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Detaching Democratic Representation From State and National Borders

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Undergraduate Honors in Discipline Thesis

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Introduction

The idea of democracy, depending on each person's background, will bring to mind various acts or guarantees that appear to constitute the theory. For those in the US, the idea of democracy will likely appear inseparable from voting, the actual act of casting the ballot and then waiting – watching – the numbers tally up in opposition or favor to one's wishes. Of course, there is a great deal more than simple "vote counting" that enters into the idea of a democracy. Within the context of the United States, the idea of representational democracy is employed at multiple levels, for example the Electoral College or the duties of the legislative branch. Representation, in such examples, works in conjunction with direct voting to ensure the efficiency and effectiveness of the institution. Divergence from direct democracy proceeds even further with the institution of the Supreme Court, which is an arguably undemocratic end-point of the judicial system. The Supreme Court operates within a democratic nation state as the "final arbitrator" for what laws may be considered just or unjust. It protects and establishes the inalienable rights of its citizens, contrary on occasion to the wishes of the majority or even Congress. It should be apparent now that a democracy is not static, the very idea of what constitutes one is open for interpretation and the application of such systems varies widely from nation to nation.

Still, it can be said that the skeleton of democracy is not a complex creature. It may vary in application, donning great diversity in various institutions, but at its core, the theory is not a difficult idea to hold. It comprises the idea of legal equality, of the worth of the individual as no more or less than any other when deciding upon the laws that will bind him or her and those with which they are institutionally connected. What do we find

when the flesh of the theory is stripped away? Are we left with ballot boxes, representatives, or endpoint arbitrators? The question, if the goal is to deduce what truly constitutes democracy, must be to determine which elements cannot be removed without defeating the very goal of the theory, equal control for each individual over the laws that bind them.

The aim of the theory I will provide is to argue that the essential elements of democracy, which I claim to be constituted in the form of representation and contestation, are not inextricably linked to the necessity of state institutions, such as vote counting and arbitration. The idea of democracy is not a static concept, and moreover, the methods I aim to use on a global scale are already tolerated and integrated into modern democratic systems. This paper will proceed in the following way. I will begin by providing an explanation as to why there is a need for a new democratic theory. My focus here will be on providing justification for the actions of nongovernmental organizations (NGO's) as well as intergovernmental organizations (IGO's) that act as representatives on behalf of populations outside of, in the case of NGO's, their own national institutions.

The following paper proceeds in a set of stages and should be taken as having two overarching parts, a conceptual and a practical half. The goal of detaching democracy begins by constructing an outline of what is minimally entailed by the term democracy. Here, I will make use of Christiano's three points that are intended to identify what is required for an individual to be considered a member of a "minimally egalitarian democracy" and furthermore, why an individual's allowance into such a system is nothing less than a human right.

Of course, simply establishing a right to democracy is not enough to move it away from institutions, rather there must be additional work done to show that this right is exercisable in a manner separate from traditional procedures. In order to show this is possible, I will appeal to the “importantly affected” criteria as outlined by Gould. This theory puts forth the claim that the amount of direct participation an individual is entitled to exercise over a situation is directly proportional to the amount his or her basic human rights are being affected. Furthermore, that the level of participation they are entitled to can be achieved by representatives rather than a form of direct vote counting. It is my claim that this role of representation can rightfully be met by NGO’s and IGO’s acting on behalf of populations that have had their basic rights infringed upon.

The next stage of the paper will move to provide an argument for an expanding moral community that can encompass the rights of the affected subgroups under the doctrine of human rights. This argument relies upon the point that those affected by an institutions policy must have means to be included, though not necessarily directly, in the institution that binds them. The expanding moral community, combined with the “importantly affected” criteria forces inclusion of subpopulations into the global community where they have their right to exercise control fulfilled through the representation by NGO’s and IGO’s.

Logically, the next task of the paper will be to establish that NGO’s and IGO’s can function as representatives for the various subpopulations. To show that is a permissible function, I will argue that representational claims, as presented by Saward, are the product of creative acts between the represented and the representatives. Representation will be construed as a two-part decision consisting of the representative

properly demonstrating their link to the group and the acceptance of the link by the group. It will be necessary for the next stage of the paper to demonstrate the various types of claims that one could consider acceptable and, furthermore, what methods of rejecting and accepting claims could be considered appropriate and sufficient to preserve the theory as democratic in nature.

Once it has been established that certain types of claims are indeed appropriately made by representatives, the task will be turned to discerning what level of paternalism may safely be introduced into the theory. While I argue that a certain amount of paternalism is inevitable, and indeed appropriate, I will move to mediate any resulting “hyper paternalistic” claims through internal human rights courts. In much the same way, the Supreme Court functions democratically within the context of the United States judicial system as international human rights courts would function to an international scheme.

If such can be done, there will be a successful severance of the essential elements of democracy from exclusively state institutions. Insofar as the criteria of representation and contestation are preserved, regardless of the absence of more traditional means of democratic rule, there has been no breach of democracy’s threshold. As a whole, this paper aims to allow the actions of NGO’s and IGO’s to operate under the banner of democracy while representing the interest of subgroups with which they have no national or institutional connection.

