others. A value is more central insofar as it is more central to the causal web of your other mental states: it has more of an influence in sustaining and creating these states than do other values. Second, one might think the history of how one acquired one's values is important. Imagine you acquired your most central values through indoctrination or brainwashing; you might think that it's not especially good for you, in this case, for the values to be connected to the world.<sup>14</sup> It's only authentic values that matter to one's autonomy interests. I'm neutral on this issue of history, but it is an important choice-point. It might be only values with a certain kind of history the fulfillment of which promotes our autonomy interests.

Let's turn to a third issue. What is the the required connection between your values and the world? This can't be just causal contribution, because of the possibility of deviant causal chains. Suppose you value beauty and so let some butterflies out into the wild. One of those butterflies flapping its wings causes a hurricane. That causes some artist to make a beautiful painting. Your value causes, but is not appropriately connected, to the painting's beauty. My view is that, instead of causation, the appropriate connection is manifestation.<sup>15</sup> Consider what happens when gasoline sets on fire because it is flammable: the flames manifest the flammability. Or consider salt dissolving in water: the dissolution manifests its solubility. Your values can also be manifest: when you value freedom, and that leads you to support Amnesty International. When Amnesty successfully frees people, their freedom manifests your value. Thus, the autonomy interest is an interest in our most central values being manifest in the world.

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<sup>12</sup> For this conception of valuing, see Scheffler (2014)

<sup>13</sup> As in Frankfurt (1971).

<sup>14</sup> For this kind of thought, see Christman (1991).

<sup>15</sup> For a useful discussion of this notion of manifestation, and the problem of causal deviancy, see Turri (2011)



It's critical to recognize that, on its own, this autonomy interest does very little to explain the intuitive structure of autonomy rights. Our interest in getting our values manifest in the world can be satisfied in ways in which we don't have a right to satisfy it. I might really care about what happens in your life: I might care deeply about what career you choose, or who you marry, or how you do your hair. Getting what I want on these issues might be just as good a way of getting my values manifest in the world as deciding what career I choose or how I do my hair. Yet I have rights over my life and my body, not yours. For a real-world case, think of the attitude of men towards their female relatives in honor societies. Fathers and brothers in rural Pakistan, for example, often care enormously about what their daughters or sisters do. That means their autonomy interests are often affected by their female relative's actions. But this does not give them a right to control their female relatives. The point here is that autonomy interests are crude, unstructured entities: we need to do a lot to get from them to the precise contours of autonomy rights. So let us turn to collective obligations.

### 3.2. Block Two: Collective Obligations

The autonomy interest matters because it gives people claims: each person has a claim on others to help them manifest their values. But there are two ways to conceptualize this claim. One might see it as a claim on an individual; on this view, you as an individual owe it to each other person to help them manifest their values. Perhaps there is such a claim, but it is not the one I wish to foreground. That is because the practical consequences of such a claim are a little opaque. On the one hand, that is due to the fact that you have a very limited ability to enable most people to manifest their values. How much anyone can manifest their values usually depends on the actions of millions of other people. Your actions make up only a small fraction of these actions. On the other hand, it is difficult to weight helping one person manifest their values against that of helping another person manifest their values. Helping someone become a doctor might be incommensurable with helping someone else move to a new city, but you might not be able to do both. So your options will often be incommensurable, and thus you will plausibly be permitted to act in many ways. Your individual obligations will generally not be very binding.

Fortunately, there is a second way to conceptualize the claim. We can think of it as a collective obligation, an obligation not (or not only) that each individual owes to every other individual, but an obligation *we* as a plurality owe to each individual.<sup>16</sup> To get a grip on the notion of a collective obligation, imagine that a

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<sup>16</sup> For a classic discussion of collective obligations, see Parfit (1984, 75–86). For more recent, practical, discussion see Wellman (2005) and Maskivker (2019).

building has collapsed, and someone is stuck under a heavy beam. The beam is too heavy for you to lift on your own. So you're not obligated to lift it: you cannot be obligated to do what you can't do. But you are with three other people, and together you four could lift the beam. Here you four have a collective obligation to lift the beam. You have an obligation as a plurality that does not derive from the obligations of each individual. Consider, additionally, cases of pollution. You as an individual are not obligated to prevent the world from warming by, say, 2°C. You cannot achieve this. But as a plurality we might well be obligated to prevent such warming. We can achieve it together, and so we have a collective obligation to prevent the warming. The idea is that everyone who can affect an individual's autonomy interests has a collective obligation to promote it. We, as a plurality, owe it to each person to help them get their values manifest in the world.

