

# The Transfer of Duties: from Individuals to States and Back Again\*

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## I. Introduction

We often make claims about the duties of states. One might think, for example, that Australia has a duty to legalise homosexual marriage, that Britain has a duty to spend less public money on the royal family, or that the United States has a duty to make healthcare affordable. Can such duties be explained in terms of individuals' duties? We think many—though not all—can. To make a case for this, we build a general and abstract analysis of how some collectives' duties are explained by individuals' duties, and apply it to states in a way that retains common sense intuitions about states' duties. We then use that analysis to suggest a new sense of membership in a state. The analysis depends crucially on epistemic elements, including the beliefs and transfers of information required for reciprocal recognition and intentional participation; certain other bidirectional transfers of knowledge; and the required degree of justification for certain key beliefs.

There is surprisingly little literature on the possibility of a derivative relationship between particular duties of states and individuals. Much has been written assuming that states are moral agents and so can bear duties (e.g., Barry 2005; Reidy 2004; Shue 1999). Others have argued that states are moral agents, but haven't commented on how those agents acquire or discharge duties, or who counts as a member (Erksine 2006; Wendt 2004; Goodin 1995, ch. 2). There is a growing literature on assigning duties of financial compensation to citizens, as a means of rectifying democratic states' wrongful acts (May 2006; Pasternak 2013; Stilz 2011; Thompson 2002). But rectifying wrongs makes up only a tiny subset of states' duties. What about their duties simply to pursue some good state of affairs, such as human rights fulfilment, climate change mitigation, or nuclear disarmament? And what about the question not of who should bear the costs of discharging these duties given that there are such duties, but of how states acquire such

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duties in the first place? Our guiding questions in this paper are: can we give an account on which a good number of states' duties are justified by and discharged through individuals' duties, and can this tell us anything interesting about membership in states? We give an affirmative answer to both.

These questions could easily be misread as belonging to the large literature on political obligation. There are well-known social contract accounts of the original transfer of individuals' rights in creating the state (Hobbes 1651; Locke 1689), just as there are various accounts of whether, and how, the state has authority over the individual (for an overview see Dagger 2007). Our account may have implications for thinking about political obligation insofar as we suggest a criterion for membership, and one major theory of political obligation builds obligations out of membership (see e.g. Gilbert 1993). But we are not interested here in individuals' duties *in general* to obey the laws of a given state. Rather we are interested in how any given duty of a state's is derivable from particular duties of particular individuals, and how it will come to create moral duties (not necessarily legal ones) for those same individuals. It is a separate question whether the state's general authority over those individuals (or other individuals) is legitimate.

We begin in §II by laying out what we call 'the simple story'. The simple story starts with the fact that individuals sometimes discharge their duties by transferring them to collectives. The individuals' discharged duties generate new duties for the collective, and the collective discharges those duties by acting through its constituents, which involves distributing roles to them. (On individuals' duties in group contexts see e.g. Lawford-Smith 2012; Collins 2013; Held 1970; Feinberg 1968; Gilbert 2001). Constituents then incur yet more duties, related to their roles.

In §III, we argue that this analysis can account for a good number of states' duties. We begin by mapping the general form of states as collective agents. We then explore the various components of the simple story as applied to states, and demonstrate its intuitive force as a model of many of states' duties. We close §III by addressing some complications that arise in applying the simple story to states. The result is that many, but not all, of states' duties can be accounted for by the simple story.

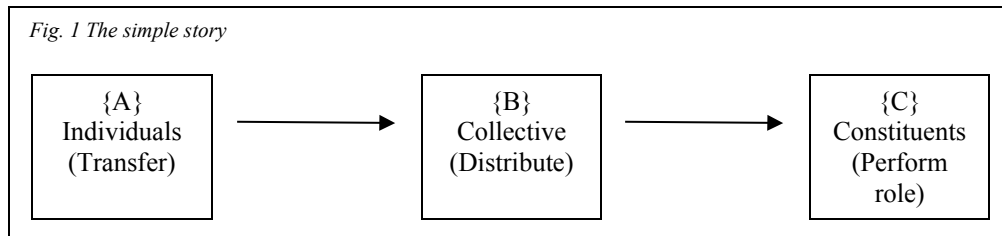
In §IV we explain the various ways in which individuals and states can fail to properly discharge their duties in the way the simple story demands. We then find that the simple story produces some counterintuitive results regarding the constitution of a state's agency. In remedying these, we develop a novel and important sense in which individuals are members of states. This argument stakes out new territory within the growing literature on whose moral agency is implicated when the state acts (Parrish 2009; Stiliz 2011; Pasternak 2013). We thus draw a bridge between theories of group duties, and

theories of state membership, by using our theory of group duties to answer neglected questions about the normative basis of states' duties. §V concludes.

## II. The Simple Story

To avoid rehearsing arguments given elsewhere (List & Pettit 2011; Pettit 2010, 2007; Pettit & Schweikard 2006; Collins 2013), we will simply assume that the only groups that can bear duties are those that have a shared decision-making procedure. (For contrary views, see Feinburg 1968; Held 1970; Wringe 2010.) Let us call these groups collective agents, or simply collectives. Each collective (and no non-collective group) has a procedure that takes inputs from some individuals, such as their beliefs, desires, and so on. It processes the inputs, resulting in its own beliefs and desires, and ultimately in a group decision and a distribution of roles to its constituents that are together sufficient for carrying out that decision. Collectives (and no other groups) can bear duties, since they (and no other groups) have their own group-level decision-making procedure.

We call our general account of collectives' duties 'the simple story.' It is presented visually in Figure 1.



The simple story has three 'nodes': {A}, {B}, and {C}. Each node is represented by a box. The second row in each box indicates the type of agent that has duties at that node. In the bottom row is the method the relevant agents can use to discharge their duties at the relevant node (we say 'can' rather than 'must' because, as we will explain, there are sometimes multiple way to discharge {A}- and {C}-node duties). At {A} the agents are individuals, and they can discharge (some of) their duties by transferring those duties across to {B};<sup>1</sup> at {B}, the agents are collectives, and they in turn discharge the duties they have in virtue of the transfer from {A} by distributing roles to {C}; and at {C} the agents are constituents of the collectives at {B}, and they discharge their duties (usually, but not always) via the roles they have been assigned at {B}.