The Need For a New Global Theory

Within the context of the modern democratic state, representation is a common and effective regulatory instrument that works in conjunction with more traditional vote

counting methods. Groups or individuals within the state act on the behalf of subgroups unable to assert themselves in the political sphere. They advocate for the recognition of their needs despite the inability of the subgroup to proclaim dominance through majority rule. Transnationally, the states perform representational acts in the interest of their citizens. The United Nations is, for example, composed of countries that represent their respective populations. The trend of institutional association is well established between representation and population. What is not currently available is a theory of transnational democracy that would allow representational claims to extend from citizens of one state to suffering subgroups in another, as well as IGO's, NGO's are neither part of the same state as the population they aim to represent nor a functioning state acting for its population. Rather they are individuals or groups that express the interest of others and petition the global community for aid.

NGO's and IGO's require a new form of democracy to justify their transnational actions. They must be allowed to function as representatives of populations with whom, in the case of NGO's, there is no institutional connection. This, I propose, is attainable through a two part democratic theory that emphasizes the representational act and the ability to contest, by the subpopulation, the claims imposed upon them. This theory preserves the essential elements of democracy while removing traditional requirement of a national connection. NGO's can act as representatives of populations making claims for their wellbeing insofar as the population has the power of veto. Democracy globally cannot allow for traditional vote counting methods, but it does not need to do so. Insofar as a population can have their viewpoints and desires adequately represented and can reject the outcome of the representation, the essence of democracy is maintained. My

theory secures this, bridging the gap between state institutions through transnational representation while maintaining democracy through the power of contestation.

Minimally Egalitarian Democracy

Perhaps it is best to begin this excursion into new democracy by first establishing why there is a human right to democracy and, later, why human rights necessitates a right to democratic representation. I begin the construction of a new democratic theory by first appealing to Christiano and his identification of what is necessary for the satisfaction of a “minimally egalitarian democracy,” and why inclusion in such a system is a human right. Later, I will identify why one issue brought up in response to this question is disputable and how the other, a valid claim, can be satisfied through an appeal to a new, looser interpretation of what constitutes democracy.

Christiano begins by defining the three criteria of what it takes to be a member of a “minimally egalitarian democratic state.” Quickly put, the qualifications are as follows: formally equal votes; formally equal opportunities to run for public office, presence of the rule of law and an independent judiciary (Christiano, 303). It is then to be said that an individual has a *moral*, though not necessarily a legal, human right to be a member of a state with these characteristics. The real question of focus here, for the purpose of this paper, is why the right to these characteristics should be considered a human right. The answer provided by Christiano is twofold: subordination and complicity. When countries must cooperate on a global level, there will inherently be a skewed balance of representation of interest as some of the participating entities are not giving equal representation to their populations. For example, if a democratic state were to enter into contractual negotiations with a hierarchal state, the democratic state would be

representing the collective wishes of its population. Oppositely, the hierarchal state would only be representing the interest of its elite autocracy. In this sense, the few in the aristocracy have the same power as the collective in the democracy. This will lead to the subordination of democratic people to that of aristocracy (Christiano 331).

The other problem identified by Christiano is that of complicity. That is to say, democratic states “give their blessing” to the inequalities created and sustained by hierarchal states when they participate in a global system, such as negotiations, with hierarchal states that employ harmful policy towards their own populations. In participation with these states, it is arguable that validation has been given to their procedures (Christiano, 314). It is my position that this problem can be remedied with an appeal to a new conception of democracy.

First, however, allow me to refute the subordination problem identified. The dismissal of this issue may occur quickly by merely questioning if it exists. Rather starkly, it appears that our currently constructed human rights doctrine embodies a *highly* egalitarian set of standards. There is no evidence to suggest that negotiations between hierarchal and democratic states result in an outcome favoring the former. If anything, the opposite is true. Therefore, it is not the subordination of democratic states with which we need to be concerned. Instead, the problem we must turn our attention to is the subordination of subgroups within a state that fails to satisfy the outlined criteria of a “minimally egalitarian democracy” and the complicity of democratic states in their subordination. Here, Christiano leaves us only with identification of a problem and not a solution. Yet, such an issue is not without cure. In the next section, I argue that the “complicity in subordination” problem can be fixed through an appeal to Gould’s

reconstruction of what democracy entails for those individuals who have had their basic rights, HR, affected by either their own or another countries policies. This detachment of democracy from strictly institutional procedures, vote counting for example, allows for transnational backing when human rights claims occur. Importantly so, it allows for these claims to be made by NGO's and IGO's on the behalf of the suffering subpopulations.

Constructing a Human Right to Democracy

Democracy, for the sake of this paper, must not be taken in a narrow sense. Rather, it needs understanding in a broader conception if we are to move beyond institutions and traditional state borders. Here, I will be making use of Gould's explanation. Democracy then will be made to refer to a commitment to a "general notation of respect for persons" (Gould, 288). To refer to democracy in this manner allows for oppressed groups, both within and outside of institutions, to appeal to the greater global community for the validation of equality and democracy.

Gould acknowledges that the primary responsibility, and certainly the initial implementations of the right to democracy, is a state level responsibility. However, she contests that this responsibility must remain exclusive to the states. Rather, she argues, the right to democracy can "transcend borders" through its function as a human right (Gould, 289).