How can we fulfil this obligation? Here we encounter a problem. We can't effectively discharge our collective obligation by just directly ensuring that, in each decision situation, every one of us gives full and appropriate weight to everyone's autonomy interests when deliberating. People are highly disposed not to give other people's autonomy interests fair consideration. We're self-interested; we often give our own interests outsized weight. And we're ignorant: we often don't really know what satisfies other people's interest. Yet, qua collective, we have only very weak control over how each person deliberates. We simply cannot reach into each person's mind, blast away these biasing forces, and directly ensure everyone deliberates appropriately on every occasion, that they give full weight to other people's autonomy interests. We need some other way of fulfilling our collective obligations. To identify such an alternative, we turn to institutions.

### 3.2. Block Three: Institutions

Institutions are “the rules of the game in [our] society or... the humanly devised constraints that shape human interaction” (North 1990, 3). They are the norms that govern how we behave. An institution is not an objective moral rule: it is a norm that a very large number of people in a society have internalized, in the sense that they try to conform their own behavior to the norm and chastise or punish those who depart from it.<sup>17</sup> Some institutions are informal. In Languedoc, people kiss three times upon greeting. This is a norm governing salutation. Holding your fork with your left hand or not putting your elbows on the table when eating are similarly informal norms. Other institutions are formal. The laws codify and create a large body of institutions; institutions that forbid murder, assault and theft. Most generally institutions are the humanly-crafted norms that govern our behavior.

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<sup>17</sup> For more discussion of what norms are, see Brennan et al (2011).

Such norms, or institutions, have a pervasive influence on our actions. We know this from anthropological fieldwork. Take relationship structure. In much of the world monogamous relationships are the rule. Two partners form an enduring union and together raise children. But, in many cultures, different norms govern relationships. Consider the Aché, a mobile hunter-gatherer group in Paraguay. Pair-bonds among the Aché are relatively unconstrained by community norms. The result is high turnover: by age 30, women have an average of ten marriages and all first marriages seem to end in divorce. Or take the Na, from China's Yunnan and Sichuan provinces. Na norms don't support child-rearing romantic relationships. To conceive children, men furtively slip into women's houses at night. They are gone in the morning and have no responsibility for their offspring. Instead, they invest in their sister's children. Meanwhile, in many South American indigenous communities, norms support partible paternity. Women, after they get pregnant, are permitted (indeed encouraged) to acquire additional male sexual partners. Any man who contributes sperm to the fetus is a "secondary father" to the child and is thus expected to contribute to its welfare.<sup>18</sup> Institutional variation, clearly, makes an enormous difference to how we manage our romantic relationships. Similar points apply to all other aspects of our behavior: institutions determine what we eat, how we work, what we wear, where we live, what we think. They have a pervasive impact on what we do.

The impact of institutions on our behavior is likely underpinned by an innate norm-following psychology. The reason to think this is that even young children quickly internalize social norms. We know this, in part, from the experiments of Mike Tomasello and his colleagues (Schmidt and Tomasello 2012). Tomasello showed three-year-olds an adult—the model—using a random assortment of objects in a specific way. For example, in one task the model used the head of a suction cup to push a wooden block across a table into the gutter. Tomasello then has his friendly hand puppet, Max, use the objects in a different but perfectly sensible way. He finds most students immediately protest the puppet's norm-breaking actions: they tell Max off for doing it wrong. This suggests we are disposed to internalize norms from a very young age. It suggests that internalizing norms is an inborn feature of human psychology: we are norm-following animals (Henrich 2016, 184–210). Institutions are like the water in which fish swim: we are so surrounded by them that it is easy to miss their dominating influence on how we live.