To illustrate, imagine an isolated relatively poor community of a hundred people. The community is struck by an earthquake. Suppose that there is nothing any of them

<sup>1</sup> As we will go on to explain, it's not strictly speaking the *duties* that get transferred between {A} and {B}, at least not in the particular form they took at {A}.

could have done—either individually or collectively—to foresee the earthquake or preemptively adapt to its effects. Most community members suffer no significant effects. However, ten people’s worldly goods are completely destroyed. They are now homeless and penniless. According to most moral theories, the other community members each have a duty to do what they can, although not at disproportionate cost, to help the earthquake’s victims.<sup>2</sup> By doing this (assume) they will maximise aggregate or average well-being, abide by categorical imperatives, do what the good person would do, make the worst-off better off, respect the victims’ rights, or so on.

Suppose that, given their own poverty, each unaffected individual lacks the ability to do anything to significantly help the victims on his or her own. But imagine that each can, at not disproportionate cost, take individual steps towards seeing to it that there is a collective that is able, at not disproportionate cost and on her behalf, to provide the victims with subsistence goods until they are back on their feet. And assume that if each individual takes steps to ensure that such a collective exists, then such a collective will exist and will have a duty to provide the victims with the subsistence goods. Each individual can then discharge her duty to do what she can for the victims by signalling to the others that she is conditionally willing to take these steps (‘I’ll help bring about the capable collective if I reasonably believe you will’), and by taking the steps if the antecedent (‘I reasonably believe you will’) is true. These steps might include getting the others to help her create a collective, joining an established collective, working to change the capacities or functions of a collective to which she already belongs, or simply checking to see that a collective to which she already belongs is pursuing that good on her behalf. Call these individual steps ‘collectivizing.’

If the only way the unaffected individuals can help the victims is to collectivize, then this will be the only way to discharge their {A}-node duties. If the victims can be helped most efficiently if the individuals collectivize, then the individuals might be morally demanded to discharge their {A}-node duties in this way. However, if each individual is able to efficiently help the victims (at not disproportionate cost) without a collective, then collectivizing is just one of many ways in which the individual might discharge her {A}-node duty. (For a roughly similar account of duties to form collectives, see Collins 2013.)

Discharging one’s {A}-node duty by collectivizing requires more than just taking steps to ensure a capable collective exists. It also requires transferring one’s {A}-node duty to the collective. Let us explain. Suppose the justification of Tui’s {A}-node duty was that some good ought to be pursued—the good of ‘the earthquake victims being

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<sup>2</sup> For a useful discussion of moral demandingness and acceptable costs, see Goodin 2009, p. 6.

helped.’<sup>3</sup> That general justification gives rise to specific duties for agents—whether individuals or collectives—to pursue that good. These duties are ‘specific’ in that their precise content depends on the agent’s capacities. For Tui’s specific duty to be passed to a collective, and thus for her to have discharged her {A}-node duty via the simple story, she must meet a particular epistemic condition: she must reasonably believe that a collective will pursue, on her behalf, the good of ‘the earthquake victims being helped’—that its specific duty will be discharged in her name. Tui’s discharging her {A}-node duty by collectivizing has four steps. First, she must do what she can (at not disproportionate cost) to bring about a collective that can pursue the good of the victims being helped. Second, she must will that the collective pursue that good on her behalf. Third, she must communicate to the collective that she wills this (as we’ll see, her communicating this to a state will require that she engage in political participation of some kind). Fourth, she must do what she can (at not disproportionate cost) to bring about her own reasonable belief that the collective will, in fact, pursue that good on her behalf.

At first glance, it looks like what is transferred between {A} and {B} is Tui’s specific duty to do what she can to pursue the good of ‘the earthquake victims being helped’. She has literally ‘passed’ her duty on to someone (something) else. But for familiar reasons to do with ‘ought implies can’, Tui cannot have duties to do what she cannot do. So even though the good ‘the earthquake victims being helped’ generates duties for both a single individual and a large collective, the specific duties that it generates will be different in content depending on the agent they accrue to. Tui does not pass on to the collective her specific duties, which are constrained by her individual capacities, but rather generates a new specific duty to pursue that same good, which is held by the collective and is constrained by *its* capacities. The collective’s duty will demand different actions than Tui’s duty, because the collective has different—much greater—capacities. This way of understanding what is transferred avoids the odd effect of a collective coming to have multitudes of specific duties to do things which are not sensitive to its own capacities.

In some cases, the collective would have incurred a capacity-relative duty to pursue the relevant good even if individuals had not transferred their general duties. But the transfer is important: the individuals’ transferring their duties constitutes an additional justification—over and above the value of the good to be pursued—for the collective’s duty. In cases where the collective would have had a duty to pursue the good even without the individuals’ transfer, the transfer overdetermines the collective’s duty to pursue that good. The transfer is a sufficient—though not always necessary—justification

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<sup>3</sup> We hope this is fairly neutral between ethical theories. One might instead have ‘Tui (and those who, on Tui’s behalf, discharge duties with this justification) responding appropriately to the victim’s claims’, or so on.

for the collective's duty to pursue the relevant good. So it provides an explanation of the collective's duty. Additionally (and importantly for our later arguments), the transfer makes it true that when the collective discharges (or fails to discharge) its duty, it does so on the individuals' behalf.

Notice, though, that the collective might take itself to be pursuing a good on an individual's behalf, where she objectively has a duty to pursue that good at the {A}-node, but without it actually doing so on her behalf. In order for a collective to pursue a good on an individual's behalf, she must *will* that it does so and must *communicate* this will to the collective. If she does not will this, or if she does not communicate it, the collective isn't really pursuing it on her behalf. In such cases, she has not engaged in the duty transfer process with the collective. The collective's act of pursuing the good, and purporting to do so on her behalf, might serve to dissolve her {A}-node duty, but she has not thereby discharged her duty: if we imagine she has a moral ledger, she would not get a tick in the {A}-node duty row.

Note also that an individual might discharge his {A}-node duty by willing, communicating, and reasonably believing in the right way, even if the collective fails to so act. This is consistent with saying that the individual acquires a new duty when he discovers the failure. But his original duty was to take certain steps—namely, to will, communicate, and reasonably believe—which he did take. The original duty is thereby discharged, through the individual's meeting these epistemic conditions. (This will become important for the analysis in §III, when we consider how individuals discharge duties by passing them on to states.)