Gould's argument begins from the assumption of equality granted to all individuals to "develop capacities and realize projects" (Gould, 291). That is to say, since all persons are endowed naturally with the same basic equality, regardless of nationality, they possess a naturally valid claim to exercise an equal amount of liberty in the pursuance of their personal capabilities and goals. Furthermore, democracy can be

considered a human right on the basis of its ability to prevent the domination of individuals when groups are participating in collective decisions (Gould, 292). To view democracy in this way, that people have the right to participate equally in matters determining their collective life with others, democracy thus becomes a formal institutional procedure that is committed to the equal representation of its participants (Gould, 292).

This adaptable view allows for the extension of democracy past traditional borders. Indeed, insofar as a person is being affected, he or she has the right to democratic participation in the binding decision. To clarify this point, Gould offers a distinction between two classes of “affected.” The first class of people this affects are those that can be considered “importantly affected” (Gould 293). These individuals are to have, or will have, suffered direct imposition on the “fulfillment of basic human rights” by the law or regulation in question. In other words, the law is impeding their basic human rights. In such a case as this, Gould purports that they should have *significant* input in the creation and sustaining of the law. Though this view is less than the absolute equality given within institutions, it is a sufficiently thick democratic protection. What does this entail on a global scale? Essentially, it gives the basis for rights claims to transcend borders. Insofar as a country’s policy is negatively impacting the basic rights of any group or population, the group has a claim to be made against the former under the purview of democracy (Gould, 294). Democracy is, at this point, required for the protection of basic human rights. It enables individuals to control their situations when the policies of others would seek to negatively supersede their input. From here, my goal remains to classify NGO’s and IGO’s as appropriate representatives of groups that have

been importantly affected by the actions of other countries or their own. If such can be done, then the actors are permitted to function democratically in their representation of the groups on a global scale. It is, of course, appropriate now that NGO's and IGO's are functioning as a replacement of "direct vote counting." The level of affectedness permits input without requiring total equalization.

It is often the case that those who suffer the greatest imposition to their basic human rights by way of domination of more powerful countries, governments, or general political entities cannot, in their current state, exercise the amount of rights attributed to them by their "importantly affected status." The role of this representation must fall onto the shoulders of those in a better position to petition the international community. To say otherwise would be a rather cruel joke. It would be the promise of a protective status that, in effect, failed to ascribe any normative power of protection to its holder. Essentially, without the ability to express the HR of democracy through representation by way of actors on the population's behalf, the very idea of a right to democracy would become infeasible to the point of meaningless for those affected subpopulations.

The Moral Progression of Human Rights

Even having established a moral right to democracy, an additional argument for the ability of subgroups or populations to express this right, this human right, on a global platform must be provided. It is not enough to claim that these groups have a right to be heard democratically or even that they may express this right by way of representational actors. It still remains necessary to show that these groups function with a general global institution where moral inclusion of their basic human right, the basis of their democratic

claims, is permitted to be expressed and made an object of response by states and their institutions.

Buchanan provides an argument for the moral progress of human rights as institutionally mediated. That is to say, it is with developments of and in institutions that our notions of human rights becomes more fully expanded to include our modern conception of human rights. I will make use of the following points from his paper. First is the expanding membership of the primary moral community. Next, is the access to a dominant, cooperative scheme of justice. That is, subjects must be included in the institutions that affect them. Even those who contribute nothing have a right to a system about them. Furthermore, institutions are subjects of choice. They are things that we, the populations, have the ability and responsibility to change and make choices about. More so than any other point, the growth of institutional capacities produces a shift from simple charity to justice (Buchanan, 407). That is the big idea. Charity is no longer an imperfect act but an act of justice. These changes in the moral progress of human rights, the reach to expand the moral community of those affected and to be concerned, was not planned. It developed with the morphing of our modern institutions, a change in our conscience that affected the way we think. Our current human rights doctrines prove that these points are representative of the fact that the moral community is expanding to encompass a large global population under the realm of justice and not mere charity (Buchanan, 408).

Human rights are not mystical and separate critical standards, but realized through the development of institutions. I will make use of Buchanan's moral inclusion argument to justify the increasing presence of subpopulations to the global community as "importantly affected" individuals that have the human right to democratic representation

through transnational actors such as NGO's and IGO's. Democracy, under Gould's definition, required the ability of those affected by institutional procedures to have the power to exercise some level of control over the imposed laws. As the amount of "affectedness" incurred from the law increases, so too does the right of participation. Subgroups become increasingly involved parties in the global community as institutions, with whom they lack any formal institutional connection, infringe upon their basic human rights. As national institutions increasingly expand their domain of influence upon the global community there is necessarily a widening of the classification for "importantly affected" individuals and as such, there is demand for the representation. This, I argue, can best be achieved through the use of NGO's and IGO's acting on behalf of the affected individuals.

To speak of moral progress as institutionally mediated developments, allows the primary moral community to be expanded on a global level. This ability to encompass the basic HR needs of subpopulations breaks away from strict national borders. It is no longer a matter of simple charity when NGO's represent those with whom they have no institutional connection. Now there is a binding moral community on a global level, which is dictated and embodied through our current HR documents. Advocating for those who are "importantly affected" by their own government or another entities is now a matter of justice, a duty owed to them on the basis of the human right to democracy as part of the global moral community.