That opens up a way to satisfying our collective obligations: we can set up and maintain norms that protect people's autonomy interests. These might be norms such as "don't touch people without their permission" or "if someone is

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<sup>18</sup> For descriptions of these cases, see Henrich (2016, 148–55).

unconscious, only give them medical care if they would have consented to it had they been conscious.” The point of such norms would be to help people get their values manifest in the world. Since we humans are norm-following animals, this is an effective way of promoting people’s autonomy interests. We will internalize such norms quickly and probably at a young age, and once internalized we will comply with them and punish those who depart from them. So we don’t need to reach directly inside each person’s mind in order to fulfil our collective obligation to protect people’s autonomy interests. We have an indirect way, a way that proceeds via norms, of reaching inside everyone’s mind. This is, I conjecture, the most effective way of fulfilling our collective obligation. We should take the effective means to fulfilling our duties. So, we have a collective obligation to create and sustain norms that help people to get their values manifest in the world.

### 3.2. Block Four: Fair Shares

How do we get from this collective obligation to individual obligations? Via duties to do our fair share. When we are part of a collective that is obliged to do something, we’re individually obliged to do our fair share towards achieving that thing.<sup>19</sup> If four people are collectively obliged to lift a beam off someone, each of the four is individually obliged to do their fair share in the lifting. If all of humanity is collectively obliged to reduce global warming, each of us is individually obliged to do our fair share towards the reduction. I suspect that we can generally think of fair shares in terms sacrifices: we’re obliged to make a sacrifice in contributing to that fulfillment of the level that, if everyone made such a sacrifice, we’d fulfil the collective obligation.<sup>20</sup> We are, for example, required to reduce our carbon emissions to the level that, if everyone made such a reduction, we’d keep global warming at 2°C. Likewise, we’re obliged to do our fair share towards instituting and maintaining autonomy-protecting institutions.

To establish what that requires concretely, it’ll help to say more about how institutions, or norms, are created. The most important force is probably the observable actions of other people (Henrich 2016, 34–53). When we think that most people act in a certain way, we are disposed to internalize that way of acting. We take it as a standard for our own and other people’s behavior. When children see the model pushing the block across the board with the suction head, they internalize this as the way one should use the objects. When the people of Languedoc see their fellow Languedociens greet one another with three kisses, they internalize this as the standard for salutation. Were people to behave differently, that would undermine and eventually eliminate the norm. The basic

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<sup>19</sup> Dietz (2016) is one recent source for this claim.

<sup>20</sup> For this view, see Murphy (2003).

mechanism by which norms come about is that we observe the behavior of our fellows and then internalize the norms underpinning that behavior.

We can now identify the individual obligations that are, ultimately, generated by the collective obligation to promote people's autonomy interest. If we don't have autonomy-protecting institutions, we have a duty to help set them up. If we have such institutions, we have a duty to maintain them. We do both by internalizing the norms that constitute the institution. It is this internalization that ultimately sustains the institution. If everyone does this, we will fulfill our collective obligation to help people make their values manifest in the world. So that is what our duty to do our fair share requires of us as individuals: we should make these norms an internal standard for our own and other people's behavior. This, ultimately, is doing our fair share to promoting people's autonomy interests.

#### 4. The Institutional Theory

All the building blocks of the institutional theory of autonomy are now on the table. Let's put them together. We start with the idea that we have a collective obligation to promote autonomy interests. We cannot satisfy this obligation by reaching directly to each person's head and controlling how they deliberate. Yet, because human beings are norm-following animals, we can satisfy it by setting up and maintaining institutions that promote people's autonomy interests. We do, in actuality, have institutions that protect people's autonomy interests. We have institutions protecting bodily integrity, free speech, privacy, and property. We have institutions protecting our ability to choose who to marry, where to live or what career to pursue. Thus we must maintain such institutions. We have a collective obligation to sustain the actual institutions that promote autonomy interests. Individually, that means we have a duty to do our fair share in maintaining such institutions, and that requires internalizing and comply with them. The institutional theory says that you have a special right to control something just in case we have good institutions that grant you such a right. Autonomy rights are just obligations people have to conform to institutions that help people get their values manifest in the world.