At the {B}-node, there is a collective agent. The individual's transfer at the {A}-node has discharged her duty. It has also generated a new duty, held by the collective, with the same justification as the {A}-node duty: in the example, the justification was the good of the earthquake victims being helped. Thus the collective comes to have a duty to do what it can, at not disproportionate cost, to pursue that good. In the example, the individuals' {A}-node duties amounted to signalling conditional willingness and acting if they reasonably believed the condition was met, and we supposed that the collective would be able, at not disproportionate cost, to see to it that the victims have subsistence goods until they are back on their feet. So in this case the collective's duty will be to see to it that the victims have subsistence goods until they are back on their feet.

How does the collective discharge its duty? Collective agents act by having their constituents act, in just the way that individual agents act by having parts of themselves act. I start to dance a 1920s Charleston by lifting my right foot up while turning both ankles out, and then setting my right foot down while turning both ankles in. Collectives ensure subsistence goods for victims by distributing roles to constituents, such that if

each constituent used their role in the right way, then the victims would have subsistence goods.<sup>4</sup> The collective ‘distributes roles’ when at least one individual uses the collective’s decision-making procedure to distribute roles.<sup>5</sup> For example, following the conditions for group agency in (Pettit & Schweikard 2006), suppose the ninety individuals unaffected by the earthquake set up a governing board of five; express their intentions to have the board’s decisions bear on their own; establish their decision-making procedure as ‘consensus of the board’; establish the goal of their decision-making procedure as ‘giving the earthquake victims subsistence goods’; and those nominated as board members agree on the roles jointly sufficient for achieving that goal, and communicate those roles to the constituents who must use them in pursuit of the goal. When the board has distributed the relevant roles, the collective has done its duty.

Finally, at the {C}-node, we have individual constituents of the collective and their duties to use their roles in such a way that the good is pursued. In the earthquake example, a role might be ‘housing two victims’ or ‘baking ten loaves of bread’. Different constituents can be given different roles based on their various capacities, and their all-things-considered role-related moral duty holds only if the cost of performing it is not disproportionate.

At the {C}-node, instead of viewing the group as one entity discharging duties as a unitary agent as we did at {B}, we now consider the constituents’ duties individually. This means that when we consider a given constituent’s duties, we cannot simply assume that others will perform their roles (as the collective did when it was assigning the roles). A constituent’s duty is not an isolated duty simply to perform her role. Instead, because the {C}-node duties derive from the {B}-node duties, the individuals at {C} have duties to use their roles in such a way that they do what they can (at not disproportionate cost) to see to it that their collective does its duty, i.e. pursues the good in question (insofar as it can at not-disproportionate cost). An individual’s using her role for this purpose might require more than just performing the role the group gives her. For example, Kea’s using his role to see to it that the collective helps the victims might require not just (say) baking bread, but also motivating other constituents to perform their roles, and maybe even performing their roles for them if they fail (Lawford-Smith 2012). So the constituents may be required to help others do their bits. This is all part of their duty, which is ‘use your role in the collective to see to it that the collective does its duty.’ Constituents are

4 ‘Constituents’ are individuals who meet the relevant conditions for collective agency. We say ‘constituents’ rather than ‘members’ because later we will develop a conception of membership that is stronger than the concept of ‘constituent’ that we are using here.

5 ‘Roles’ isn’t meant in any deep sense: it may be equivalent to ‘actions’ (the role may be to perform an action). Furthermore, we talk about the distribution of roles because we’re focused in this paper on collective actions rather than collective decisions, but if the collective’s goal is only to produce a decision then the roles will have mental actions rather than physical actions as their content.

jointly and severally responsible for the collective's doing its duty, because the duty is something they are discharging together, as a collective.

Although the constituents discharge the collective's duty together, this should not be taken to automatically imply anything about their psychology. Individuals sometimes intend, plan, wish, etc. not just on their own behalf, but on the behalf of a group they partly constitute, whether or not that group is a collective agent (for accounts of this, see Pettit & Schweikard 2006; Tuomela 2006; Bratman 1999). Our simple story is neutral on the question of whether—at any of the three nodes—individuals 'put themselves in the group's shoes', so to speak. It is possible for the simple story to run with or without such 'we-thoughts.' If it does not include them, then each individual thinks only about what he or she has a duty to do, at each node. At {A}, this is willing and communicating; at {B}, this is ensuring that at least one constituent uses the collective's procedure to distribute roles; at {C}, this is using her role with a certain end in mind. The collective can discharge its duty without anyone conceiving of themselves as 'in its shoes.'

Nonetheless, it might be useful or common for an individual engaged in the simple story to think in we-terms—to think not just about doing her own duty, but about the collective doing its duty. These kinds of thoughts might be particularly useful at {B}, where at least one individual must distribute roles with a view to a certain outcome. We-thoughts might also be helpful at other nodes. For example, at {C} they might help an individual to better understand the purpose of her role-related duty. But nothing in our account of duty transfer hangs on this psychological question.

The psychological question to one side, there remains a metaphysical question about the relationship between the individuals and the collective. Is the collective somehow "more than the sum of its parts" or "something over and above its constituents"? We think not. An assumption of our model is that, ontologically speaking, a collective is nothing more than a set of individuals arranged in a certain way, for example meeting something like the conditions for collective agency presented in (Pettit & Schweikard, 2006, 33). If this assumption were false, the simple picture would look quite different: for one thing, the duties at {B} would not be analysable in terms of individuals' duties. Those who endorse metaphysically non-reductionist views of collectives should view our project as an attempt to make sense, in metaphysically reductionist terms, of certain duties of collectives in general, and then of states in particular. If that project succeeds, we will not have shown metaphysical non-reductionism to be false, but we will have vindicated metaphysical reductionism's ability to explain the justification of collective's duties.



### III. Application to States

#### A. State Agents

We will now apply the simple story to states. This application is not entirely straightforward, because the size and complexity of states introduces epistemic problems that we assumed away in the earthquake example.