Reconstructing the Definition of Representation

I begin the detachment of democracy from borders by looking to Saward as he takes representation outside of the traditional democratic restraints, a necessary condition

for its detachment from states and national borders. Under this definition, claim making is set at the core of representation and stress is instead put on the performance side. This is rather opposite of the traditional notation of democratic representation which intuitively brings about thoughts of institutional procedures. As such, Saward's definition provides a considerable amount of leeway for working out who and what can be considered representatives of populations outside of traditional democratic restraints.

Saward begins with the simple statement that representation is best described as a two-way street. That is, the represented must play a part in choosing their representatives and the representatives "choose" the represented by portraying them or framing them in some contestable way (Saward, 301). According to Saward, it goes in such a manner that if a constituent can be convinced that they possess a certain characteristic X and that the representative has the capacity of Y to represent them, then that consequently enables representation. It is the very act of the representative making the claim on them, the represented, and the binding link between them that creates the actual represented party (Saward, 302).

One could argue that these types of claims are made rather frequently even within systems of traditional democracy. There exist numerous examples of artists and other famous figures doing nothing more than pausing an event to call upon the audience and receive validation for their proposed link between a dissolute population and themselves (Saward, 302). Such is the point for Saward, that the actual act of representing can be likened to performing, making and presenting a claim. There is even a comparison drawn between representatives and artists. For both, Saward says, must use degrees of creativity to frame their represented in varying ways.

Representation is now created through the process of making the performance. It is no longer merely a function of formal systems but now highly informal ones as well. Saward places two qualifications on making representational claims. The first is that claims cannot simply appear; rather they must be constructed from already existing terms that the audience will be able to understand. The second condition is that the audience, whoever that might be, must acknowledge the representation in some manner and must be allowed to accept or reject the representation (Saward, 303). Under this new definition of representation, a wide variety of options becomes available to the makers of representative claims. For example, a representative could now claim to stand for the desires of a country or embody the needs of a population; the combinations are numerous (Saward, 305). Insofar as a person claiming to be a representative of a certain group of people can demonstrate a link between the characteristics of that group and their ability to represent it, then the representation is valid. That is, of course, assuming a lack of any objection from the intended audience. Democratic representation is now no longer a matter of ballot box counting and majority rule, for such would make transnational representation a logistical impossibility. Rather, claims can be permitted from electoral candidates, local figures, party leaders, and interest groups without the technicalities previously thought necessary to confirm a representative claim (Saward, 306). This in itself justifies the inclusion of such organizations as NGOs, academics, and private business in their varying levels of representation.

How Claims May Be Rejected or Accepted

The rejection or acceptance of claims made by representatives presents a problem that may, at best, be mediated. There are, of course, simple forms of rejection that may be

employed. Evidence of this is seen by world medical campaigns such as the attempt to eradicate polio. Here the actions of NGO's not only had a substantially positive effect on global welfare but could also be objected to easily. Simple refusal to receive the vaccination sufficed to disconnect the member of the subpopulation from their alleged representative. This highly informal rejection is one method by which claims can be dismissed. However, it will hardly cover all cases and nor should it be allowed to do so. Allow me to present two hypotheticals where merely refusing aid would not suffice as rejection. In the first example, allow the petitioned aid to be a much needed road connecting a village to its nearest developed city. This road would necessarily be a positive thing for the village, providing not only easier access to medical care but also opportunities for economic expansion. However, in this hypothetical the road would be built upon hallowed ground for the village. That is to say, beneficial road would be constructed overtop a sacred place. In this instance, merely refusing to travel upon the road or acknowledge its presence would be of no value to the offended villagers. The road is built and the damage done with or without their acceptance. Before discussing solutions to this, allow me to present one other hypothetical proving the necessity of a forum to redress grievances. In this instance, the subpopulation is not offended by the imposition of aid and there is no road being built or vaccinations offered. Instead, the aid package consists of a particular set of educational materials useable in the surrounding schools. These materials, however, focus on skills that have little applicability to the group's life opportunities. They focus on things, which while interesting and certainly informative, will provide the group with only minor advantages. In this case, it would be incorrect to say the aid was *harmful*, and we can even grant that it might help minutely.

However, it would also be wrong to insist that this was the best use of aid resource and, even more so, that the group should be limited to accepting this set of materials when ones more beneficial to their lives could be supplied at the same cost. There should exist, in both of these examples, a way by which the groups can contest the representation more efficiently than simple refusal. There is nothing democratic about forcing things upon groups, no matter how well thought out or intentioned they are, without a means to redress grievances. To say in the first example of the road that the group must accept the aid, would not only fail to be democratic, it would also be a form of tyrannical charity – intolerant and unacceptable despite its goodwill.

The second example is made more conflicting if we imagine that it is not merely books that are being sent to the population but teachers. Here we have aid that is not harming the village. Perhaps, they even enjoy the classes to some extent, but it is certainly not helping a terrible lot either. Let it even be that the organization that employed the teacher did so thinking that the set of skills to be taught are optimal. Here we have a population that is being misrepresented and, as such, they have a claim to see this representation changed. It is an incorrect depiction of their needs and wants. In this case, it is necessary that they be allowed to appeal to some type of institution, though not necessarily a national one, to hear their claim. To simply say you get-what-you-get when it comes to international aid would fail to meet the criteria of a democratic theory. In the following two sections, I aim to show that is appropriate that NGO's and IGO's make paternalistic claims upon the represented subpopulation, but only insofar as feasible contestation methods exist.

Is a Level of Paternalism Necessary?

