

A Theory of Democratic Self-Determination: Affectedness, Sovereignty, and Nonterritorial Political Boundaries

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Abstract

If democracy means *rule by the people*, then the first question of democratic theory is: Who are *the people*? A fundamental problem in the contemporary theory and practice of democracy is that the people who constitute a given polity are generally defined by their territorial location – a characteristic that only *approximates* a more fundamental democratic principle. This democratic fundamental principle holds, in short, that those affected by a decision should be involved in its creation; or, more specifically, that an actor should be involved in making a decision to the extent that she is affected by it. I argue that the ‘affectedness principle’ constitutes the core of a democratic conception of self-determination, one that empowers people to have a say over decisions that affect the conditions of their lives. I focus on three important implications of the affectedness principle for democratic governance: 1) Territorial political borders are inadequate to effectively put democratic self-determination into practice, and instead we ought to have a system of flexible political boundaries that are responsive to issues of different scales; 2) Though self-determination is often linked with questions of secession and political autonomy, I separate these to suggest that secession and political autonomy are not always, and perhaps not even frequently, implied by a democratic conception of self-determination; and 3) The way an actor is affected matters. Democratic self-determination, in my view, holds that people should have a say in decisions that is roughly proportional to their degree of affectedness. This notion calls into question *one person, one vote* and, when combined with a theory of rights or capabilities, suggests that some actors ought to have veto power over particular decisions. I conclude with some preliminary suggestions about how a system of democratic self-determination might be put into practice through a combination of judicial decisions and deliberative bodies.

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Introduction: *Beyond Territorial Sovereignty*

State sovereignty or, more broadly, territorial sovereignty has become increasingly untenable for a world characterized by extreme interconnection and interdependence. Many of the most pressing facts and problems in the contemporary world – from globalization, poverty, and migration, to climate change, pollution, and epidemics, to global terrorism and war – routinely cross territorial borders. As such, people are deeply affected by problems over which they have little or no say. A financial decision made in one country may have consequences on the availability of basic food and medicines in another. A lack of economic opportunity in one region may result in a flood of migrants into another. Emission from a coal plant in one state can cause acid rain in another and contribute to climate change worldwide. A terrorist attack by a small group of individuals in one country can result in a widespread civilian bombing campaign in another. How, one might ask, is it democratic that people who are deeply impacted by a decision have no say in its creation, simply because the locus of that decision-making power is on another side of a territorial border? If people are indeed fundamentally free and morally equal, why do some individuals have decision-making power over the lives of other people – people who have little or no say over the basic conditions of their own lives?

The dominant paradigm of state sovereignty holds that a government is the “supreme authority within a territory” (Philpott 1999: 570). This has at least two important implications: 1) No other entity within or outside of that territory can override the state’s decision; and 2) Even if the state’s decision has severe impacts on the lives of people outside of that state, those affected people do not have the right to make a decision-making claim on the state.¹ The principle of state sovereignty operates in clear tension with the notion of universal human rights, insofar as claims of universal rights deny that a state has the legitimacy to do whatever it wants within its borders (Pogge 1992). In contrast, universal human rights claim that states are explicitly prohibited from violating human rights and may also have positive duties to ensure that certain basic rights are met. In addition to the normative challenge to state sovereignty, it is threatened on an empirical level, as well, by the United Nations, the World Trade Organization, the International Criminal Court, the mobility of capital, and the slew of previously mentioned social problems that cross national borders. Each of these institutions and issues make it practically impossible for a state to maintain exclusive control over its territory. Given these well-established normative and empirical challenges to state sovereignty, it is past time to reconsider its desirability and ponder alternatives.²

In this paper, I focus on the question of democratic decision-making beyond state sovereignty. It is no longer tenable (and perhaps it never was) to hold that each nation-state, so long as it is internally democratic, can effectively make decisions that affect the conditions of life within its borders, while simultaneously not affecting the lives of people outside of its borders. Instead, decisions made in one territory have impacts that travel to other territories. At the same time, people within some borders do not have control over decisions that fundamentally affect them simply because those decisions emanate from elsewhere. “The idea of a community that rightly

¹ While this is generally true, there are certain exceptions. For example, a state’s military actions – perhaps the clearest example of effects that stretch beyond territorial borders – are limited to some extent by principles of nonaggression and just war (at least theoretically). See, for example, Walzer’s (1977) *Just and Unjust Wars*.

² I do not mean to imply that this is a new project. A range of scholars have challenged the concept of state sovereignty and proposed alternative models of governance including Held (1992), Pogge (1992), and Young (2007).

governs itself and determines its own future – an idea at the very heart of the democratic polity itself – is, accordingly, today deeply problematic” (Held 1992: 325).

The fundamental problem is that *the people* who constitute a given polity are currently defined by their territorial location³ – a characteristic that only *approximates* a more fundamental democratic principle. This more fundamental principle holds, in short, that those affected by a decision should be involved in its creation; or, more specifically, that an actor should be involved in making a decision to the extent that she is affected by it. I argue that the affectedness principle constitutes the core of a democratic conception of self-determination, one that empowers people to have a say over decisions that affect the conditions of their lives.

