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## **The Principle of Affected Interests: An Interpretation and Defense<sup>1</sup>**

### ***1. Introduction***

The question of inclusion in democratic theory has focussed almost exclusively upon the relationship of individuals to government — of citizens to their state. Theorists have sought to provide an account of the political rights of individuals living under the legitimate authority of a democratic state. These accounts seek to ground the judgement that adults living under such authority should be treated as equal citizens who have, among other political liberties, rights to participate in the decisions of that state. Two starting points lead to this end of equal citizenship before a state that is legitimate because it is democratic.

The first is roughly constitutional and contractarian. A democracy of equal citizens is the answer to the question of how a collection of individuals who expect to live with one another in a society should organize their common affairs together. What rules and procedures would each find acceptable? From this starting point, a legitimate order is a democratic one: a “self-legislating

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<sup>1</sup> I thank Arthur Applbaum, Robert Goodin, Jane Mansbridge, Annie Stiliz, and Dennis Thompson for enormously helpful guidance on prior drafts of this paper.

*democracies*, of citizens ruling and being ruled in turn, consisting of all and *only* those who are full citizens and thus *both* authors *and* subjects of the law.”<sup>2</sup>

The second starting point begins with the from the principle of affected interests.<sup>3</sup> That principle, perhaps the most basic of democratic intuitions, is that individuals should be able to influence decisions that affect them. Absent such influence, decisions may not be taken in ways that properly regard the interests of those they affect or may not be made in ways that are informed by their perspectives and knowledge. Furthermore, exercising such influence is a critical aspect of individual autonomy.

Those who begin from each of these quite different starting points have for the most part converged in their focus upon the state as the main object of democratic theory. From the constitutional perspective, individuals have a special relationship to their state. Citizens come together and rule themselves through their state. Within any territory, it is the organization that makes binding decisions that are backed by coercive power. Constitutional democracy is the answer to the question why citizens should regard such binding decisions as legitimate and authoritative. From the principle of affected interest, the actions of states often have potent effects on individuals’ most important interests. At the extreme, states send their citizens to war, imprison them, and even execute them. More commonly, government actions and public policies clearly affect the security, prosperity, and overall well being of individuals. Territorially organized representative

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<sup>2</sup> James Bohman (2007), emphasis in original. Compare Rawls (1971) formulation of his goal as identifying principles of justice to regulate a society, where “a society is a more or less self-sufficient association of persons” and Joshua Cohen’s (1997, p. 67) formulation of a deliberative democracy as “an association whose affairs are governed by the public deliberation of its members.”

<sup>3</sup> See Mill [1861]; Dahl (1989) 93-95, 119-31; Goodin (2007).

government in which citizens are political equals provides an ongoing structure through which citizens can shape laws to protect their interests.<sup>4</sup>

For all of these reasons, states and their laws have been and shall properly remain an important object of political philosophy. However, democratic theorists should note that scholars in many other areas of social investigation and practice — in political science, sociology, and public policy — contend that contemporary conditions have constrained the reach and capability of formal state structures. They claim that sites of power and influence have proliferated even as the state's ability to bridle them has diminished. If they are right, then the state is simply less capable today than it once was of ordering the affairs of their citizens. They claim that the actions and consequences of various actors — other states, corporations, non-governmental organizations, public agencies, even individual citizens — now escape, perhaps inevitably and irrevocably, the regulatory control of democratically directed government.

A broad ebb of the state as the principal actor in organizing common affairs and accomplishing public objectives is now widely called the shift from government to *governance*. The term governance denotes activities that, like projects of government, aims to achieve common purposes. However, the new term is meant to mark shifts in both who acts to achieve those purposes and how they are accomplished. With regard to means, public leaders and policy makers seem to rely less upon binding decisions and state commands and more upon efforts to “steer” the behavior of actors in society and collaborations that frequently include actors outside of government. With

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<sup>4</sup> While any particular law might affect some individuals more than others — laws governing Medicare in the United States are especially consequential for the elderly — one might nevertheless say that representative government with political equality is consistent with the principle of affected interests because that government determines an inextricably connected package of laws and policies, each interlinked with the others (e.g. tax regime + general health care + Medicare). When citizens are considered through their whole lives across the many dimensions touched by laws and policies, they are affected equally to a first approximation and should thus exercise equal influence.

regard to who acts, governance activities are undertaken not just by entities in the state sector, but also in the private sector and civil society as well.<sup>5</sup> In global climate change, economic development, human rights protection, basic education, disaster relief, and many other issues, the most promising strategies involve not states making binding laws but rather a complex of governance activities that involve complex collaborations between government and non-governmental actors.

Presume that this often noted shift from government to governance is empirically correct. Rules of inclusion that provide equal opportunities for the participation of citizens in decisions of their state is insufficient. For the constitutionalist, enfranchisement in state decision-making is insufficient for self-rule when many important decisions — decisions that order the common affairs of citizens — are made by non-state actors. The affected interests principle naturally requires that individuals be able to exercise influence over a range of decisions broader than those made by the state when such decisions affect their important interests.

The shift from government to governance thus demands an expanded account of democratic inclusion in which individuals influence not just state decisions, but the decisions of other organizations as well. In this paper, I develop the principle of affected interests to offer an account of inclusion that is appropriate for the circumstance of governance (as opposed to government). The principle of affected interests strikes me as a more promising point of departure from which to grapple with the novel challenges of contemporary governance than the constitutionalist perspective. The constitutionalist begins by delineating a group of individuals — as small as a town or as

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<sup>5</sup> Nye and Keohane (2000).

large as the whole world — who form a persistent political community.<sup>6</sup> But one of the features of governance is that different public problems encircle quite different groups of individuals. Intuitively, very different sets of individuals should exercise influence over decisions concerning global climate change, health care policy, education, or international labor conditions.

The principle of affected interests and the contractarian-constitutional approach are alternative accounts of democratic legitimacy.<sup>7</sup> It might be fruitful, however, to think of them as complimentary, rather than exclusive and opposed, justifications of democratic institutions and practices that both have their place in the political culture of democratic societies. So, both the contractarian and affected interest accounts converge in their justification for our settled commitment to a representative government of territorial nation-states through which we rule ourselves as free and equal citizens.<sup>8</sup> But that circumstance does not exhaust our democratic intuitions and responses. Indeed increasingly, we face situations in which the nation-state fails to govern actions that impact citizens' interests. When we face the local indignities of tyrannical school principals, authoritarian employers, or the cosmopolitan harms of powerful global corporations, we have strong democratic impulses. In these areas, we feel we ought to have a say when we do not. The principle of affected interests accounts for our democratic sensibilities in these increasingly common areas of social life. More importantly, it can justify the creation of certain democratic controls that elude the grasp of the contractarian account of representative government.

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<sup>6</sup> For very different delineations, see Robert Dahl (1967); Dahl and Tufte (1973); and Robert Goodin (2007).

<sup>7</sup> I thank Jenny Mansbridge and Dennis Thompson for the approach suggested in this paragraph.

<sup>8</sup> See, for example, Beitz (1989).

Here is my elaboration and defense of the principle of affected interests in outline. One deep ambition shared by all democrats is to construct socio-political mechanisms that enable morally equal individuals to secure their interests by making decisions that regulate their lives together in the world. The mechanism that is commonly thought to best advance this territorial representation: citizens govern themselves through equal rights of political participation in a representative government that rules over a nation state. That mechanism can be independently justified by two distinct ideas: a social contract between free and equal citizens and the principle of affected interests. Certain factual developments — globalization, privatization, decentralization, the rise of the administrative state, and the shift to governance as a principal mode of public action — severely limit the ability of territorial nation-states to secure individuals' interests (section 2).

These developments thus frustrate the ambition that underlies both the contractarian and affected-interests defense of democracy understood as representative government. To indicate that ambition, popular control — or at least influence — must be expanded and adjusted in ways that respond to these developments. The principle of affected interests can accommodate such expansion more easily than contractarian approaches (section 2).