Inevitably, there will be countries that either refuse to acknowledge the levels of health inequality within their territories or intentionally subject sub-groups of their population to discrimination. When this occurs it must be decided if such an organization has a right to either force recognition upon the country or, at least, secure the rights of groups beyond the host country to petition for and deliver aid. This initially appears to be at odds with the traditional democratic idea of self-determination. In the traditional context of state institutions, representation is authorized by way of representative selection. That is to say, the represented population cast their ballots for the candidate they believe best construes their own individual position. Thus, when the representative acts he or she goes about with the full authorization of the group. It is akin to a contractual agreement wherein one party, the represented, signs over the right to the other party, the representative, to purport their image and desires in a political sphere. It is, a mutual understanding of sorts. If the representative begins to act in a manner that is contrary to wishes of the represented. The group has the right to either contest the representation or, at the very least, refrain from reauthorizing the representation. The United States, with the exception of the Federal Courts, utilizes this method of representation based upon mutual consent.

Discursive representation is of a different nature. It requires representation without the authorization. NGO's and IGO's are not awaiting permission to construe their respective groups; rather, representation is a creative act by the representative. It is a difference in the root of initiation and as such requires a stringent plan for the contestation aspect of democracy. Where representation and contestation appear to be

balanced within state institutions, the burden largely shifts upon the ability to contest when democracy moves into the global sphere. Absent accessible means to contest the representation, such an act would be a mere imposition and not able to be reconciled to democratic theory.

Paternalism is then inherent in transnational representation as I have construed it here. NGO's and IGO's must move to create their constituents before the population exists as a collectively represented group. Claims are imposed, traits assigned, and limits set all before any consent of the group is given. If such is still to be considered democracy, the burden rest upon the ability to contest the claims to show such is possible

Of course, it is not only an issue of governmental heads refusing to entertain grievances. A distressed population can be blind to the blight of their own situations. Experiments have indicated that people are prone to a "status bias" (Sunstien and Thaler, 176.) In an ideal world, people would always evaluate decisions and make the rational choice in their best interest, but in our current world "the existing arrangement, whether set out by private institutions or by government tends to stick" (Sunstien and Thaler, 176.) The example provided compares the number of workers who partake in a 401K plan either opt-in or automatic enrollment setups. Under this plan, there is no push in either direction, but a choice still must be made by signing up, opting out, or doing nothing, and by default, opting out. The result from the study found a 49% to 86% increase when automatic enrollment was utilized (Sunstien and Thaler, 177.) Something to this effect could be used in petitioning for aid. It could be as simple as determining the needs of a population by NGO and IGO actors and supplying the aid unless a subgroup or country objected to the specified aid and wished to make their case for a different type of

resources to be delivered. This would allow the World Fund to initiate more long-term aid approaches while still allowing the countries an avenue for redresses. Note that in order for this method to meet the requirement of minimal interference, the ability to contact and discuss alternative aid plans must be readily available. Aid workers cannot be so remote, either culturally or physically, from the groups that communication back to the World Fund is made impossible. That is to say, the organization must function reflexively in order to retain its democratic character. The expansion of this point is in the final section of the paper where the distinction between republican theory and the one offered here is clarified.

Of course, there will be times when boundaries are overstepped and a new type of tyranny is inflicted upon suffering groups from good-intentioned, but nonetheless, incorrect wealthy nations or transnational groups. When this occurs, there must exist a higher authority to appeal to or else the democratic nature of the approach breaks apart. In the next section, I will attempt to offer a solution by way of appealing to human rights and international courts.

An Appeal to Human Rights in International Law

If shown that a level of paternalism is necessary to secure the human right to democracy, it becomes mandated that a mechanism for rejecting markedly or misallocated paternalistic claims can be possible. James Bohman provides plausible argument for appealing to the Human Rights Courts as a means of rejection. His argument entails that the an appeal to the Human Rights Courts would function democratically in the same manner that the United States Supreme Court overrides violations of Civil Rights. By not making use of the traditional forms of electoral

representation, the model is detached from state institutions and therefore able to accommodate claims based internationally.

Bohman begins his discussion of appealing to Human Rights Courts by first establishing that humanity is, in and of itself, a political community able to be detached from any particular community. He cites the case of *Smith vs. Massachusetts* (2004) to show that an entire political community, rather than an individual, can serve as the interested party even within the national borders of mechanistic democracy. This trend is additionally evident in cases of civil rights violations where “The People of the United States of America” bring forth the suit showing that an entire political community, not an individual, is the party of interest (Bohman, 110). Such is how, Bohman argues, that those who are victims of crimes against humanity may seek a redress of their grievances. For those who suffer crimes against humanity may now argue that it is the entirety of humanity that functions as the interested party and this same community may hold those who violate the intrinsic human rights of others as accountable (Bohman, 110). When other systems of redress fail an appeal to membership in humanity could serve as the point of finality for the violations of justice involving basic human rights.