We understand ‘states’ in much the way described by The Montevideo Convention on the Rights and Duties of States (1933). The Convention describes states as having: “(a) a permanent population; (b) a defined territory; (c) government; and (d) the capacity to enter relations with other states”.<sup>6</sup> Some might be tempted to interpret claims like “Australia has a duty to legalise homosexual marriage” as “the Australian government has a duty to legalise homosexual marriage”—here we’re not interested in the narrow understanding of states as governments, but in a very broad understanding of states as collective agents that include anyone whose agency is implicated in the states’ actions.

The claim that states have group-level decision-making procedures—and are therefore collectives—is plausible, even if controversial.<sup>7</sup> States meet the conditions for agency given in, for example, (Pettit & Schweikard 2006). States have a range of complex decision procedures, which systematically produce a range of beliefs, desires, and goals, and a distribution of individual roles for achieving those goals. Many people (implicitly or tacitly) intend to have the goals, procedure, and role distributions bear upon their own decision-making goals and procedures. A state distributes roles to constituents on the basis of its goals, which are a complex function of constituents’ goals. (Recall that ‘constituent’ here means those individuals who meet whatever are the correct conditions for being a member of a collective agent. Under Pettit & Schweikard’s model, the key condition is that the individual intends to have the collective’s decisions bear on their own decisions.) To be sure, states’ decision procedures often turn constituents into adversaries and some constituents arbitrarily have more sway over the procedure than others. States’ decisions are not reached by anything remotely resembling consensus. Moreover, not all of the procedures are explicated and they often change in *ad hoc* ways. Yet the result of these processes within the collective is a set of goals, a set of individual roles for achieving those goals, and a distribution of the roles among individuals: results produced not by one constituent—or by the conjunction of each constituent’s independent processing—but by the constituents as a system. The will of the state is a complex function of the will of its constituents. The actions of those with roles under the

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<sup>6</sup> According to Shaw (2003, 178) and Jasentuliyana (1995, 20), these criteria remain generally accepted.

<sup>7</sup> Erskine (2001) and Wendt (2004) agree, each using slightly different criteria for collective agency.

state's decision procedure partly constitute actions of the state when the role-holders use their role to help discharge the state's duty.<sup>8</sup>

### **B. The Nodes in the State Story**

The simple story can be used to shed light on a large number of states' duties. Consider a state's duty to mitigate climate change, promote fair trade, or respect and protect human rights on a global scale. What reasons might we give for why states have these duties? We might point to the state's relationship to the individuals it represents: that the state owes it to those individuals to pursue those goods. But often, the individuals that states represent will not be the intended beneficiaries of states' duties: for climate change, it will be future generations; for fair trade and global human rights, it will be people all over the world (including, but not limited to, those a given state represents). It then seems odd to say that the state owes such duties to the people it represents—unless what states owe to the people they represent is to pursue some goods on those individuals' behalf.

Moreover, it is independently plausible that individuals have duties at the {A}-node that relate to pursuing the goods of climate change mitigation, fair trade, and so on. If we could effectively pursue these goods on our own, then, according to a wide range of ethical theories, we would have a duty to do so. But we cannot effectively pursue them on our own. You, as an individual, cannot have duties to bring about these goods, because you, individually, are unable to do so. But you can have a duty to do what you can, at not disproportionate cost, to pursue them. There are multiple ways to discharge your individual duties to pursue these goods, and often you will be required or will choose to do other than just transfer them to the state. In pursuing the good of avoiding dangerous anthropogenic climate change, for example, you might switch to a vegan diet or give up air travel. But you might also choose to transfer your duty to your state: to bring about your reasonable belief that the state has, first, taken on your duties and, second, is giving relevant roles back to you and other constituents. You can discharge your duty to pursue that good by doing what you can to make your state such that it can pursue that good; willing that the state pursues it on your behalf; communicating this to the state; and forming the reasonable belief that the state will, in fact, pursue it on your behalf. This is all just as the community members unaffected by the earthquake did in the initial example.

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<sup>8</sup> On this, our account agrees with international law. The *Responsibility of States for Internationally Wrongful Acts* ([http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9\\_6\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf), ch. 2, article 5) states that “The conduct of a person or entity ... which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance”.

What specific actions do these four steps involve? Take the climate change mitigation duty at the {A}-node. Most states are able to pursue the good of climate change mitigation to some extent. (Note that an ability to do something does not entail a willingness to do it.) If one's state does not pursue it, then this first step might require anything from awareness-raising, to rallying for a new government department, to (in extreme cases) staging a coup.<sup>9</sup> The second step—willing that the state pursue climate change mitigation on your behalf—requires a simple mental action. The third step, communicating your will to the state, will require political participation. In democracies with the appropriate checks and balances, it will require voting in a certain way. In democracies and elsewhere, it might require protesting, signing petitions, publicly declaring one's views, or so on. Finally, bringing about your reasonable belief that the state has taken on your duty might just require regularly checking that the state already is pursuing that good on your behalf (for example, by following the political news). Or it might require even less than this: if it is epistemically reasonable for you to simply trust that your state is doing as it ought, then you might be able to secure a reasonable belief simply by trusting. If you reasonably believe that the state has not taken on your duty, then bringing about your reasonable belief that it has might require rallying your government representative for more aggressive climate policy, joining a green movement, raising others' awareness, and so on. In this way, the {A}-to-{B} transfer requires that individuals get themselves into a particular epistemic position.

Our duties at the {A}-node are constantly being ~~re~~-discharged as we keep willing the transfer, communicating this to our states, ensuring that our beliefs that our states have taken up our duties are reasonable beliefs, and working to reform the state if we see that such a belief is not reasonable, in order to make it so. In extreme cases, discharging an {A}-node duty might require attempting to join a state (for example, by emigrating there) or attempting to form a new state (for example, by joining a secession movement).