The third section offers a formulation of the principle of affected interests in which individuals ought to be able to influence the decisions of a large range of organizations — not just territorial states, but also potentially administrative agencies, civic associations, private enterprises, international organizations, and other states — whose actions regularly or deeply affect their interests. The fourth section elaborates two implications of this formulation of the principle. Unlike the one-to-one relationship of citizen to state, each individual has the warrant to influence many different organizations (multiple membership). Furthermore, these circles of membership change

dynamically over time as individuals and organizations evolve; the circumstances of governance dictate that the principle be applied *in media res* rather than fixing boundaries of inclusion once and for all.<sup>9</sup> The fifth section develops a broad notion of “influence” in which individuals ought to affect decisions not just through active and direct means, but also indirectly and passively. Section six indicates how disputes about inclusion and influence might be adjudicated, and section seven illustrates the principle with international and domestic applications.

## **2. Beyond and Below the Nation-State**

My argument begins not from first principles, but from stylized empirical developments. If they are true, those stylized developments combined with our underlying ethical commitments to govern ourselves democratically demand that we adjust our institutions to accommodate these developments and that we revise underlying principles that justify those institutions.

### *A. Contemporary Governance*

If there once was a time when the laws of a nation-state could adequately protect the fundamental interests of its citizens, many argue that such time is past. Consider briefly five stylized developments that support this conclusion.

First, *globalization* makes citizens of one state more vulnerable to financial, environmental, security, and even socio-cultural decisions that originate outside of that state.<sup>10</sup> Second, *privatization* at once increases citizens’ dependence upon corporations — especially financial institutions

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<sup>9</sup> Contrast this domain of application to Goodin (2007) and Dahl (1989), who are concerned with applying the principle of affected interests to address questions of constitutional structure.

<sup>10</sup> For one particularly lucid discussion of the character of power in this global age, see David Singh Grewal’s *Network Power: The Social Dynamics of Globalization*. New Haven. Yale University Press, 2009.

and multinational corporations — and reduces states' ability to control them.<sup>11</sup> Third, *decentralization* of activities that were previously executed by national governments — on issues such as social services, security and policing, education and training, regulation, economic development, and health care — in many states reduces the scope of *national* laws and policies.<sup>12</sup> The *rise of the administrative state* is the fourth representation-effacing development is the rise of the administrative state. For at least for a century, the complexity of modern conditions dictates that state action occur largely through policies that are formulated through administrative agencies rather than only, or even principally, through laws passes by elected representatives. Scholars have long noted the challenges to democracy posed by administrative delegation.<sup>13</sup>

A fifth development that diminishes the role of national laws in ordering social affairs has been called the shift from government to *governance*. Governance signals the way in which role of actors other the nation-state — such as local and regional governments, private firms, voluntary associations, and transnational organizations — and the use of non-binding means — soft power, voluntary standards and protocols,<sup>14</sup> collaboration, and negotiation — is increasing. They have dubbed this broad trend the shift from government to *governance*. Joseph Nye and Robert Keohane write that:

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<sup>11</sup> This is not a particularly new phenomenon, but its consequences, especially when privatization interacts with globalization, have perhaps intensified. See Charles Lindblom's classic discussion of "The Market as Prison." *Journal of Politics* 44.2 (1982): 324-36.

<sup>12</sup> [complete citation here]

<sup>13</sup> Stewart, Richard B. "The Reform of American Administrative Law." *Harvard Law Review* 88.8 (1975): 1667-813; Sunstein, Cass. *After the Rights Revolution: Reconceiving the Regulatory State*. Cambridge: Harvard University Press, 1990.

<sup>14</sup> See Lessig (2006) and Benkler (2006).



governance [is composed of] the processes and institutions that guide and constrain the collective activities of a group. Government is the subset that acts with authority and creates formal obligations... Private firms, associations of firms, non-governmental organizations (NGOs), and associations of NGOs all engage in it, often in association with governmental bodies, to create governance; sometimes without governmental authority... more governance activities will occur outside the box represented by national capitals of nation states.<sup>15</sup>

This shift away from the national state in the public ordering and public action has resulted from practical necessity rather than merely a political ideology of state retrenchment. Circumstances in the world have made states less capable of protecting the interests of their citizens through binding laws.

In response, individuals increasingly organize their common affairs not just through their state but through a host of other organizations as well. Sometimes in collaboration with governments and sometimes parallel to them, non-governmental organizations such as charitable foundations and advocacy groups increasingly provide financial resources, expertise, and staff to address problems such as health and education. This phenomenon is most visible in the large scale activities of organizations such as the Gates Foundation in developing countries, but it also common in the United States and other developed nations.<sup>16</sup> Responding in part to the limitations of governmental standard-setting, efforts to protect the environment increasingly involve joint efforts

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<sup>15</sup> Nye and Keohane (2000): 12-13.

<sup>16</sup> Complete citations; Gates local urban efforts; Rob Reich on philanthropy and public education.

between government agencies, non-profit organizations, and private sector firms.<sup>17</sup> Actions to address concerns that cross national boundaries such as transnational migration, trade, security, human rights, natural resource exploitation, and global labor standards frequently involve not just a single national government, but multiple states as well as international organizations, private sector groups, and non-governmental organizations whose activities occur inside state boundaries as well as across them.<sup>18</sup>

The rest of this essay supposes that these stylized developments are true to the extent that laws made through nation-states are today incapable of securing many important interests of individuals. If these stylized developments are not true, then I offer no reason for those who now accept the contractarian justification of representative democracy organized through nation-states to revise their view.

Those who accept these developments as true, or true enough, might nevertheless attempt to defend limiting the focus of democratic theory to cover just the binding laws of the nation-state. Consider two such defenses.

### *B. Freedom is the Only Critical Interest (Necessity)*

The first reason for limiting the scope of democracy to the nation-state begins with the notion that claims to inclusion and influence in decision-making are warranted only when particularly important interests are at stake. Binding decisions — those that are backed by the coercive, potentially violent, force of the state — affect individuals' critical interest in freedom. Binding de-

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<sup>17</sup> See, for example, Weber (2003).

<sup>18</sup> Nye and Keohane (2000).

cisions of governments are the most obvious — and perhaps most historically important — way in which individuals' choices can be deliberately constrained. Unless an individual can influence such binding decisions, these restrictions are objectionably arbitrary. The individual becomes merely a subject and not a citizen, ruled without in turn ruling. Thus many democratic theorists have concerned themselves with the question of how the coercive authority of the state can be legitimate. In a strong formulation of the scope of democracy, citizens have rights to political participation in collective decision-making *only if* those decisions determine binding laws that are backed by the coercive authority of the state.

But arbitrary binding decisions of government are only one source of interference with individual choice. It may be that non-binding decisions made by non-governmental actors — the power of employers over workers — threaten an individual's freedom just as much.<sup>19</sup> The interest in this understanding of freedom, and against arbitrary interference, would thus seem to support inclusion in influencing other decisions — those that do not involve coercive power and those made by non-nation state actors — as well.

### *C. Binding Laws Can Secure All Important Interests (Sufficiency)*

A quite different reason for limiting democracy to a state's binding decisions supposes that such decisions can secure all important interests of that state's citizens. Binding workplace standards and discrimination laws might, for example, protect workers from the arbitrary power of employers. In this way, individuals' influence over binding state decisions might be sufficient to

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<sup>19</sup> This example comes from Philip Pettit's (2000) discussion, p. 85-6.

protect their all of their important interests from a broad range of threats that come not just from the state, but all other quarters.

The claim that state action through binding laws and policies is sufficient to protect important interests seems obvious to many. If not the state, then who? Yet, there are many reasons to doubt that states lack the reach — despite their authority, monopoly on violence, financial resources, and bureaucratic capacities — to adequately protect individuals' interests in this era of globalization and wicked social problems. The question of whether extending individuals' influence to other organizations such as workplaces and non-profit enterprises and decisions other than binding laws would better secure their important interests is an empirical one. The reasons to answer this question affirmatively are contained in the five stylized developments above.