Now it's possible to not have institutions that promote people's autonomy interests. We could be in a state of nature, in which we didn't have any institutions promoting autonomy whatsoever. Or our actual societies might just be missing institutions crucial in promoting some people's autonomy interests. In such cases, we're collectively obliged to set up such institutions. We collectively wrong those people we leave without sufficient institutional protection.<sup>21</sup> For each of us as

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<sup>21</sup> For a similar point, see Rozeboom (2018).

individuals, that means we're obliged to do our fair share in setting up said institutions. What our fair share is, in this context, is a little more complicated than it is in the context in which we already have good institutions. It will often involve advocating for the creation of such institutions and may sometimes involve using the coercive apparatus of the state to enforce such institutions. And it will often involve conforming our behavior to the institutions that would promote autonomy; by acting as role-models, we contribute to the creation of such institutions. So, in sum, the institutional theory says that when we have autonomy-promoting institutions we're obliged to conform to them; when we lack them, we're obliged to set them up. This is how the unstructured soup of autonomy interests is made into the finely-carved edifice of autonomy rights.

Let's clarify some things about this theory. First, what institutions generate autonomy rights? Consider the institutions that gave plantation owners in the Antebellum South control over their slave's bodies. Obviously, these institutions didn't generate moral rights. So which institutions generate rights, and which don't? The ones that generate rights are the ones that genuinely help us satisfy our collective obligation to protect people's autonomy interests: they are the ones that help people make their values manifest in the world. The simplest to understand this is counterfactually. If, were an institution to disappear, autonomy interests would be less well satisfied, that institution helps promote people's autonomy. And so we have moral reason to comply with it. The institutions of slavery clearly don't fit that bill; those protecting bodily integrity do. Additionally, the *more* an institution helps promote autonomy interests, the weightier are the reasons it generates. Some institutions make a great contribution to getting people's values manifest in the world. We have weightiest collective reason to maintain such institutions, so we have weightiest individual reason to comply with such institutions.

One might resist this counterfactual account of when institutions generate reasons. The worry is that it will give us reasons to comply with some pretty odious institutions if the alternatives are worse. Imagine that, were our current patriarchal institutions to disappear, worse ones would take their place. Then, on the counterfactual account, people have reason to comply with the current institutions. One can articulate theories that avoid this consequence. One might say that institutions have to result in a certain absolute realization of autonomy interests to generate reasons. Yet a problem with such a theory is identifying any non-arbitrary absolute level of autonomy interests being realized. So I am inclined to stick with a counterfactual account. And it seems there is a good explanation for which one should comply with one's current institutions in the just-mentioned case; doing so is doing one's fair share to avoid the formation of even worse institutions. One should of course try to bring about even better institutions, but

if this is unfeasible one has fair share reason to comply with one's actual institutions. So the counterfactual account seems to me the most plausible one.

Second, let's be clear that we're evaluating how much individual, actual, rules promote autonomy. We're not evaluating how much our entire system of rules contributes to autonomy. That is simply because the fact one institution frustrates people's autonomy interests doesn't mean a different institution cannot promote them. The Antebellum South had both institutions underpinning slavery and institutions protecting the bodily integrity of freedman: the former doesn't undermine the normative force of the latter. Equally, we're not evaluating the effect of ideal institutions, and nor are we asking what the effects of our actual institutions would be in some hypothetical situation. We're asking what their effect is in the actual world. This is the crucial differences between the institutional theory and the rule consequentialist theory of autonomy rights; the latter looks to very distant hypothetical situations, to ideal situations, to guide our behavior. Let me say one final thing about how we evaluate institutions. To do this, we need some way of aggregating the claims of different people to get their values manifest in the world. I suspect a prioritarian procedure is best: we should take the claims of those whose autonomy interests are least well-satisfied to be relatively weighty. So we will have weightiest reason to comply with institutions that produce relative equality in the satisfaction of autonomy interests.