As we said, there are epistemic problems for the simple story's application to states. One might wonder about, for example, a climate change sceptic, who believes there is no {A}-node duty to pursue the good of climate change mitigation. Assume his belief that there is no such duty is reasonable. But imagine he does, in fact, have such a duty, that his state believes that he has such a duty, and that it intends to discharge it on his behalf. It does so by, among other things, giving him the role at the {C}-node of paying a petrol tax. He begrudgingly pays his petrol tax, entirely out of fear of being punished if he does not. On our account, the sceptic's duty to pay his petrol tax cannot be characterized in the way that our simple story suggests. This is because he has not passed

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<sup>9</sup> Of course, whether one is all-things-considered obliged to do this depends on one's capacities, proportionate cost considerations, and the possibility that one's actions won't be futile.

on his {A}-node duty: he has not willed, communicated the will, or taken steps towards reasonably believing that the state is pursuing that good on his behalf. (In fact, he may have taken steps to ensure the opposite.) Rather, the state has merely dissolved his {A}-node duty; the state secures the good and so there is no longer a case for the sceptic, at the {A}-node, to pursue that particular good. Our account is thus able to explain what goes wrong with the climate change sceptic's relation to his duty to pursue climate change mitigation: he has not discharged his {A}-node duty.

A second epistemically interesting case is one where the climate change sceptic does not believe there is a duty to pursue the good of climate change mitigation—and (let's imagine) he's correct—yet he does believe that the state intends to discharge that duty on his behalf. The fact that individuals often protest against actions taken by their states, using rhetoric like “not in my name!”, is at least anecdotal evidence for constituents having a general belief that when the state acts, it acts ‘for’ them or ‘in their name’, even when they do not endorse the state's actions and even when the state is wrong about their duties.<sup>10</sup> In these cases, the state intends to act on the individuals' behalf, and maybe the state believes it has done so successfully. But it fails to actually do so, since the individuals have not engaged in the transfer at {A}. They do not reasonably believe that the state has taken up their duties.

Of course, there are some goods that states have a duty to pursue, where individuals would not have duties to pursue those goods in some hypothetical ‘state of nature.’ Nonetheless, these duties of states are derived from individuals' {A}-node duties. Take the examples we started with: Australia's duty to legalise homosexual marriage; Britain's duty to spend less public money on the royal family; the United States' duty to make healthcare affordable. In the state of nature, individuals could not have had duties to pursue these goods. Without the relevant states having the goals and procedures they do, there would be no marriage institution in Australia, no British royal family, and no healthcare program in the United States. However, although Australia created its marriage institution, the duties to pursue the good of legalised homosexual marriage—given that there is a marriage institution—are {A}-node duties. Given the institution, it is plausible that individuals have a duty to pursue the legalisation of homosexual marriage, which they can transfer to the state. It is a mistake to think about the transfer process in a state-of-nature way—to imagine the transfer from {A} to {B} all happening at some point in hypothetical history. The nature of the agent at {B} can generate new {A}-node duties.

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<sup>10</sup> See, e.g., United States citizens' protests against the ‘War on Terror’ at <http://www.notinourname.net/> (accessed 1/12/2012).

The simple story can help us to understand, and to debate about, why states have certain duties that they have. On the simple story, they have them because the individuals at the {A}-node had duties to pursue some good. For any given duty, we can then have a debate about who these {A}-node individuals are, what their {A}-node duties are, and what should follow from the transfer. This gives us a starting point for thinking about, and refining, our account of particular duties of states'. It gives us a useful way of starting discussions about the basis, and so about the implications, of states' duties.

### C. Exceptions, Complications, and Clarifications for States

Two important exceptions to the simple story's application to states come from noticing that there can be partial variants of the thread from {A} to {C}. First of all, states can incur duties by making contracts with other agents (individual or collective). In these cases, the state's act of contracting will give rise to a collective duty that is justified entirely with reference to actions of the state itself. The state's {B}-node duty is not explained by any individuals' {A}-node duties, to carry out the terms of the contract.<sup>11</sup> For some state contracts, for example treaties regarding human rights, it is plausible that states' constituents do have relevant duties at the {A}-node. It is plausible that individuals have duties to be conditionally willing to play a part in respecting human rights. These duties can, we think, fairly be characterised as discharged by being passed on to the state, which acquires a duty to make contracts with other states regarding human rights. So the duty of states to make the contract derives from individuals' {A}-node duties. But even in these cases, the fact of the contracting will give rise to a new collective duty (a duty to abide by this contract, not merely a duty to form contracts regarding human rights) that is justified entirely with reference to agents at the {B}-node, i.e., the state.

Second, the state itself can form and carry out a decision that causes harm. On most moral theories, agents have duties to remedy harms that they have done. So assume that the state, represented in the simple story at the {B}-node, would have duties to remedy the harm. Because collectives act by distributing roles to constituents, this will have implications at the {C}-node. The obligation to remedy historical injustice can be understood within this framework. But again, while this is part of the series of duties that we're interested in, it isn't a paradigm case because it doesn't include the duties at {A}.

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<sup>11</sup> For example, Britain made an agreement with the International Olympic Committee that it would host the 2012 Olympic Games. In virtue of making this agreement, Britain incurred a duty to do what it could to see to it that it would host the Games. But it is implausible to think that individuals passed on duties to be conditionally willing to do what they could to see the Games hosted by Britain. They might have *chosen* to do what they could, but they had no *duty* to do so. And they might each have these duties *after* Britain has committed, but these duties arise at the {C}-node, not the {A}-node. But Britain's initial {B}-node duty to host the Games has no {A}-node explanans.

Any story about individuals at {A} transferring duties to the state at {B} will entail constituents' duties at {C}, because {B} and {C} are logically connected. But not all stories about collectives' duties at {B} will entail an explanation at {A}, because states are collective agents which can act autonomously, e.g. in entering contracts and in undertaking potentially harmful actions, and they can thereby come to have duties to honour their contracts, make reparation for their harms, or perhaps even assist in virtue of their mere capacity to do so (in cases where transfer has not occurred).

In addition to these two exceptions in the case of states, there are complications that apply to the simple story, and equally to its application to states. First, just like other kinds of collectives, states can 'contract out' their duties (fulfilling duties by having another agent perform them, not to be confused with accruing duties by making agreements with other agents, discussed above). For example, a state might hire a private military company to assist it in waging a just war, or hire a national of another state to vote or argue on its behalf at a meeting of the United Nations. The firm or the delegate would thereby incur a duty, and the state would discharge its duty relating to the war or the vote by making the contract with the non-constituent and fulfilling its end of that contract.