Those who accept these developments of globalization, privatization, decentralization, fact of governance as an inevitable, and perhaps even desirable, shift away from national government as the paramount agent of social ordering must also thereby reject the claim that binding laws of states are sufficient to protect the important interests of individuals. The fact of governance is that many social decisions — some that do not involve binding laws and some that are made by organizations outside of the state — affect individuals' interests.

#### *D. When the Social Contract Runs Out*

This reasoning — admittedly dependent upon plausible but controversial empirical claims about globalization, privatization, decentralization, governance and the administrative state — leads to an expansion of the scope of citizen participation and influence beyond decisions about the laws of national governments to a much wider range of organizations that may include administrative

agencies, local governments, private corporations, international organizations, other nation-states, social service groups, and non-profit organizations.

The principle of affected interests is a more promising point of departure than contractarian approaches from which to extend the impulse that motivates rights of political participation in the democratic nation-state to encompass the broader range of organizations that affect citizens interests in the contemporary world. Contractarian justifications begin by (i) delineating a fixed group — the parties to a social contract — and then (ii) identifying the first order terms of their socio-political order (the “basic structure” in Rawls’ formulation). The democratic components of contractarian justifications usually involve the translation of citizen’s moral equality into political equality in determining the laws of a central state.

Consider first the domestic case. Suppose a contractarian democrat agrees that the modern developments discussed above reduce the ability of citizens to adequately regulate their affairs and protect their interests through national laws even against decisions and actions that occur within a country’s borders. She might agree that contemporary democracy requires that individuals be able to participate in many other kinds of decision-making — administrative rule-making, choices of service bureaucracies and planning agencies, in local governments and authorities, in civic associations, and even in the management of economic enterprises.<sup>20</sup> Such measures would certainly be consistent with democracy understood as a social contract among moral equals.

There is no inconsistency between contractarian justifications of democracy and these extensions of democracy beyond the nation-state.

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<sup>20</sup> See Dahl, Preface to Economic Democracy.

While consistent with democracy beyond (or perhaps below) the nation-state, it seems difficult to wring more specific normative guidance out from the bare idea of a social contract because it is focussed on the basic — which means enduring and central — features of government and because its moral emphasis is on the equal political status of citizens. Participation in the countless decisions that occur throughout any complex society require a much more highly differentiated and dynamic account than is natural for contractarian reasoning. We don't think, for example, of each state or province within a nation, much less each public school or workplace, as having its own social contract that is embedded within the larger national one.

To justify extensions of democracy, a contractarian might rely upon other principles that parties to the social contract could endorse. The principle of subsidiarity and the principle of affected interests come to mind as likely candidates for such an account. However, the success of that justification would then depend upon a compelling articulation of those principles. I aim to do part of that work — to develop a plausible interpretation of the principle of affected interest — below.

The contractarian approach seems even more limited for threats to self-government that stem from decisions and actions occurring outside of territorial borders such as pollution, trade, multinational corporate decisions, and transnational advocacy. Contractarians have two natural responses. The first is to insist upon a global, cosmopolitan democratic social contract that creates participation rights in a world government.<sup>21</sup> While there is much that is appealing in such a proposal, it would also lose some of what makes contractarian justifications of national democracy attractive — realism and compatibility with tradition and political culture.

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<sup>21</sup> See *Cosmopolitan Democracy*. Provide citations.

The second route is to insist that the constitution of nation states remain the principal subject of the democratic social contract, and that effort to regulate actions emanating from outside territorial boundaries occur through international bodies in which citizens are represented by their national governments. This path simply leaves too much on the table, democratically speaking. In many urgent areas such as disease and public health, labor conditions, environment, economic development, and food and product safety (think lead paint on toys from China), individuals can potentially regulate actions affecting their lives through routes of participation and influence that bypass national states by connecting individuals from one country directly with governments, transnational organization, or firms. Many of these forms of engagement have been regularized and institutionalized. They are valuable for democracy, but find little justification from the point of view of the nation-state oriented social contract.

### ***3. The Principle of Affected Interests — Formulation***

The principle of affected interests may thus offer a more promising point of departure. Though it captures an enduring impulse in democratic thought and has garnered many passing references,<sup>22</sup> it has not received sustained attention in political theory.<sup>23</sup> Several of those who have considered the principle have rejected it as undesirable,<sup>24</sup> incoherent, or impractical.<sup>25</sup> This section addresses some of these difficulties by offering a specific formulation and interpretation of the principle of affected interests.

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<sup>22</sup> Provide citations.

<sup>23</sup> Exceptions: Fredrick Whelan, Robert Goodin, Robert Dahl, Arrnhenius

<sup>24</sup> Nozick, *Anarchy, State, and Utopia*.

<sup>25</sup> For a discussion of some of these criticisms and a rebuttal, see Gustaf Arrnhenius (2005)

### A. Rudimentary Formulation

The most common statement of the principle of affected interests runs like this:

- (1) Individuals should be able to influence decisions that affect their interests.

This rudimentary formulation is under-specified in at least three ways. What kinds of *decisions* and *decision-making entities* are regulated by the principle? What kinds of *interests* grant individuals a warrant for influence? And, what sort of *influence* does the principle require?

Robert Nozick, for example, raises the following example as a *reductio* against the principle:

If four men propose marriage to a woman, her decision about whom ... to marry importantly affects each of the lives of those four persons, her own life, and the lives of any other person wishing to marry one of these four men, and so on. Would anyone propose, even limiting the group to include only the primary parties, that all five persons vote to decide whom she shall marry?<sup>26</sup>

Of course not. Nozick's example illustrates how formulation (1) of the principle is underspecified on the first dimension of domain.<sup>27</sup> Indeed, most of those who have written about the principle of affected interests have considered its application not to the decisions of individuals, but rather to the territorial state. A specification of the principle that restricted its domain to governments which are the only entities that make binding and coercively backed law:

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<sup>26</sup> *Anarchy, State, and Utopia*, p. 268-71.

<sup>27</sup> Gustaf Arrnhenius responds to Nozick's example in a different and effective way. He notes that voting is not the only mode of influence, and that suiters may properly seek to influence the woman's decision by making their case in the usual way — through courtship. He also notes correctly that it is incumbent upon the defender of the principle of affected interests to provide an account of the relationship between the kind of influence and the importance of the interest. In the case of marriage, he writes, one reasonably thinks that the interest of the woman is of the kind that gives her a veto over the matter.



- (2) Individuals should be able to be able to exercise voice [voting] to influence decision that affect their interests through binding and coercively backed law.

Drawing on discussions of the limits of the nation state above, this specification is unduly restrictive in at least four ways. Entities other than legislatures (such as administrative agencies, private organizations, other governments, international organizations, civic groups) make decisions that affect individuals (under-inclusion of entities). Individuals' important interests are affected by many kinds of decisions, not just binding laws backed by coercive power (under-inclusion of decisions and interests). Legislatures make decisions that affect those who do not live within its territorial boundaries (under-inclusion of individuals). Finally, voice through voting is just one way to influence a decision. There are both more direct and less direct modes of influence that may be appropriate (under-inclusion of modes of influence).

I will defend a formulation of the principle that is more specific but also more inclusive:

- (3) An individual should be able to influence an organization if and only if that organization makes decisions that regularly or deeply affect that individual's important interests.<sup>28</sup>

### *B. Regularly or Deeply Affected Interests*

In his illuminating essay on inclusion and affected interests, Robert Goodin holds fixed both kind of entity and mode of influence. He presumes that the principle governs public legislative bodies and, at least implicitly, that individuals will exercise influence through voting and representation.

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<sup>28</sup> I won't discuss the "only if" portion of this principle in this essay.