We can now see how the institutional theory explains the phenomena with which we began. Let's start with the boundaries of autonomy rights. We have the right to control how we do our hair or what we wear or who we marry because we have good institutions that grant us such rights. These institutions are good in the sense that they generally help promote people's autonomy interests. That's because, as a contingent but very robust matter, people often care immensely both about how they physically present themselves and about their choice of romantic partners. Thus, generally giving people a right to control these things helps them get their values manifest in the world. Some people, of course, might be indifferent to their choice of hairstyle or clothes or even of marriage partner. But most people care about such things, so it is good to have institutions protecting them. And, individually, we should still do our fair share in supporting such institutions; we should internalize them. We should, thus, conform our own behavior to them. This explains why we have special control rights over our bodies (bodily integrity), information about us (privacy), what we say (free speech) and some things in the physical world (property). All are granted by actual institutions that promote people's autonomy interests.

Let's now look at the peculiar structure of some of these autonomy rights. We'll begin with issues around consent. Our institutions dictate that present dissent trumps past and future consent, and that hypothetical consent matters sometimes,

but is trumped by actual dissent. These are good institutions for straightforward epistemic reasons. What you actually, presently, consent to is usually a much better guide to what your core values dictate than what we predict you'll consent to in the future, or what we think you consented to in the past, or what we think you would consent to were you fully informed. That is because we're often wrong on such issues. You (usually) know your values much better than external actors and are much more inclined to accurately express those values. External actors will often fail to correctly predict what you will consent to in the future or what you would consent to in hypothetical situations. They will often misremember what you consented to in the past. Thus, institutions that privilege the present and the actual help promote people's interests in getting their actual values manifest in the world. So we should comply with such institutions.

We now turn to advice. Again, the initial point here is that we do have institutions that protect people from unwanted advice. And they seem like good institutions. Unwanted advice can easily turn into autonomy-undermining psychological pressure. Advice can turn into hectoring. And it can also easily spill into unwanted demands for information or claims to control people's actions. Restricting advice-giving is a straightforward way to stave off these risks. Finally, let's think about the culturally relativity of autonomy rights. Why are rights to personal space different in Romania and Argentina? Why are family members in the West more constrained vis-à-vis their younger relatives than those in China? The answer is that there are different institutions in these different places. In Romania they have institutions that grant people control rights over a wider sphere of personal space than in Argentina. In the West, we have institutions that restrict how much information even close family members can solicit about our lives and restrict how much advice they can give us. The cultural variation in our institutions explains the cultural variation in autonomy rights. This is a simple, compelling, explanation of why autonomy rights vary from place to place.

This completes my explanation of how the institutional theory can explain the peculiar contours of our actual autonomy rights. At root, the explanation is straightforward. Our actual institutions have peculiar contours. They are the way they are for contingent, often historical, reasons. And so our autonomy rights inherit the peculiar contours of our actual institutions. But that is not to say that the institutional theory is without challenges. In the next section, we will address what I take to be its most important challenges.

## 5. Challenges

### 5.1. Directed Obligations



In my view, the most serious challenge to the institutional theory is that of dealing with directed obligations.<sup>22</sup> Let's consider this in the case in which we have good institutions promoting people's autonomy. Suppose you violate these institutions; you touch someone without permission or stop them from choosing their own career. The institutional theory says that you've violated a duty to do your fair share maintaining certain institutions. But this is a duty you owe to everyone in society, not just to the person whose rights you violated. So it seems the institutional theory says you haven't wronged the person whose rights you violated specifically. You've wronged them no more than you've wronged anyone else. And that seems incorrect. When you violate someone's rights, you wrong them to an especially serious degree. One can think of this in terms of directed obligations: you owed it *to them*, more than to society at large, not to transgress their rights, and so when you do transgress them it is them you wrong primarily. Can we capture this in the institutional theory?

We can, via, two strategies. The first strategy relies on the point that we often have very fine-grained institutions. Societies can, and often do, have rules that protect only some people's autonomy interests. They can have rules that protect the bodily integrity of men but not of women, or the free speech rights of those in lower but not in higher castes. When you touch someone without their permission, for example, you undermine the general institution protecting everyone's bodily integrity. And so you wrong everyone. But your actions make it more likely that society moves to an institutional framework in which specifically the person you touch is not protected by institutions, rather than one in which nobody is protected by institutions. So you undermine the institutional protections of the person you touched to a greater degree than those of anyone else. This means you transgress your duty to do your fair share in promoting their autonomy interests more deeply than you transgress your duty to do your fair share promoting other people's autonomy interests. The point generalizes: when you violate someone's rights, you wrong them especially.