Similarly, states might dissolve the duties of non-constituents, both collective and individual, so that some individuals start out with a duty but do not end up with one. For example, if New Zealand suddenly decided to take in all climate refugees from Pacific Island nations, then the duties of other states to take in these refugees would be dissolved. Those states' constituents would also have their {A}-node duties related to Pacific climate refugees dissolved. (This does not necessarily mean other states would be left with no duties. They might have a duty to compensate New Zealand. But the other states, and their constituents, would lose their duties to do what they can to take on the Pacific Islands' climate refugees.) Any individual who has her duties dissolved rather than transferred is not part of the transfer from {A} through {C}, although this should not be understood to imply that {A} and {C} must be symmetrical in composition. Asymmetries will sometimes be present in the simple story but will almost certainly exist when the {B}-node collective is a state, because constituents may transfer duties at {A} and then emigrate, or fall very seriously ill, or die, before they are able to be distributed duties at {C}.

Furthermore, a state cannot simply contract out whichever of its duties it likes. That is to say, just as there are agent-relative duties for individuals, such as duties of friendship (it matters that I comfort my friend rather than that just anyone comforts her), there are agent-relative duties for states. Consider the duty of Australia to apologise to Aborigines for the state's policy of forcibly removing Aboriginal children from their

families. Here, Australia's duty is to see to that Australia apologises to Aborigines, not just that Aborigines receive an apology. The duty cannot be contracted out; it must be done by a constituent of the Australian state (in this case, a suitably high-ranking constituent), acting within and because of their role, under instruction by the state itself, as a result of the state's decision-making procedure. When the constituent does this, Australia itself apologises.<sup>12</sup>

Another seeming complication for states is actually no complication at all, but it is instructive to consider why. This is that it looks like certain duties, transferred from {A} to {B}, can be discharged at {B} without being distributed to {C}. Imagine that individual Canadians have a duty to do what they can to protect the human rights of those outside their borders, and they discharge this duty by transferring it to the state. The state can discharge the duty it thereby incurs by arguing a certain way in the next meeting of the United Nations, when human rights protection is on the agenda. It looks like there is a transfer of duties between {A} and {B}, from individuals to the state, but that the collective duty can be discharged at {B} without needing to be distributed to constituents at {C}. However, that a collective duty can be discharged easily or by one person does not mean that it has been discharged without distribution of the necessary roles to constituents. Collectives act through their constituents. So the action of one constituent—who is the state's delegate to the relevant United Nations meeting and argues in a certain way—is the action of the collective. (If the state organises for a non-constituent to act on its behalf, then this organising action is an action of the collective, performed by a role-bearing individual at the {C}-node.) So rather than demonstrating that there can be a transfer of duties from {A} to {B} without any implications for {C}, this case demonstrates that the duties of constituents at {C} can be extremely minimal.

#### **IV. Implications for States**

##### **A. Failure at Multiple Stages**

Understanding certain of states' duties via the simple story gives us the resources to criticize moral failure at multiple stages. Many of these varieties of state failure have an epistemic dimension. By noticing this, we can see the close connections between groups' epistemic lives and their moral lives.

First, states may fail to discharge their duties because the state has a faulty set of beliefs, desires, and goals, a faulty procedure for identifying future beliefs, desires, and goals, or a faulty procedure for distributing roles (*mutatis mutandis* for alternative conditions for collective agency). We can then locate the failure at the {B}-node, or

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<sup>12</sup> As happened on February 13<sup>th</sup>, 2008. See "Kevin Rudd's Sorry Speech", *Sydney Morning Herald* 13<sup>th</sup> Feb., 2008, online at <http://www.smh.com.au/articles/2008/02/13/1202760379056.html?page=fullpage> accessed 31/07/12.

perhaps with the individuals who set up the procedure, or (if they could have changed it) with the individuals at the {A}-node who did not make their state such that it could do their duty. Or perhaps the procedure and outputs of the state are fine, but a constituent has failed to perform her role—a failure which would be particularly egregious in a context in which all roles were necessary for the collective action’s being performed. Here we can locate the failure at the {C}-node. Finally, maybe the {A}-node individuals failed to will that the state take on their duty, or to communicate this to the state, or to do anything to bring about their reasonable belief that the state would pursue the good on their behalf. Collectives can only do what individuals bring it about that they do, so here the failure would occur at the {A}-node. These different points at which the series of duties can fail are likely to have interesting implications for blaming states and their constituents: blame should be distributed differently, depending where in the series the failure occurs.

Take Australia’s 2012 policy on refugees, for example: the ‘Pacific Solution.’ The policy, abandoned in 2007 and reintroduced in 2012, causes all asylum-seekers arriving by boat in Australia to be processed offshore in Nauru, and removes limits on processing time (as a deterrent to prospective asylum-seekers).<sup>13</sup> Assuming that such policy is unjust towards asylum-seekers, we can articulate the causes of this injustice by looking at each of the nodes in the simple story, applied to states.<sup>14</sup> Let us assume there is a valuable good which justifies duties for capable agents, namely that political asylum be provided to those who desperately need it.

At the {A}-node we have individual Australians, who might be failing in one (or more) of several ways. They might be failing to discharge their duties to pursue that good by failing to attempt to reform the collective of which they are a constituent. While individuals’ duties at {A} can be discharged by forming, joining, reforming, or checking a collective, states are already a relatively fixed part of the political landscape, so individuals’ duties will generally be to join, reform, or check. In the case of an unjust policy, it will most commonly be to reform. Or individuals might be failing to will that the collective takes up their duty. Or they might be failing to communicate their will to the Australian state. Perhaps they are not aware of their duties to pursue that good or just don’t care about them.

At the {B}-node we have Australia, which has failed to take on the duties that Australians actually have (and has instead taken on duties it, or they, believe they have),

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<sup>13</sup> The bill supporting the policy passed on August 16th, 2012. For more information, and an argument that the policy is unjust, see Frelick, Bill. “Australia: ‘Pacific Solution’ Redux”, *Human Rights Watch* online at <http://www.hrw.org/news/2012/08/17/australia-pacific-solution-redux> accessed 23/11/12.

<sup>14</sup> Not everyone would agree that this policy is unjust. However, we have intentionally selected an example in which ‘ought implies can’ allows individuals to have {A}-node duties that they can discharge by engaging with a state. Less controversial examples of unjust state policies are unlikely to meet this condition.



and which distributes roles to constituents at {C} whose fulfilment will result in the state's pursuing morally objectionable ends. Perhaps Australia has been insufficiently responsive to individuals' attempts to transfer their duties to it. Or it is possible (though highly unrealistic) that it has taken on their duties, but has negligently or carelessly distributed roles in the wrong way.