One issue that must be dealt with when appealing collectively to humanity is the lack of a global justice system by which unwanted or unwarranted claims could be contested (Bohman, 111). In certain cases, a simple refusal to accept the offered aid would suffice as rejection of the claim being made. For example, certain subgroups refused Polio vaccinations on religious grounds and by doing such successfully rejected the representational claim that had been made upon them. However, this method of rejection will only cover a limited number of cases. There will still exist violations of that

require a more formal avenue of redress. In order for this to be plausible, a theoretical backing must be established that would allow for those individuals or groups seeking redress to do so transnationally by way of contestation in international law. When a population seeks to contest their delivered aid in a formal institution there are certain mechanism by which they must have access. Legal representation is one of these components. It would be nonsensical to propose that individuals who have been subjected to excessively paternalistic claims should be responsible for creating and maintaining their own defense. Their opposition would be better financed, more familiar with the system, in possession of significant resources, and the list goes on. It would be a mockery. We see this realized in the United States, where it is a mandated right that people be provided with legal representation. Otherwise, we have a promise of the ability to contest without any practical realization of it. This is where the World Fund, or a similar institution, would become necessary. While the primary purpose of their collective fund would be used for the purchasing of aid, a portion of it would be sectioned off in a “legal defense fund.” This would enable the realization of formal institutional contestation for excessively paternalistic claims. It would allow for such things as injunctions to be imposed, as in the case of road construction, and precedents to be set on an international scale. To establish that such an appeal is warranted, I look at Bohman’s argument for human rights.

For Bohman, humanity has the authority to act as a party of interest due to the ability of crimes against humanity to deprive persons “of the normative status of membership in humanity, with its complex rights and powers.” To prevent a person from exercising certain political powers such as the right to vote or freedom to speech is a

crime against his or her normative status as a member of the human political community. Insofar as human political rights can be understood as granting individuals a “membership in humanity”, then it can be said that humanity has an interest when normative rights have been violated (page 111, Bohman). To show the necessity of political rights in making a person’s “human status”, Bohman relays Hannah Arendt’s description of a “rightless person.” This person would be without a state, lacking anything but “bare humanity.” They would have no political or historical features and would lack rights, status, and powers that had previously made their participation in the “common world” a possibility. Without an institution to hear the claims made, a stateless person loses all normative powers, and the person is left to be ruled in tyranny with no ability to reform their situation (112, Bohman). This freedom from domination is a central idea of democracy that must be made applicable globally for any just system of transnational governance. Without the ability to challenge existing legal structures and possess the power of communicative freedom, a person is subject to the arbitrary or planned interference of another, they lose the ability to lead an autonomous life, in such a state the person is a slave. Citizenship is then a necessity to ensure a person retains their normative powers as conferred upon them by virtue of being a member of the humanity (96, Bohman). Justice requiring the treatment of all with equal respect must allow for freedom from domination, and therefore, the right to demand citizenship in an institution that recognizes the normative powers of individual agents. Democracy both globally and locally meet the criteria for justice by allowing communicative freedom and the ability of citizens to challenge and change the institutions that rule over them.

With this established, Bohman makes the claim that by virtue of a person's innate humanness, he or she is granted certain normative powers that can be exercised upon humanity collectively. It is, he says, "The right to have rights." This power of rights enables any person to make claims of justice in an institutional environment where the claim can be recognized and realized. Bohman points out that international law is currently responsive to the claims of those seeking nationality or immigration. This manner of construing rights transforms the right of nationality into "a positive normative power that includes all the enabling participatory conditions for social and political rights... (112, Bohman)." With this the transnational community is obligated to forgo the traditional constraints of nationalities of those seeking a redress for violations of their normative status as members of humanity. Excessively paternalistic claims made by wealthy countries upon their poorer counterparts that cannot be addressed within the state can be countered at regional human rights courts. In the same way that international courts prosecute crimes of genocide or tyranny, regional human rights courts become justified in protecting the rights of actors who suffer from excessively paternalist claims under the justification that the right to non-domination extends past one's initial nationality. Rather, the right to non-domination is a positive normative power that allows one to demand a redress of their grievances at the international level by virtue of their membership within humanity. When other avenues fail, this can serve as a plausible termination point for rights violations.

Sneaky Republicanism?

One could object at this point that by dropping the authorization aspect of representation, this theory appears to tread dangerously close, if not form a healthy

relationship with, republican theory and by doing so forgoes its democratic namesake. After all, democratic theory is distinct due to its reflexive nature, that is, its ability to be shaped by its constituents. Discursive representation that I have presented here appears initially to be much more aligned with the republican theory of accepting or rejecting a predesigned proposed claim. Without the ability to directly authorize representation, there is a dramatic loss of the participatory element that appears intimately associated with democracy. The mere ability to accept or reject claims by subgroups, even by way of international human rights courts, only takes the theory so far. If the participatory aspect of the theory cannot be equated with direct authorization by way of electoral process as I have argued, it would represent a logistical impossibility for transnational representation. A new dimension must be introduced to mark this theory off from those of republican nature. Otherwise, it would appear that there is a disassociation between the represented and the representatives.

The task now becomes to identify the inclusion of those elements that would allow the theory offered here to be construed as having sufficient emphasis on participation. Bohman identifies two aspects of transnational participation that are necessary at the level of participatory input. The first is that of *popular legitimacy*. Such is embodied when a population both has knowledge of the proposed change as well as possesses the ability to “shape or assent to such reform” (Bohman, 139). Second, he identifies *deliberative legitimacy*. That is, citizens (or in the case of this paper those “importantly affected”) must have the ability not only to accept or reject a proposed change but also to offer their individual rationale for the decision. Furthermore, they must be allowed to do so within a context or sphere that permits their justification to be taken into

consideration by their community and those tasked with the creation and or implementation of the potential policy. The inclusion of these two elements will suffice to enable an acceptable amount of participation by subgroups without relying upon the ability to authorize representation. Participatory input has now been shifted from emphasis on selection of representatives to that of inclusion in the shaping and creation of policy.