The second strategy depends on the premise that, when your wrongdoing leads to someone being harmed, you wrong the person you've harmed especially. To illustrate this phenomenon, consider recklessness. Suppose you drive home drunk. You wrong everyone on your route home by imposing a risk on them. Now suppose, additionally, that because you are drunk you lose control of your car and crash into someone, injuring them. You harm the person you injure. By harming them, you wrong them, and so you wrong them to a much more serious degree than to those you merely imposed unrealized risks on. Yet it's not intrinsically wrong to lose control of your car and crash; if you'd crashed because of ice or fog

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<sup>22</sup> Nisewandt (2019) also foregrounds this challenge.

or just bad luck, you wouldn't have wronged the person you injured. It is because your crashing stemmed from your own prior wrongdoing, your decision to impose risks on people, that you wrong this person. You wrong them especially because your wrongdoing, in this case your recklessness, led you to harm them.

We now apply this to autonomy rights. When you violate someone's autonomy rights, you typically set back their autonomy interests. When you touch someone without their permission, you prevent them from controlling who touches them. If you force someone into a job, you prevent them from choosing their own career. But this alone doesn't show you wrong them, because there are many ways to set back someone's autonomy interests without wronging them (winning the job they applied for, for example). Key is that, on the institutional theory, violating their autonomy rights is a wrongdoing: it wrongs them, and everyone else, by violating your duty to do your fair share in maintaining good institutions. Additionally, the harm this wrongdoing causes doesn't fall on everyone equally; it falls primarily on the person whose rights you violate. You set back their autonomy interests specifically. Above, I claimed that when your wrongdoing leads to someone being harmed, that itself wrongs the person you harm. So, when you violate someone's autonomy rights, you wrong them to an especially serious degree. This is the second way in which we explain the directedness of autonomy rights: the harms of violating them fall on certain people more than others.

These points are complementary. The general picture is that when you violate someone's autonomy rights, you deal a special blow to the institutions protecting their autonomy interests. And, additionally, you harm that person, and that generates an additional, but not less serious, wrong. Thus, the institutional theory can explain the directedness of autonomy rights.

## 5.2. Particularity

Let's turn to a second challenge. This challenge hinges on the fact that there are many different ways individuals can promote other people's autonomy interests.<sup>23</sup> Imagine you give someone a lot of money, and so make it much easier to get their values manifest in the world. This would substantially promote their autonomy interest. So, one might think, you have done your fair share to promote their autonomy interests. Yet, intuitively, you should still comply with their rights. You cannot just give them money then do what you want to them; you cannot trade-off a rights violation by contributing to someone's autonomy interests in some

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<sup>23</sup> Maskivker (2019, ch.4) emphasizes this kind of challenge (in her case, to a theory of duties to vote based on collective obligations).

other way. There's one particular way that we're obligated to promote people's autonomy: by respecting their rights. Can the institutional theory capture this fact?

It can, straightforwardly. The key point is that our collective obligations to each person are more extensive than an obligation to promote their autonomy. Additionally, we are obliged to take the effective means to protect their autonomy. This flows from a general effective-means principle: when we have a duty to do something, we have a duty to take the effective means towards doing that thing. The effective means towards promoting people's autonomy interests is to set up and maintain autonomy-protecting institutions. So we have a collective obligation to support exactly these institutions. You cannot do your fair share towards satisfying this specific obligation by giving someone some money and then ignoring the institutions. You have to at least comply with the institutions. So we can explain the particularity of autonomy obligations: we can explain why one has an obligation to, in particular, respect people's autonomy rights rather than to simply do whatever one thinks will best promote their autonomy interests.

### 5.3. Paternalism

Let's address a third challenge. Imagine we're all very akratic. We want to be healthier but find it very hard to freely choose healthy food. Fortunately, we have (paternalistic) institutions that ban unhealthy food. The challenge is that these institutions plausible do conduce to the realization of our core values (health), but they still are still problematic from the point of view of autonomy. Paternalistically forcing you to do something impairs your autonomy. Can the institutional theory capture this? It can. The key point is that your autonomy isn't achieved simply by you getting what you value. Your values have to non-deviantly bring about, they have to be manifested in, their ultimate fulfillment. When you're forced to eat healthily by paternalistic institutions, your health doesn't manifest your values. It manifests, instead, the designs of whoever set up the institutions. And so we can object to the paternalistic institutions on autonomy grounds: they do not actually promote people's autonomy interests.