And finally, at {C} we have the constituents of Australia, who may fail to perform their roles, which under some conditions will be sufficient to trigger no one performing their roles. In this particular example this may be a good thing—because it will mean Australia being thwarted in pursuing objectionable asylum policy. Yet it will be a bad thing whenever roles are distributed at {B} in accordance with the duties Australia actually has, which it in turn has in virtue of the transfer of duties individuals actually have at {A} because of some antecedently specified good.

### **B. Membership: Robust Duty Transfer**

A second implication of the simple story's application to states is that it can pick out a group of people who hold an interesting kind of relationship to the state: membership. 'Membership' is used in numerous ways by ordinary people to talk about their relationship with their state. It could pick out citizenship, permanent residence, national identity affiliation, and much else besides. The simple story can be used to develop one interesting way of precisifying this complex notion, but it is by no means the only way.

The conception of membership that we will develop aims to pinpoint the relation between an individual and a state, where the individual's moral agency is bound up with the moral agency of the state, such that when we talk about whose moral agency the moral agency of that state is made up of in general, or distributes down to in general, we are talking about the members. A member is implicated in general in the state's fulfilment of or reneging upon its duties.<sup>15</sup> The members have a deep-seated moral-agential identification with the state. It is appropriate for these people to be ashamed or guilty when the state does wrong—even if, on this particular occasion, the member didn't intend for the state to pursue the given state of affairs on his behalf. As we shall see, the members have epistemic lives that are—and are likely to continue to be—intertwined with the epistemic lives of their state: they and their state regularly transfer knowledge to one another, have various reasonable beliefs about one another's duties, and reliably recognise one another.

'Citizenship' is insufficient for picking out this relation, since in many states—for example, autocracies—citizens' agency is not implicated when the state acts. Their agency is not intertwined with that of their state. Another option is to say a person is a

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<sup>15</sup> By 'in general', we mean as opposed to 'for a specific duty.'

member if he engages in the simple story with a state on at least one occasion. This requires him to be a constituent, meeting whatever are the correct conditions for being part of a collective agent. However, again, he might be a constituent, and engage in the transfer process once, despite not being implicated in state's agency in general. For example, a tourist might transfer to the state her duty to pursue systematised conduct on the road. That is, she might will that the state pursue that good in her behalf, communicate this by (say) tacitly agreeing to obey the road rules, and bring about her reasonable belief that the state pursues that good at least partly on her behalf. Moreover, it might be true that it does this partly on her behalf, and the state might give her a role related to this good—the role of obeying the state's road rules. So anyone who comes into the state's jurisdiction might be a constituent in the weak sense we outlined earlier, and might engage in the simple story (but only if the state actually pursues some good on their behalf). Because of this, is the tourist therefore a member of the state, in the sense that she is generally implicated in the state's agency? Common sense says not. If we allow individuals to be members just by happening to engage in this process with a state on one occasion, then we end up saying many people are members that common sense says are not members. We think that's worth avoiding.

We therefore suggest that the members of a state are the reliable or stable participants in the simple story where the collective at {B} is the state. By 'stable participants' we mean those who meet three conditions. First, a sufficient proportion of the transferred duties that the state has had during these individuals' lives have come from each of these individuals. (Exactly how many duties a state must have received from an individual for her to count as a member will depend on the capacities of the state, and on the duties (and outlets for collective transferral) that are open to that individual. Because these vary so greatly across both states and individuals, it's likely that there's no general answer to what a 'sufficient' proportion is.) Second, the state accepts the duty transfer and distributes roles back to each of these individuals, and has a history of doing so. Third, across a high proportion of likely futures of the actual world in which the state has a similar procedure to its current one (across which states are subjected to a wide range of differing economic, environmental, social, and cultural circumstances, both domestic and international), the state would accept the transfer of those individuals' duties, and distribute roles back to them. Membership, then, is both retrospective and prospective. In short, what makes members members is that (1) they are now, and have in their past been, involved in every stage of the simple story for enough of the state's

duties, and (2) this is likely to continue into the future, at least as long as the individual is alive and the state remains in more-or-less its current form.<sup>16</sup>

Who counts as a stable participant in the simple story with states will vary across time. Take the United States during the eighteenth century. Plausibly, at that time, no slaves would count as stable participants. This is because the US was not engaging in the simple story with slaves' duties, nor had it been, nor would it if you'd put (a similar version of) it in a range of economic, environmental, social, and cultural circumstances that were likely futures of that time. So slaves were not properly understood as partly constituting the state's agency at that time.

It will also vary in interesting ways at one time. The hermit in the woods, who wholly rejects the state—who does not will that the state acts on her behalf and does not appropriately use any roles she gets back—is not a member on our view, even if she is an enfranchised citizen. There is a significant sense in which she is not part of (does not partly constitute) the state. This is consistent with the citizen hermit's having a duty to be a member of the state, which she is failing to discharge. It is also consistent with her having a duty to obey the state's laws, which she might or might not be discharging. And it is consistent with the state's reliably dissolving the hermit's {A}-node duties (it might be much more efficient for the state to presume to act for everyone within the territory than to act for exactly those members who have transferred duties, and in so acting the state may dissolve the duties of non-members within the territory). Yet she is not stably transferring her {A}-node duties. Of course, one might think that this reliable duty-dissolving relationship is morally significant. If it is, then our account can agree: perhaps the citizen hermit has some morally significant relationship with her state. But this relationship is not one of membership, understood as partly constituting the state's agency.

On the other hand, consider a permanent resident alien—a non-citizen, e.g. a New Zealander living permanently in Australia under the countries' reciprocal immigration agreement—who pays taxes, votes, contributes to public debate, benefits from state-funded healthcare and education, and generally acts through the state on a range of issues—and does so stably. On our account, this person does count as a member. This seems the right result to us. She has, does, and probably will continue to transfer her duties to the state. Of course, she and the state might both say that she is not a member. Our suspicion is that, in saying that, they are using 'member' to pick out a different phenomenon than the one we are interested in. Perhaps they are using it to mean 'citizen'

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<sup>16</sup> It might also be that certain duties are more important than other duties for making someone a member: perhaps it's more important, for my being a member, that the state stably pursues on my behalf the good 'fighting all and only just wars,' than that it stably pursues on my behalf the good 'breath-testing vehicle drivers.' We will not here take a stand on which duties, if any, might matter more for membership.

or ‘national identity affiliate.’ She is not a member in these senses, but her agency is implicated when the state acts. Many of the state’s duties have, do, and probably will receive their justification from her (among others).