How then to go about this? I mentioned previously and briefly that representatives must have the ability to both be in communication with an international organization, such as the world fund, as well as be involved in deliberation with the subgroup they are representing. Here, that aspect is expanded upon. It would become necessitated that the organization implemented forums or consultation groups within the affected community with the amount of formality being dependent upon the intrusiveness of the proposed aid. These quasi-judicial proceedings would allow the representational aspect of the theory to remain distinct from authorization while incorporating participation at the level of policy creation.

Emergence of this new type of public sphere represents an opportunity for deliberative and constructive policy creation at multiple levels of planning. There is a specific targeting of the affected population where expression of their input rights work to shape the terms under which they live. By designing centralized locations within communities that interact with the overall deliberative process, there exists the ability of subgroups to influence institutional policy by exerting the influence of their community as a collective whole. Such can mediate transnationally through the respective NGO and IGO groups. That is to say, these forums of participation within the communities,

implemented by transnational representatives, carve out a place of democratic control where the subgroups can deliberate and influence policy creation not only within their community but also within a “polycentric decision making process” (Bohman, 89). These forums allow populations to come together and to debate and discuss policy creation, thus formalizing the participatory element that democratic theory emphasizes.

Organization into public spheres allows for a “thickening of the communicative infrastructure needed for deliberation across state borders” (Bohman, 90). There is creation of a collective will by the represented that allows for their expression of rejection, acceptance, or modification of the proposed policy to transcend their community and enter into the realm of transnational policy creation. The respective organizations, for example the world fund, can act in a reflexive manner to the expressed desires of the affected subgroups. In this way, we have the creation of a multilateral transnational form of democracy that utilizes traditional participatory deliberation in public spheres while still allowing transnational representatives to mediate the process.

One manner by which a public space of deliberation could be designated is through the use of Mini-Publics that would function as a form of representation for affected subpopulations. Citizens that are brought together to debate, discuss, and ultimately recommend plans of actions to be taken in the area of policy under consideration (Smith, 462). This process would ensure that appropriate perspectives are allotted sufficient influence at the level of policy creation. Thus substantiating the democratic nature, as opposed to republican, of transnational representation. Mini-Publics could encompass a wide range of perspective on the matter at hand, including both expert testimony on the issue as well as input by both community leaders and individual citizens

who will be effected by the change in policy. Insofar, according to Dryzek, as the communication between participants is non-coercive and inclusive there can be effective transmission of information back to representatives or organization that is seeking to implement a proposed policy or form of aid (Smith, 470).

Drawing upon expert testimony, empirical studies of relevant information, and public input, mini-publics allow respective groups to identify when, for example, the infringement of fundamental human rights occur in groups. Hence the importantly affected criteria described previously. Such a decision can then be relayed to respective global agencies that can best determine the most effective and appropriate ways to encourage a change in the imposing nations policy through global tools. Mechanisms, such as sanctions on trade, that while do require a global collation of participating nations, ones that accept the relevant expansion of human rights past national borders, does not require a global government or leviathan type enforcer.

Mini-Publics are an already utilized source within modern democratic states. For example, citizen's juries, deliberative polls, and planning groups, demonstrate the same basic premise (Smith, 463). The aim, for purpose of this paper, is to allow Mini-Publics to function in a similar way across national borders. Permitting subgroups to exercise an appropriate level of democratic control over the policies that will directly affect their daily lives. It is important to note, the level of democratic control asserted is to be referenced back to Gould's "affected criteria" which mandates that a person be allowed democratic influence in accordance with the amount of affectedness he or she will incur due to a proposed or implemented policy. Furthermore, this method decreases the potential that deliberations are only in the hands of those individuals who already assert

political influence, such being accomplished through the mandate of random sampling for participating citizens (Smith, 463).

There is a marked distinction between an organization designing a system for an impoverished community and merely allowing the group to accept or reject the plan and that of an organization actively consulting within the community and allowing for modifications based upon the input of the affected group. In the latter manner, aid expresses a multiplicity of possibilities able to be directed by the affected, the represented. As such there is distinction drawn between the dichotomous republican view of aid and the reflexive, democratic, approach taken by this theory. This method additionally aids in the avoidance of cultural imposition criticisms that are often levied against liberal egalitarian global theories. By granting the subgroups policy creation rights, there is an inherent inclusion of their own cultural perspective. Proposed plans cannot be impositions insofar as they are honest in their intent, understandable to the affected group, and responsive the self-identified needs and wants of the population. Granted, the very introduction of proposed plans may be construed as creating two distinct pathways for the population to follow, those being that of their traditional culture and that of the more modern conception of a standard life.

The noting of two points should occur in regards to such a claim. First, there remains an absolute retention of contestation rights in addition to that of participatory input. A group need not integrate any aspect of a proposed plan into their culture if such is the consensus arrived at or, alternatively, they may select only those aspects of the proposed plan that are compatible with their cultural values and goals. Perhaps, then, there is objection to the introduction of western-liberal values in general. Here, however,

such appears to be an inevitable effect of concluding that there exists a human right to democracy, particularly one exercised through the use of representational actors from varying (but largely western-liberal) states. If it is established that groups have a right to transnational aid, then it becomes an unavoidable consequences that they must interact, albeit indirectly, with a global community that demonstrates different cultural values than their own. However, insofar as the group retains the ability to participate effectively and influentially at the level of policy creation there is no reason to equate international aid with cultural imposition.