### 5.4. Secrecy

Consider a fourth challenge. Suppose one is able to violate an institution in complete secrecy. Imagine you're alone with someone: nobody is observing you and both of you are about to experience amnesia. In this case, one might think that violating their autonomy (by hitting them, for example) won't undermine any autonomy-protecting norms. It won't make anyone less likely to observe these norms; nobody is watching, and even you two won't remember it. But that is

obviously the wrong result. Fortunately, we can easily avoid this conclusion. We do so by emphasizing the role of internalization within the theory. You have a fair share duty to internalize norms, not just comply with them. Internalizing a norm means, *inter alia*, taking it as a rule for your own actions. This internalization is what most supports the norm because it most robustly supports your own enforcement of and conformity to it. And if you ought to internalize a norm, and internalizing the norm implies that you'll act in a certain way, then you ought to act in that way. So, even when you can violate a norm in complete secrecy, you shouldn't do so because you should internalize the norm.

### 5.5. Incredulity

We now turn to a fifth and final challenge. The worry here is just that the institutional theory has implausible consequences in certain cases. This worry is best brought out by considering bodily integrity rights in societies very different from our own. Imagine we lived in a society where bodily contact, including perhaps sexual contact, had a very different social significance to that which it does in our society. In this society very few people care about such bodily contact, and accordingly this society has no institutions protecting people from such contact. The institutional theory implies that the members of this society genuinely don't have the rights to control contact with their bodies that we have. They are not wronged when people touch them without permission. Some might respond to this consequence with incredulity. They might think that bodily integrity rights are a simple, natural and unproblematic class of rights. They cannot be undermined by institutional variation in this way. Does the institutional theory have any reply to this objection?

This objection, in part, simply expresses a clash of intuitions. I myself find the verdict of the institutional theory plausible in this kind of case; it seems to me that in societies very different from our own, our bodily integrity rights would be very different. But one can say more to undermine the contrary intuition. For a start, there is an obvious error theory for it. In the actual world, almost everyone cares enormously what happens to their bodies, and so in actuality institutions protecting bodily integrity are very important. The intuition that we would have bodily integrity rights in very different situations is, I suspect, rooted in a failure to appreciate how different they are from all actual situations. And, additionally, the picture behind this intuition—that bodily integrity rights are simple and nonproblematic—is implausible. Suppose you brush past someone in a crowd or convivially slap someone on the back. You needn't have violated their rights, but it is not at all simple to understand why. Or imagine you have a wooden leg. It isn't clear whether you enjoy the same control rights over this as over your flesh-

and-blood limbs. Bodily integrity rights are complicated and, often, arbitrary seeming. That undermines the idea that they must be pre-institutional.

There are of course other objections to the institutional theory that we could explore. But I believe that addresses its most serious challenges.

## 6. Conclusion

Let me conclude by slightly reframing the theory that I've advanced in this paper. It's extremely plausible, I think, that our institutions sometimes make a difference to what we ought to do. Consider property: you have a right to control some material objects, but the nature of this control is very plausibly determined by our institutions. When, for example, you own some land, whether you have moral rights to control the space above and below it depends on your local institutions around property rights. Equally, when we keep our promises or stop at traffic lights or comply with the norms of etiquette, we are following institutions. Plausibly, part of our reasons for doing such things is that we have some moral reason to follow institutions.<sup>24</sup> I've advanced a general way to think about the moral force of such institutions. They have force when they help us satisfy a collective obligation, and because we have a duty to do our fair share towards that satisfaction. And that story illuminates autonomy rights. We have weighty rights to control certain things because autonomy-promoting institutions grant us such control, and others should do their fair share to sustain such institutions.

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<sup>24</sup> For institutionalist views about these phenomena, see n.7. I think Valentini (2021) provides the most attractive alternative view.

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