He focuses upon the question of whose interests ought to be included. In particular, should those whose interests are *possibly* affected by a decision exercise influence, or only those whose interests are *actually* affected? He rejects the “actually affected” formulation on grounds of incoherence:

Notice first that whose interests are “affected” by any actual decision depends upon what the decision actually turns out to be. Notice second that what the decision actually turns out to be depends, in turn, upon who actually makes the decision. Hence the “all actually affected interests” principle suffers the same incoherence as discussed at the outset: *it is unable to tell us who is entitled to vote on a decision until after that very decision has been decided.*<sup>29</sup> [emphasis mine]

There are two related but distinct potential difficulties here: endogeneity and indeterminacy. The “actually affected” formulation has the endogenous characteristic that the delineation of who is entitled to influence a decision depends upon the substance of the choice itself. That formulation is also subject to indeterminacy in that a different substantive choice might be made *if* a different set of people had been entitled to influence that decision. These technical observations are interesting, but the conclusion of incoherence is too quick. Goodin is correct that the “actually affected” formulation cannot uniquely determine the set of individuals who ought to be included. But neither that endogeneity nor indeterminacy provide compelling reasons for rejecting a political arrangement as illegitimate.

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<sup>29</sup> Goodin (2007), p. 52; Fredrick Whelan (1983, p. 19) articulates the same problem as infinite regress: “The deeper problem is that before a democratic decision could be made on a particular issue (by those affected), a prior decision would have to be made, in each case, as to who is affected and therefore entitled to vote on the substantive issue—a decision, that is, on the proper bounds of the relevant constituency. And how is this decision, which will be determinative of the ensuing substantive decision, to be made? It too should be made democratically, by those affected—but now we encounter a regression from which no procedural escape is possible.”

To see why, suppose that two towns, A and B, share a common boundary. The decisions of each town are made only by the residents of that town and they are made in a democratic way. Over a certain period of time, the residents of each town make decisions that have no spillover consequences onto the other town and produce no injustice between them. It is certainly true that if the border between A and B were to shift by a few blocks and some residents of B became new residents of the expanded town A', we would expect the decisions of A' to affect a slightly wider set of individuals and that the choices made would be different than the social choices made by A. But those observations by themselves do not provide a reason to reject A. Indeed, both political arrangements — A/B and A'/B' — satisfy the principle of including all and only actually (not possibly) affected interests.

Suppose that residents of B are possibly affected by the decisions of A. Residents of A could decide to build power plants that emit toxins into B or construct buildings that are an eyesore to the distinguishing tastes of B's townfolk. If the people of A begin to make such decisions, then the people of B have a claim to be included in influencing A's decisions under the principle of affected interests, and the circle of inclusion should change.

Goodin's formulation of possibly affected interests is motivated by his desire for the principle to yield the delineation of a single demos that persists through time.<sup>30</sup> In order to ensure against decisions that are impermissible because they affect the unincluded, such as B's residents in A's belligerent period, the circle of inclusion must be very wide indeed. But the principle of affected

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<sup>30</sup> He can be forgiven for this ambition toward what Amartya Sen has criticized as “transcendental institutionalism” for the ambition is shared by many political philosophers, at least since Rawls. The approach of this paper embraces Sen's call to develop principles that can better guide the incremental quest to reach more desirable states of the world that are within reach. See Amartya Sen (2009).

interests can also be understood in a way that is more sensitive to circumstances and fluidity that makes this trade-off more tractable. It can be understood as a regulative principle for continuously adjusting the boundaries of inclusion in real-time. A/B, A'/B', and a metro government of A+B might all be justified by the principle of affected interests under various circumstances. If the capacities of these towns, the problems they face, and the priorities of residents are such that the decisions made in A do not affect those in B, then residents might well prefer to be members of separate towns rather than a metropolitan government that fuses A and B in order to be able to exercise more meaningful influence. If however, environmental, economic, or other conditions create substantial interdependency between A and B, then the importance of influencing decisions that address those encompassing concerns weighs in favor of larger political units.

### *C. Organizations as Decision-Makers and Objects of Democratization*

Formulation (3) above also specifies the domain over which the principle operates as organizations such as governments, international organizations, administrative agencies, private corporations, and civic organizations. This specification is broader than a domain that includes just nation-states, but far narrower than the rudimentary formulation (1), which could be interpreted to include individuals making intimate decisions about their lives. Formulation (3) thus directs us to look not just at that single decision, but rather to the organizational entities that make those decisions. As an analytic matter, this shift is necessary to make sense of the term “regularly,” which describes not a single decision but rather multiple related decisions. It is natural to understand those decisions as being made by organizations because organizations (e.g. national states, town governments, firms, clubs) are entities of sufficient coherence to enfranchise or exclude

individuals. This shift also renders the principle in a way that fits with sociological reality of organizations and the everyday ways in which the notion of affected interests is used.

Organizations are entities that collectively control resources, advance purposes, and make decisions whose effects are moderately consistent over time. To a first approximation, it is usually sensible to say whether or not the interests of a particular individual are “regularly affected” by the decisions of a particular organization. The decisions of a territorial state regularly affect all of those living within its boundaries and often those living outside of it. The decisions of a multinational corporation regularly affect its managers, workers, shareholders, and residents of communities where it, its subsidiaries, and its suppliers operate. The decisions of the school board in Sacramento, California do not regularly affect residents of Massachusetts.

Furthermore, organizations are sufficiently coherent that they typically possess durable procedures of decision-making that specify boundaries of inclusion and exclusion. Democratic states have rules of citizenship, suffrage, parties and elections, administrative and executive consultations, judicial and administrative standing. Public corporations have directors, shareholders, and sometimes works councils and stakeholder boards.

Organizations — rather than free floating decisions — are typically the object of demands for inclusion. Those demands frequently arise from the claim that the organization acts in ways that affect individuals who have no influence on them (“no taxation without representation”). Demands for inclusion can be satisfied, or rejected, by modifying the existing decision-making procedures of the target organization.

Finally, the set of individuals whose interests are regularly affected by any organization's decisions typically changes over the medium and long term. Corporations abandon some communities and move into others. Individuals leave and join firms, local communities, and even societies. The environmental consequences of production and regulation expand, contract, and shift over land and sea. Societies engage and disengage from various trading and security relationships. Organizations take on new priorities and missions even as they shed and gain consequential capacities (the United States engages in a War on Terror; General Electric shifts from industrial production to financial services). These shifts are unavoidable and favor a dynamic understanding of the principle of affected interests in which those who ought be included in influencing any particular organization's decisions changes over time as the consequences of that organization's actions fall on different individuals.

#### ***4. Multiple Membership and Dynamic Inclusion***

This interpretation of the principle of affected interests entails a much more complicated structure of political membership than an account of democratic inclusion that maps individuals onto states in a more or less one-to-one way. This view envisions many overlapping circles of inclusion. Associated with every organization — government or other — is a set of individuals whose important interests are regularly (or deeply) touched by the decisions of that organization. When they comply with the principle of affected interests, all individuals in that set have the capacity to influence the decisions of that organization. Each individual in turn is a member of many such sets because he is touched by the decisions of many organizations. Furthermore, these circles of inclusion around organizations and individuals must change over time as those organizations and individuals evolve.

Frederick Whelan has raised this dynamic feature as an objection to the principle of affected interests:

An obvious practical difficulty with the all-affected principle is that it would require a different constituency of voters or participants for every decision: the status of fellow citizens would not be permanent, as is the case in territorial states with which we ordinarily associate the concept of citizenship, but would shift in relation to the issue proposed.<sup>31</sup>

Guilty as charged.

There are two responses to this objection from impracticality and aesthetic inelegance. First, the proposal is not altogether impractical because many organizations and individuals are already accustomed to operating in a world with many circles of inclusion and membership. Multinational corporations, international governance organizations, administrative agencies, social service groups, local governments all regularly sponsor various forms of stakeholder and public engagement. Many individuals are accustomed to exercising influence in ways that include not just voting in national elections, but also participating in school councils, labor unions, employees groups, local authorities and boards, and so on. Section 5 addresses concerns about the excessive demands of multiple membership by developing a more capacious understanding of “influence” that economizes on the cognitive capacities and time that individuals spend influencing organizational decisions. While existing circles of inclusion are far from satisfying the principle of affected interest, the basic organizational and individual practices of multiple membership are nei-

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<sup>31</sup> Whelan (1983), p. 19.

ther novel nor alien. Indeed, it is Whelan's political philosophic ideal of one person, one state, one vote that lies at some remove from contemporary reality.