It is curious that members who are not legally recognised can achieve the duty transfer. In the case of the New Zealander in Australia, we have stipulated that she votes and pays taxes—so she has some level of formal, legal recognition. This makes her case somewhat easy. But what about permanent residents in countries that deny non-citizens these privileges? Can they realistically be members? Yes—but it will probably require some clever parasitism on others’ legally recognised membership. When there are enough individuals who have a legally recognised status as a stable transferor, the modes of duty transfer are often quite open. Consider legal rights of protest, or petitioning, or writing to parliamentarians. These rights (and the associated formal processes) are no doubt designed for legally recognised members. However, others are more than capable of partaking in them, and thus regularly engaging in the {A} to {B} transfer. By obeying the laws that result, they also play a part in {C}. These individuals engage in an interesting kind of reverse free-riding: rather than selfishly exploiting the relationships that already exist, they add value by ‘tagging along with’ the official members.<sup>17</sup> These members are not as easy to pick out as citizens, but their relationship with the state is a valuable one. The simple story and our account of membership can explain what that value consists in: they are stable duty transferrers.

It won’t always be easy to identify the stable participants where the collective at {B} is a real state. We think that for democratic states, political participation is a good heuristic for stable transferral, and enfranchisement is a good heuristic for political participation. It’s not perfect: the enfranchised hermit is not a member, while the disenfranchised but politically active permanent resident is. But when trying to identify members in the messy world of politics, it’s a good enough place to start. (A different story needs to be told for non-democracies, in which voters’ decisions do not partly constitute the collective’s decisions—because there are no voters. For dictatorships, for example, it is probable that the members will be only a small circle of elites).

One might disagree with our intuitions about, for example, the citizen hermit and the politically active permanent resident. Perhaps one thinks that the hermit does partly constitute the state’s agency, while the active permanent resident does not. There are a few responses to this, which are compatible with one another. First, we accept that our conceptualisation might not capture all intuitions about membership. But it does capture a good number of them, and perhaps this is all that is needed to earn a theory serious consideration.

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<sup>17</sup> We are grateful to Miranda Fricker for discussion on this point.

Second, perhaps some common sense intuitions that our conceptualisation does not capture should be rejected, in favour of conforming to a unified and well-motivated theory. In particular on the citizen hermit and the resident alien, we find it compelling that there must be something the citizen hermit can do to distance herself from the state. Is it really enough for membership simply that the state claims, has claimed, and might continue to claim that it represents her? We think not: the hermit's will must be involved in some way—plausibly, in the way we have described as being involved in discharging an {A}-node duty: she must do what she can to make the state capable of pursuing a good on her behalf, she must will that it do so, she must communicate this, and she must induce in herself a reasonable belief that the state is acting in accordance with that will. (In emphasising individuals' intentions, our account has affinities with Pasternak 2013.)

Third, we can agree that some common sense intuitions with which our account disagrees are picking up on a normatively significant relationship. But we can deny that that relationship is membership, understood as having one's moral agency bound up with that of a collective. Different theoretical conceptions of membership, and different intuitions, might be useful for capturing different phenomena, and maybe intuitions are not always clear on which phenomena they capture. To the extent that this last point is true, our proposed understanding of membership may not be a competitor to extant accounts in the literature, but may rather pick out something slightly different. (For other accounts of membership, see Walzer 1983; Parrish 2009; Stilz 2011; Pasternak 2013. Of these, Stilz' broadly Kantian account—on which individuals have duties to leave the state of nature and form states in order to secure the conditions necessary for justice—has the most affinity with our account. It would take at least another paper to argue that our account is preferable to these. We present our account of membership merely as one possible account.)

## V. Conclusion

Our starting point in this paper was a simple story about the transfer of duties from individuals to collectives and back again. On that story, individuals can discharge their duties to do what they can (at not disproportionate cost) to pursue some good, by transferring that duty to a collective. The collective thereby acquires a new duty to do what it can (at not disproportionate cost) to pursue that good, which it discharges by distributing roles to constituents. Constituents thereby acquire duties to use their role with a view to pursuing the good in question.<sup>18</sup>

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<sup>18</sup> One issue that we haven't touched on is what the constituent's duty is when his role is pointless. It might be pointless either because the state's duty will not be discharged even with his role (since other constituents will fail to perform their necessary roles), or because the state's duty will be discharged even without his role (since other constituents will perform roles sufficient for discharging it). Lawford-Smith

Our analysis depended on epistemic elements, including reciprocal recognition (members' recognition of their state, in willing it to discharge duties on their behalf, and the state's recognition of its members, in reliably distributing duties to them), intentional participation (of members by taking up the roles distributed to them by the state), bidirectional transfers of knowledge (members' communicating to their states that they wish them to act on their behalf, and states communicating to members the roles necessary for the securing of the goods they act in pursuit of), and, finally, degree of justification for beliefs (members being required to reasonably believe that their states will act on their behalf in taking up their duties).

Applying that simple story to individuals and states helps to shed light on the nature and justification of certain of states' duties, and on the possible sources of state failure.<sup>19</sup> An interesting upshot of this application is a new conception of who the members of states are, for the purpose of figuring out who, in general, is morally implicated in the state's actions. Our suggestion was that a state's members are those whose moral lives—and, therefore, whose epistemic lives—are robustly intertwined with that of their state.

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(2012) argues that collectives' constituents do not have duties to perform their roles where they have a reasonable belief that doing so would be pointless. We think this point applies to states' constituents as well.

<sup>19</sup> States are just one collective to which the simple story might be applied. It would be interesting to consider whether the simple story works in other contexts. Perhaps, for example, one could treat states as the agents at the {A}-node, and inter-governmental organisations (such as the North Atlantic Treaty Organisation) as the agents at the {B}-node—thus ratcheting the whole story up one level, to groups in super-group contexts.

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