Enforcement Objections

To conclude I will entertain Thomas Nagel's argument that justice must be constantly remanded back to the level of the states. It is his position that without a collective body to take responsibility for the rules of the system no justice possible. Furthermore, he argues, that absent a global general there is nothing obligating the states to adhere to or respect international human rights. It is then by necessity that global justice not extend into international territory. It is my goal to mediate the damage done by these two objections through use of international human rights courts as a binding global authority. I will do this with an appeal to an increasing moral community, as evidenced by expansion of human rights by way of institutions (this argument was earlier substantiated through appeal to Allen Buchanan), that point in the direction of respect for international claims when rights violations are presented.

Though what I offered in the previous pages is a largely conceptual defense for a democratic theory, it is best to speak at some length of a general objection to feasibility. Thomas Nagel, I believe, best details this issue. His objection argues from the collective

responsibility of the states. For Nagel, equality is only possible at the level of the state because collective agreements are only *possible* at the state level. Justice is then, by necessity, is always remanded back to the level of the state. People are born into a system that they are simultaneously subjected to and charged with authoring the laws of (Nagel, 128). Justice is then the collective responsibility by the people not achievable absent a body to take responsibility for the system. That is to say, there is no global general, no collective responsibility on behalf of the states. As such, justice must remain a political concept at the level of the states, unable to extend into global territory without a mechanism to force collective global responsibility taking Nagel 137-8).

I make no claim that the issues presented by Nagel can be eliminated; the lack of a “global general” is problematic for any theory that purports necessary interaction between countries. However, there are two points I wish to raise in aim of softening the blow. The first is to consider the contextual aims of the theory I have presented. Backing for the allowance of democratic representation by NGO’s and IGO’s it is not meant, at least not here, to argue *for* participation. Rather, this theory provides the justification for any individuals or organization that wishes to act as a transnational representative. There is no “call to action” argued for. This theory is neither obligatory nor demanding. It is only a backing of the act if individuals by self-volition decide to undertake the role of representative. Consider, for example, the international movement to eradicate Polio. I will not bother with presentation of statistics here, only note that the effort was widely effective and a result of internal collaboration of NGO’s and IGO’s, as well as others. My theory, in the case of polio, would provide retrospective backing for the movement, but it would not fault the movement for a lack of global participation. The same is to be said for

current global epidemics, such as the pressing issue of Ebola. Under my theory, those representatives that seek to aid subpopulations whose home country has either ignored or cannot, due to lack of resources, properly handle the arising issues, would have justification to act on behalf of the suffering populations. However, there is no obligation, presented here, for the global community as a whole to collectively participate in alleviating the epidemics ills and therefore no need for a “global general” to force collective cooperation.

The second issue raised is the modern day development of international human right courts, for example those operating in the EU. While these courts are certainly not a “global leviathan” by any stretch, they do represent a new dimension of global justice operating in such a way as to deeply connect the host countries and those far beyond their national borders. Nagel argues for justice at the level of states, but in this case the state has voluntarily accepted its role as a mediator of human rights for the global community at large. So perhaps there is no feasible way to enforce “collective responsibility” by the states. However, there is good reason to suspect that the currently operating national institutions are moving with a general trend towards global inclusion of those with which they are not connected with by border or nationality. The world moves towards greater validation of human rights and primarily it has always done so. Of course, there have been set backs and atrocities but, overall at the level of both states and the international community, the set of moral rights we have come to recognize as residing with other both in and beyond our borders, has increasingly shown to be egalitarian and inclusive. In the macro perspective, institutions develop towards the realization of human rights. Nagel

may be correct about lacking a global general, but it may also be the case that one it not eventually required.

Conclusion

The right to democratic representation is not limited to those within functioning institutions. If it is a human right, as I have claimed it is, then its extension permeates all people regardless of national association. Of course, it would be infeasible to grant this right by way of the most traditional forms of democracy, direct voting. Such a process is limited not only to in-state institutions but also to highly developed and organized ones. Rather, the task of securing this right can be better achieved through the use of representational actors who make democratic claims on behalf of groups. It has been the constant claim of this paper that the preservation of two essential democratic elements, representation and contestation, qualify a theory as democratic in nature. There is no reason to suspect that the use of representational actors would disqualify either of the two criteria presented. NGO's and IGO's naturally fulfill the role of representative when the act of representation is viewed as "a creative act" and insofar as there exist easily accessible ways to appeal claims laid upon groups there has been preservation of the contestation requirement.

Democracy is intrinsically associated with equality of individuals, yet the acknowledgement that this is not accomplished by a majority rule system exists. Rather, the most developed democracies function through use of the interlaying roles of voting, representation, and final arbitration. On a global level, the right to democracy is retained but this does not entail that it must be duplicated from the state level in matter of deliverance. Rather, I have argued that insofar as people have a right to mediate the laws

that affect them and this right is proportional to amount of “affectedness” imposed upon them, that the human right to democracy transnationally could be achieved through the utilization of representational actors.

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