Second, the two obvious alternatives to this account of multiple membership are unappealing. Section 2 above explains why the account of individual influence operating through single membership in the nation-state unduly constrains the scope of popular control. Consider now why an account of single membership in a world government is less appealing than the multiple membership account favored here.

#### *A. Problems with World Government*

One way to work out the principle of affected interests is to derive its implications for durable boundaries of citizenship. How big (or small) should a *demos* be? This is essentially the question that Robert Goodin takes on in his 2007 article.<sup>32</sup> Many decades earlier, Robert Dahl began to reflect upon this question in his reflections on the question of scale and democracy:

That larger political systems often possess relatively greater capacity to accomplish tasks beyond the capacity of smaller systems leads sometimes to a paradox. In very small political systems a citizen may be able to participate extensively in decisions that do not matter much but cannot participate much in decisions that matter a great deal; whereas very large systems may be able to cope with problems that matter more to a citizen, the opportunities for the citizen to participate in and greatly influence decisions are vastly reduced.<sup>33</sup>

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<sup>32</sup> Goodin (2007).

<sup>33</sup> Dahl (1994): 23-34; discussed earlier in Dahl and Tufte (1973). What Dahl calls effectiveness in this discussion, I call depth of influence, and what he calls capacity I call scope of influence.



Concern for the scope of influence — assuring that one can influence the maximal number of decisions that might affect one’s interests — presses for larger political units. Conversely, concern for depth of influence — assuring that one’s voice will be meaningfully considered — weighs in favor of smaller political units.

A similar concern for scope leads Goodin to favor an interpretation in which all who could “possibly” be affected by a decision be included in influencing it. Since it is conceivable that just about any government could make decisions that affect just about anyone in the world, this expansive formulation leads to the conclusion that only a government that is global in scale conforms to the principle of affected interests. Any smaller unit is unstable with respect to the principle of affected interests because the individuals in that smaller unit might make decisions that affect individuals outside of it.<sup>34</sup> Only the most inclusive unit — a *demos* composed of everyone in the world — would make decisions that robustly and ideally include all those whose interests are affected. Properly understood, the principle of (all possibly) affected interests requires “giving virtually everyone everywhere a vote on virtually everything decided anywhere.”<sup>35</sup>

In section 2, I argued that institutions of world government do not necessarily follow from accepting the principle of affected interests. The “regularly or deeply affected interests” formula-

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<sup>34</sup> Goodin (2007), p. 63. Goodin writes that:

Notice, however, that on the expansive analysis of what interests might be “possibly affected,” any given decision is highly likely to affect a great many interests, at least some of which are likely not to be included in any relatively restricted *demos*. On this “decisional power” reading of the “all affected interests” principle, any restricted *demos* would be debarred from making those sorts of decisions, which, empirically, seems to be most decisions.

But it isn’t clear why this is the case. While it is true that many bodies *could* make decisions that affect anyone in the world, it seems that most bodies make decisions most of the time that affect a much more delineated set of interests and individuals.

<sup>35</sup> Goodin (2007), p. 68.

tion of the principle is compatible with institutions of multiple membership. Compared against multiple membership, world government account is unattractive for two reasons. First, even if a global demos could be realized, such institutions would seem to completely sacrifice the value of meaningful influence for the sake expanding scope of influence over many decisions that have minor or only unrealized and potential effects on an individual's interests.<sup>36</sup> The trade off between a very large demos that includes all possibly affected interests and smaller ones that afford more consequential individual influence is intractable if, as both Goodin and Robert Dahl before him supposed, the aim of an account of inclusion is to delineate the boundaries of a demos permanently. The multiple, dynamic membership account solves that problem by discarding the premise that the delineation of inclusion must be permanent. Second, the possibility of constructing political institutions on such a global scale seems remote. That reality risks reducing the principle of affected interests to a utopian ideal with few regulative implications.

### *B. Dynamic Adjustment, Not Durable Citizenship*

The multiple membership account accepts that organizations' decisions, the interests they affect, and the individuals who influence those decisions all shift over time. Goodin's proposal accommodates those shifts by positing a superordinate world government whose jurisdiction is large enough to encompass all such possible shifts. The multiple membership model seeks to accommodate these shifts by regulating the adjustment of the boundaries of membership over time.

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<sup>36</sup> Dahl (1967). Goodin offers one reason to think that the degree of citizens' influence over decisions that really mattered to them would not diminish even in a very large policy if those who were enfranchised but not really interested cast random votes (or chose not to exercise their influence) that canceled each other out. This possibility strikes me as too speculative a basis on which to safeguard the degree of citizens' influence.

In this way, the principle of affected interests is a critical and regulative principle. At any particular moment, there may be organizations that make decisions affecting individuals who have no influence on those organizations. At such moments, it is democratically imperative to expand inclusion of decision-making in those organizations in order to satisfy the principle of affected interests. If such democratic reform efforts were successful, they would bring periods in which the third formulation of the principle of affected interests was fully satisfied. Every individual would be able to influence any organization whose decisions regularly affected that individual's interests.

But the approach is also necessarily dynamic. It does not imagine that all organizations will be fully compliant at every point in time. Many, if not all, organizations could possibly make decisions that affect individuals who have no influence over them. Inevitably, some organizations would do so in time. Firms will seek new markets, states will embark on new adventures, civic organizations will drop old agendas in favor of new ones, and so on. Periods of non-compliance will emerge. During such periods, the principle of affected interests again demands institutional reform efforts that alter the boundaries of organization to include those who are affected but lack influence. And so on.<sup>37</sup>

If noncompliant periods of adjustment were sufficiently brief, the realization of this dynamic account of the principle of affected interests would be more appealing than the realization of a full

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<sup>37</sup> This recursive account political institutions in which the scale and shape of governance institutions is reciprocally determined by the consequences of the decisions emanating from those institutions echoes John Dewey's account in *The Public and Its Problems* (1927). Put in another way, the multiple membership approach embraces what some critics have seen as problematic about the principle of affected interests: its potential for radical pluralism and regress. Those two features are problems if one seeks a durable delineation of a single polity. The real-time, dynamic aspect of the approach suggested here jumps into the middle of the regress, as it were, rather than trying to find a way to halt it.

compliance account that requires a world demos. The multiple, dynamic approach envisions many overlapping circles of inclusion, one per organization. Because each circle is determined by the regular impacts of decision made by a particular organization, the size of each circle (the number of individuals in it) strikes a more sensible balance between the scope of influence and its meaningfulness than a circle that includes the whole world. Furthermore, the individuals in any particular circle are all connected by the fact that they are all commonly affected by an organization's actions. While that consequential tie may be less thick than a community united by ties of blood-and-soil or avowed membership, it is more substantial than ephemeral cosmopolitan bonds between individuals in far corners of the earth who might possibly be affected by the decisions of a global political entity.

### ***5. Varieties of Influence***

One immediate objection to this understanding of the principle of affected interests is that it would place excessive demands on individuals; it overloads their cognitive and political capacities. Every individual is affected by the decisions of countless organizations. Few people could list all of the organizations that make decisions affecting them, much less muster the capacity to try to understand or influence decisions that they all make. The limits of attention and understanding seem more manageable if citizens need only worry about influencing the decisions of a single organization, their state. It is common to think of exercising political “influence” in a participatory democratic way — as individuals exercising influence deliberately and directly. But this understanding of the term “influence” is too narrow.<sup>38</sup> Drawing upon standard discussions of

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<sup>38</sup> The work of Philip Pettit (on responsive and indicative representation) and Jane Mansbridge (2003) (on gyroscopic representation) informs the discussion in this section on varieties of influence.

power, we say that an individual influences a decision made by an organization just in case that individual's avowed interests or preferences cause that organization's decision.<sup>39</sup>

Understood in this way, even when the target of individual influence is the state, much influence occurs indirectly. In their use of the affected interests principle to justify representative government, authors such as Robert Dahl and Robert Goodin understandably think of individuals exercising "influence" by casting a vote for a politician or party, rather than directly deciding upon policies through referenda or other directly democratic mechanisms. Political representation is a method of deliberate and active influence but indirect — in the sense that citizens' influence is mediated through their political agents — that is completely familiar. Politicians, however, are just the first level of indirection. Influence over the actions of state also flows through the bewildering network of committees, agencies, and authorities that constitutes the administrative state.

There are thus both direct and indirect (e.g. through representation) ways that individuals can *actively* influence the decisions that affect them in the sense that they are cognizant about their preferences over different courses and take actions — ranging from casting a ballot to campaigning to making an argument in the public sphere — to press their preference. But individuals can also have *passive* influence over organizations' decisions. In passive forms of influence, individuals need not act at all to sway organizational decisions in ways that favor their interests. For example, investors in many mature capitalist countries benefit from laws and norms of fiduciary responsibility, backed by a regulatory apparatus, that induces executives in firms to make deci-

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<sup>39</sup> See Jane Mansbridge's discussion in the "The Place of Self-Interest In Deliberative Democracy," drawing upon Jack Nagel. We understand "causal impact" in the probabilistic sense. The decision itself need not be different that it would be if the individual had different avowed interests or preferences, just the probabilistic expected outcome of that decision.

sions that advance “shareholder interests,” even when those shareholders do not voice their preferences.<sup>40</sup>

In his 2010 State of the Union address, President Obama justified the U.S. bank bailout by saying that “It was not easy to do. And if there's one thing that has unified Democrats and Republicans, and everybody in between, it's that we all hated the bank bailout. I hated it. I hated it. You hated it. It was about as popular as a root canal.”<sup>41</sup> If it is true that the bank bailout was liked by bankers but disliked by just about everyone else —by most Americans and by Democrats and Republicans alike, how did it become policy? One cause of the U.S. Government's decision to aid the financial industry in the way that it did in 2008 and 2009 may be what some political scientists and social theorists have called structural power. On this theory, politicians and policy-makers have incentives to act according to the preferences of those who control capital above all other interests in society (such as those of consumers or workers). One reason, articulated by Charles Lindblom, is that investors and businessmen must be enticed by policy-makers to create the conditions upon which the rest of society depends (“invest, hire workers, curb industrial pollution”). Whereas other actors in society must organize to assert their interests, those who control capital (while they certainly do organize as well) can exert this additional form of political influence — and they need not act deliberately to benefit from it — simply by virtue of their position in the structure of a market society.<sup>42</sup>

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<sup>40</sup> Though part of the inducement upon executives is the threat of subsequent disinvestment by shareholders.

<sup>41</sup> Obama, Barack (2010).

<sup>42</sup> See Charles Lindblom (1982) and Lindblom (1977). See also Block (1977) and Cohen and Rogers (1983). For an empirical argument against this position, see Smith (1999).

This kind of structural power is a sort of influence over an organization that is exercised passively but directly, in the sense that those who make decisions in an organization (politicians and policy makers in the example above) respond without intermediation to the interests of particular affected individuals (in this case capitalists). Though the idea of structural power has been worked out most extensively to explain business power, the general notion of this kind of passive, direct influence applies to many other instances, such as the power that husbands exert over wives in marriage in societies where divorced women face highly diminished life chances. Furthermore, concepts of structural power have been used to explain how dominant interests exert influence that subordinates the interests of the weak. But this basic insight might also be used to explain and indeed design institutional mechanisms that create more egalitarian opportunities for influence over significant decisions. In a society with generous social welfare provisions including a basic income<sup>43</sup> and other protections, employers are less likely to exploit and degrade their employees because their well-being and self-respect is less dependent upon labor market success. While such measures would certainly enhance the bargaining position of employees, they would also enable employees also protect their interests through passive and direct, structural influence, over workplace decisions.

Fourth, individuals can also influence the decisions of organizations in ways that are both passive and indirect. Like the rest of us, those who make decisions in organizations are subject to countless norms of appropriateness, moral standards, cultural perspectives, and habits of thought that we acquire through numerous channels of socialization. There can be little doubt that these forces affect how they assess choices before them and ultimately act. Very different scholars

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<sup>43</sup> Van Parijs (1991).

have explored how such forces systematically influence decisions in favor of some interests against others: the American pragmatists with their account of habit;<sup>44</sup> Gramsci with hegemony; and the related “third face of power” explored by Stephen Lukes, John Gaventa, and other power theorists.<sup>45</sup>

Figure 1 below shows the four modes of influence discussed above and their application to the issue of employee wages. In its broad formulation (3) above, the principle of affected interests requires workers at a firm to have influence over that organization’s wage policies. It is natural to think that the principle of affected interests requires some sort of workplace democracy (I. in figure 1 below). The participatory democratic approach of giving workers’ active and direct influence is one way to satisfy the principle, but not the only one. Workers might also vote for political representatives who legislate minimum wage laws (II. active and indirect). Workers might live in communities that offer generous social welfare safety nets and perhaps even a basic income. These de-commodification measures give them structural power in their interactions with employers by decoupling their prospects from labor market success (III., passive and direct). Or, workers might work for employers who are subject to broader social norms of solidarity, care, and respect for producers (passive and indirect).

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<sup>44</sup> William James (1887, p. 446-7) famously wrote that

Habit is thus the enormous fly-wheel of society, its most precious conservative agent. It alone is what keeps us all within the bounds of ordinance, and saves the children of fortune from the envious uprisings of the poor. It alone prevents the hardest and most repulsive walks of life from being deserted by those brought up to tread therein. It keeps the fisherman and the deck-hand at sea through the winter ; it holds the miner in his darkness, and nails the countryman to his log cabin and his lonely farm through all the months of snow.

<sup>45</sup> Citations to Lukes and Gaventa; see also Amartya Sen’s discussion of false consciousness [provide citations].



Figure 1: Modes of Influence, Applied to Firm Wage Decisions

	<i>Active</i>	<i>Passive</i>
<i>Direct</i>	I. Worker bargains with employer.	III. Workers less hostage to labor market due to social welfare provisions.
<i>Indirect (mediated)</i>	II. Worker votes for politician who enacts minimum wage laws.	IV. Worker lives in community with potent pro-labor norms.

It may seem odd to count what I have called the passive modes as influence at all. Our use of the term usually refers to agents who are deliberate in the ways that they seek to advance their interests. Those who are drawn to the principle of affected interests primarily from the values of autonomy and self-mastery may resist this broader formulation of influence, and any institutional account of the principle of affected interests must make substantial room for the active modes of influence. But there are ample reasons to include passive modes of influence as well.

First, it is much more plausible to see how the principle of affected interests could be satisfied when one understands that decisions are affected by factors that include not just formal provisions for voice, but also indirect laws and regulatory mechanism, social structures of power, and the collective creation and reproduction of culture and habit. Second, this enlarged view of influence has practical implications. For any particular organization, there are many routes through which to satisfy the principle of affected interests. If one particular route is of influence is blocked by force or circumstance, politicians, activists, and other reformers might seek others.

Third, this broader understanding offers a more social, less individualistic, conception of influence in which organizations can be embedded in webs of incentive and control that work to press their decisions in ways that protect individual interests. The most obvious of these include the mediated influences of representative government and regulatory systems, but there are many others. The long term construction and maintenance of such webs of influence is not less important for democratic social control or the protection of individual interests than the decisions in which individuals participate directly and deliberately.

Finally, this broader notion of influence is congruent with contemporary psychological understandings of decision-making. Even at the individual level, the psychology of decision tells us that we accomplish most of our ends through arational, non-deliberate, processes. These psychologists distinguish between “central” and “peripheral” routes of cognition.<sup>46</sup> In the central route, individuals employ the tools of deliberate choice in full consciousness, weighing the costs and benefits, gauging the likelihood of various scenarios, and the like. In the peripheral route, decisions result from habits or affective factors that do not rely upon such deliberate appraisal of options. Think of the many decisions that enabled you to get yourself from your home to work this morning, or those that culminated in the last box of breakfast cereal that you purchased. Most decisions employ the peripheral rather than the central route of cognition. Passive routes of influence at the level of democratic society are analogous to peripheral routes of cognition at the level of individual decision-making. They can both operate to advance our interests, and they are both necessary because of our limited time and cognitive capacity.

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<sup>46</sup> Pratkanis et. al. (2003); Tversky and Khaneman [complete citation].

The principle of affected interests, then, may be satisfied through any of these modes of influence. Indeed, popular control over any particular organization will usually depend on a mix of all four. For a society, the principle requires that every individual can influence all of the organizations that make decisions regularly or deeply affecting his important interests through at least one of the modes shown in Figure 1 above. A corollary is that the principle of affected interests also requires that every organization offer at least one mode of influence to every individual whose interests are regularly or deeply affected by its decisions.<sup>47</sup> It is far more plausible that the principle could be satisfied with the broader notion of influence than through just active (or worse, active and direct) modes of influence.

Working out the factors that determine the optimal mix of different kinds of influence lies beyond the scope of this paper. Any such effort must include at least two important factors — the extent to which the mix of modes allows individuals to protect their important interests and the extent to which such modes allow individuals to economize on the attention and energy that they devote to influencing organizational decisions. A fuller theory incorporating the principle of affected interests would specify how to assess the degree to which various governance procedures and social practices satisfied the principle and whether the principle required alternative arrangements. How, for example, ought the balance between protecting important interests and economizing on time and attention be struck? Short of offering such an account, the next section illustrates how the principle of affected interests guides the evaluation of democratic control mechanisms.

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<sup>47</sup> Note that the existence of these channels of influence is a necessary, but not sufficient, condition. In order to be fully satisfied, the principle of affected interests would also require that the extent of these influences be significant. This essay does not investigate the levels of influence that the principle requires.

## **6. Two Illustrative Applications**

### *A. Decisions With International Effects*

Perhaps more than ever, states makes decisions that affect those who live outside of their borders and who have no formal voice in the decision-making processes of those states. It is from self-interest as much as voyeuristic fascination that many people from all over the world follow U.S. presidential elections as closely as they do. Powerful nations make decisions about security, economy, environment, property, and technology, among other issues, whose effects touch the interests of billions outside of their borders. Decades ago, Robert Dahl mused that the principle of affected interests may require people in Latin America to be able to vote in U.S. elections, for no one doubts that U.S. decisions have profound consequences for them. He cautions us not to dismiss this thought as absurd, for “the real absurdity is the absence of any system of government in which that joint interest is effectively represented.”<sup>48</sup> He later writes that if a first transformation gave birth to the democratic city-state, and the second was the shift from local to nation-state democracy, we now face a third transformation in which

the boundaries of a country, even a large country such as the United States, are now much smaller than the boundaries of decisions that significantly affect the fundamental interests of its citizens... the governments of countries are becoming local governments.<sup>49</sup>

As discussed above, Robert Goodin suggests that the principle of affected interests requires a world government to address this challenge to democracy. But, as Steven Macedo points out, there are many other ways to satisfy the principle of affected interests in the face of decisions

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<sup>48</sup> Dahl (1990), p. 51.

<sup>49</sup> Dahl (1989), p. 319.

with trans-boundary effects.<sup>50</sup> Suppose state A makes decisions that affect individuals living in the territory of state B. If both A and B are members of multilateral institutions such as the WTO, EU, and UN, those institutions sometimes allow those in to have influence upon A's decisions and more influence than they would otherwise have. The mode of this influence is active when individuals vote for political officials in B and is mediated through those political officials, multilateral institutions, and the response of State A.

For some kinds of decisions, influence might be exercised directly as well as actively. When decisions made by a corporation of State A affect those living in B, those in B sometimes circumvent the mediation of state organizations in favor of negotiating directly with that corporation to secure decisions that will protect their interests.<sup>51</sup> Influence over transnational decisions can also operate in passive ways. The advocacy of Bono Vox may be said to give Africans who suffer from AIDS some influence (perhaps only a little, but more than they would otherwise have) over the decisions about foreign aid of national governments, transnational international property rights regimes, and global pharmaceutical corporations. Similarly, efforts of non-governmental organizations such as Oxfam and Care can be said to give the world's poor some influence over the formulation of the rules of international trade. There is in political theory a lively discussion about whether such organizations "represent" the poor or Africans suffering from AIDS.<sup>52</sup> But it is easier to see how these international advocates afford their intended beneficiaries some influence over international decisions. Whether or not they can be said to properly represent, one of the central aims of these advocacy groups is to shift the decisions of powerful organizations in

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<sup>50</sup> Macedo (2008).

<sup>51</sup> Provide citations to direct negotiations Nike, Sialkot Rugmark, SEIU in Europe.

<sup>52</sup> See Laura Montenaro (2008); Michael Saward (2008); and the work of Jennifer Rubenstein.

ways that protect the interests of highly disadvantaged individuals like the poor or AIDS sufferers in Africa; these NGOs aim to connect the interests of the highly disadvantaged to the decisions of powerful nations, corporations, or international organizations in ways that cause them to be more favorable to the disadvantaged. If those disadvantaged individuals did not exist, or if they had interests very different from what they presently are, those advocacy groups would likely embrace very different goals.<sup>53</sup>

None of this is to say that the operations of multilateral institutions, stakeholder negotiations, or international norms currently confer actual influence over transnational decisions, much less that they confer sufficient influence to satisfy a democratically demanding interpretation of the principle of affected interests. Rather, this discussion simply lays out a number of alternative institutionalizations through which that principle could be satisfied.

### *B. Second Generation Gender and Race Discrimination*

A claim of the fact of governance is not just that states lack reach over decisions that originate outside of their borders, but that they also lack the capacity to protect the important interests of individuals even for decisions occurring inside their territory. To illustrate the plausibility of this claim and its implications for the application of the principle of affected interests, consider the problem of racial and gender discrimination at workplaces in the United States.

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<sup>53</sup> Of course, the advocacy efforts of NGOs does not perfectly track the avowed interests or preferences of individuals on whose behalf they advocate. If there is no correlation between (i) advocacy efforts on one hand and (ii) individuals' interests and preferences on the other, then these NGOs confer no influence. The closer the tracking, the more influence is conferred to otherwise powerless individuals.

In an excellent discussion of this problem,<sup>54</sup> Susan Sturm describes the difference between what she calls first and second generation discrimination. First generation employment discrimination is intentional and explicit. Sturm writes that “workplace segregation was maintained through over exclusion, segregation of job opportunity, and conscious stereotyping. Dominant individuals and groups deliberately excluded or subordinated woman and people of color.”<sup>55</sup> During the civil rights movement and afterward, legislators and advocates passed laws, formal rules, that made this form of discrimination illegal by prohibiting the use of race or gender as a factor in hiring decisions, requiring the same standards and processes for recruitment, hiring, training, promotion, and so on.<sup>56</sup>

Though this first generation of discrimination persists, Sturm shows that it is now compounded by a second generation of discrimination that is more subtle and complex. Second generation discrimination consists of patterns of exclusion that result from personal interactions over time that may not involve intentional exclusion or bias. Second generation harassment may, for example, may “consist of undermining women’s perceived competence, freezing them out of crucial social interactions.” The “glass ceiling” that blocks the advancement of women and people of color remains “largely because of patterns of interaction, informal norms, networking, training, mentoring, and evaluation.”<sup>57</sup> These more subtle patterns of discrimination have proven resistant to the sorts of binding anti-discrimination law that successfully addressed much first generation discrimination because practices that produce second generation discrimination vary across

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<sup>54</sup> Susan Sturm, 2001.

<sup>55</sup> Sturm, p. 465.

<sup>56</sup> Sturm, p. 467.

<sup>57</sup> Sturm, p. 469.

workplaces and frequently elude explicit understanding of either perpetrators or victims of discrimination. The force of binding law is insufficient to secure equality of economic opportunity against the challenge of second generation discrimination.

But the problem of second generation discrimination has been addressed successfully at many workplaces. Successful strategies often result from groups of employees and managers who engage in workplace problem-solving to identify the behavioral patterns, norms, and policies that constitute second generation discrimination. To mitigate discrimination, these findings must then be incorporated in to the human resource practices and culture of the organization.<sup>58</sup> Firms who engage in this sort of introspection and internal reform are frequently prodded, and then assisted, by external groups who advocate on behalf of female or minority professionals.

In response to the discovery of dramatic gender gaps in promotion rates, for example, the accounting firm Deloitte and Touche implemented a Womens' Initiative in the 1990s. The Initiative was born of an employee task force that identified an organizational culture dominated by gender stereotypes, biased informal mentoring practices, and work-life balance as key barriers to women in the firm. The group recommended and management adopted a range of measures that included more explicit and equitable assignment procedures, flexible scheduling and other policies designed to address balance between professional and personal priorities, and measurement and internal publicity around the extent and character of the gender gap within business units. These strategies dramatically decreased several dimensions of the gender gap. In five years, the percentage of women admitted to senior management rose from 8 to 23 percent; turnover for female

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<sup>58</sup> Sturm, p. 479.



senior partners decreased from 26% to 15%. The number of women senior partners rose from 88 to 246 between 1993 and 1999.<sup>59</sup>

Women and people of color have an important interest in non-discrimination. During the civil rights and women's movements, many of them actively exercised influence over employment decisions through the power of anti-discrimination law to protect these interests. These tools of active/indirect influence have shown themselves to be much less effective against a second generation of workplace discrimination. But other forms of influence, in particular the active-direct mode of employee participation (I. in figure 1 above) in the formation of human resource and promotion policies, has proven more effective. These efforts may in the medium term help to alter norms and habits of organizational management in ways that promote equal opportunity (IV. in figure 1 above). When representative government does not enable individuals to influence decisions affecting their important interests, the principle of affected interests demands other avenues of influence be created.

### ***7. Conflicts Of Authority and Membership***

In a world of multiple and dynamic memberships, conflicts over who ought to have influence, how much they should have, and over which organizations are bound to arise. Adjudicating these conflicts requires both appropriate principles and institutions.<sup>60</sup> Adjudication principles would specify what kinds of interests are sufficient to warrant participation in an organizations decisions, the priority of different interests, and the kinds of influence that ought to be conferred.

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<sup>59</sup> Sturm, p. 498.

<sup>60</sup> I thank Anna Stiliz for emphasizing this problem in the account of multiple memberships. Unfortunately, I am only able to suggest here some directions for a solution rather than the solution itself.

Principles of adjudication would also specify how influence should be distributed. It is worth noting that a natural interpretation of the principle of affected interests would be to distribute influence in proportion to the degree that interests are affected rather than affording all who are affected an equal opportunity to influence a decision.<sup>61</sup> Working out these principles of adjudication lies well beyond the scope of this paper. I hope to take up that task on another occasion.

As an institutional matter, who would apply these principles of adjudication to assure that organizational enfranchisement satisfies the principle of affected interests? Even in the ideal, a complex world would require complex institutions to protect participation rights. Despite many flaws, the nexus of laws, courts, and administrative practices such as notice-and-comment, administrative hearings, and regulatory negotiation in the United States offer some insight into how participation rights might be adjudicated. That experience covers only administrative agencies in a single country, and the principle of affected interests would regulate a much larger array of organizations in many other areas. In an imagined future that is more democratic than the present, there might be many juridical bodies (perhaps both courts and citizens' juries) charged with enforcing the principle of affected interests and its associated rights to participation in different territories (e.g. Kenya, the United States, or New York State), across sectors (different courts for businesses, administrative agencies, civil society, and government), or issue areas (environment, education, large infrastructure projects funded by international development assistance). If the

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<sup>61</sup> As Michael Blake (2001) has noted in another context, moral equality does not imply political equality. That non-correspondence illuminates how the principle of affected interests can violate intuitively appealing formulas such as one-person, one-vote, yet still treat people as moral equals.

principle of affected interests were widely accepted, it is not difficult to imagine institutions that would enforce it.<sup>62</sup>

As a practical reality, however, a fully-fledged structure of juridical institutions that enforces the principle of affected interests is as fanciful as a cosmopolitan democratic government. Today, the principle of affected interests is vindicated incrementally and haphazardly through the court of public opinion. When obviously important interests — human rights, health, economic livelihood, childrens' education, and so on — are adversely affected by the decisions of governments, international financial and trade organizations, corporations, and even non-governmental organizations, those who are affected sometimes rise up to demand influence. When investors and community residents demand more voice in the decisions of corporations, neighborhood groups ask for participatory planning, and governments of developing countries want greater say in the UN Security Council or world trade decisions, they often appeal to the principle of affected interests. Because organizations and their constituencies are not immune from the appeal of this norm and the pressures that it generates, targeted organizations sometimes enfranchise their critics. Such spontaneous compulsion, however, enforces the principle of affected interest in a highly uneven and sporadic way. But perhaps in the fullness of time, this democratic norm will spread from the world of impulsive political movement to institutionalized law and regulation.

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<sup>62</sup> One immediate objection to this institutional suggestion is that it is so ambitious that, at the limit, it proposes what I criticized earlier: what Robert Goodin's world democratic government. There are two key differences, however. First, the adjudicative bodies suggested here have a narrow focus on what is in the United States called "due process" concerns — they are not all-purpose governments. Second, as the paragraph describes, I imagine a wide net work of adjudicatory bodies that is perhaps similar to the structure of criminal courts. There is an International Criminal Court, but it operates in complement with national and local courts everywhere.

## **8. Conclusion**

The principle of affected interests remains one of the most firm and widespread democratic intuitions. The sensibility that people should be able to influence decisions that affect them grounds not only commitments to representative government, but complaints about the democratic deficits of multilateral institutions like the European Union and the World Trade Organization. It drives demands for participation not just upward from the nation-state, but also outward — into corporations and non-governmental organizations — as well as downward — into local governments, administrative agencies, communities, and neighborhoods. In the pages above, I have tried to formulate that principle in a way that is plausible and attractive.

The above discussion of the principle of affected interests is incomplete. I have not specified which individual interests are sufficiently important to warrant having influence; an account of what counts as an important interest is needed. I have not specified the values — economy of time and attention, extent of influence, deliberateness of control — that guide choices among alternative ways to satisfy the principle of affected interests. Furthermore, individual influence is not the same thing as democratic control. Influence must rise above a threshold and be distributed fairly to count as democratic. Authoritarian leaders know that they can go so far that they will be overthrown and so avoid that precipice. Though these countries are far from democratic, people in them have some weak influence over their political leaders.

Nevertheless, I have tried to develop the principle of affected interests in several ways that render it coherent, feasible, compatible with the complexity of contemporary governance, and yet still responsive to these radical democratic intuitions. This development turns on three specifications. First, because of what I have called the fact of governance, the principle should govern not

just state decisions, but the consequential decisions of all kinds of organizations including economic firms and civic organizations. Second, the principle should be used to guide the continuous adjustment of boundaries of organizational inclusion in real, non-ideal world that we actually inhabit rather than as a principle of design for an ideal constitution or basic structure of a society. Third, we should conceive of the idea of influence much more broadly than active and direct control; influence can also operate in indirect and passive ways.

Understood in this way, an individual should have influence over many different organizations because many affect his important interests. If we imagine every organization as having a circle of inclusion around it with all of those in the circle having some influence, every individual would be a member of many circles — some above the level of the nation-state and many below it. In some of those circles, individuals might exercise their influence directly through committee democracy and indirectly through votes for representatives in others. In many, perhaps most, circles, however, individuals would exercise a passive influence that causes organizations to make decisions that are responsive to their interests and preferences through structural inducements, norms, or regulatory provisions. As the effects of organizations shifted, constricted, or expanded, political leaders, citizens, and advocates would press them to adjust their boundaries of inclusion according to a broadly accepted principle of affected interests. In such a world, the democratic ambition to subject fate and arbitrary power to popular control would be much more satisfied than it is now.

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