After elaborating the above claim, I suggest that this model of democratic self-determination has important and far-reaching implications for our understanding of how democratic governance ought to function in the contemporary world. I focus on three broad categories, which I discuss in turn:

- Territorial political borders are inadequate to effectively put democratic self-determination into practice and, instead, we ought to have a system of flexible political boundaries that are responsive to issues of different scales.
- Though some academics often link self-determination with questions of secession and political autonomy,⁴ I separate these concepts to suggest that secession and political autonomy are not always, and perhaps not even frequently, implied by a democratic conception of self-determination.
- Not all effects are created equal and the *way* an actor is affected matters. Democratic self-determination, in my view, holds that people should have a say in decisions roughly proportional to their degree of affectedness.⁵ This notion calls into question one person, one vote and, when combined with a theory of rights or capabilities, suggests that certain actors or groups of actors ought to possess veto power over particular decisions.

I conclude with a preliminary model for how a system of democratic self-determination might be put into practice. I suggest such a system must specify different levels of affectedness in order to distinguish between actors who are affected in fundamental ways from those affected in relatively trivial ways. I propose that a network of issue-based judiciaries could be employed to decide both which actors are affected, as well as their order of affectedness. Affected actors would then participate in deliberative bodies – the issue-specific polity – that would be empowered to make a decision regarding the proper course of action. While I believe this preliminary model points the way toward an implementable system of democratic self-

³ This claim does have certain exceptions. For example, expatriates are still allowed to vote in their country of citizenship despite living elsewhere, while many immigrants cannot vote in the elections of the country in which they reside. Additionally, it may be argued that the diasporas of certain peoples suggest that *the people* is not inherently tied to territory. While it is certainly true that some peoples (e.g. the Jewish people) are territorially dispersed, they do not constitute a political unit with a decision-making function; they are not, in other words, a polity.

⁴ I use the word ‘political’ in front of autonomy to distinguish the concept from moral autonomy or self-development. By ‘political autonomy’ I mean that some decision-making body has the absolute and final say over all decisions that occur within its territorial borders. In other words, I intend ‘political autonomy’ to be essentially equivalent to the concept of territorial integrity and its related principle of noninterference.

⁵ This idea is quite similar to the principle of proportionality recently advocated by Brighthouse and Fleurbaey (forthcoming), which holds that “power in any decision-making process should be proportional to individual stakes.”

determination, it is important to distinguish the ideal of democratic self-determination that I argue for throughout most of the paper, from suggestions about how such an idea might be implemented. It would be possible for a reader to agree with the idea of democratic self-determination based on the affectedness principle, but believe that the model to implement such an ideal is in need of significant revision. For this reason, in the final section of the paper I do not attempt to definitively resolve such issues, but seek to suggest strategies for implementation.

I. The Polity's Boundaries: A Democratic Conception of The People?

At their core, questions of self-determination remain questions of “who are the people?” that constitute the polity. Deciding *who* decides is prior, both temporally and logically, to questions about *how* decisions are made. This latter question is addressed by a large literature on 1) varieties of democratic institutions, such as debates between aggregative versus deliberative democracy and majoritarian versus consensual democracy, and 2) the extent to which there should be constraints, such as constitutional provisions to protect civil liberties and minority rights, on democratic decision-making (e.g. Dahl 1998. Lijphart 1999. Young 2000). The importance of these debates notwithstanding, they largely eschew the more fundamental question: Who comprises the polity that gets to deliberate, vote, and make decisions in the first place? Robert Goodin (2007) refers to this problem as “constituting the demos”: Who are *the people* that make up a polity? Similarly, David Miller (2009: 201) asks, “How...should the political units within which democracy will be practiced be constituted?”

Some thinkers argue that no democratic principle exists capable of deciding who constitutes the people. For example, Whelan (1983: 16) writes that “Boundaries comprise a problem...that is insoluble within the framework of democratic theory, and...democracy is practicable only when a historically given solution of this issue (justifiable or not, by some theory other than democratic theory) is acceptable.” Similarly, Margalit and Raz (1990: 199) argue that “there is no universal democratic formula serving as the universal answer to ‘Who decides?’ questions.” The basic thinking here is that we cannot decide democratically who the people are because a democratic decision implies that the people are already defined, that the polity already exists. The notion of voting on who can be citizens of their polity begs the question, since those doing the voting have, in so doing, created a polity in which they have the final say.⁶ According to this argument “any group of people constituted on any basis whatsoever could constitute a perfectly proper demos for democratic purposes” (Goodin 2007: 44). In this sense, there may not be any truly democratic way of establishing a democratic community – the best we can hope for is that self-defined polities are internally democratic.

However, this argument leads to absurdities calling it into question. For instance, suppose that a group within a territory – not itself the whole of the population – identified itself as the people who were to make decisions over that territory. Even if this group made decisions democratically, would we really consider a polity democratic if only a small portion of the population was involved in making decisions? I suspect that most readers would think not. We do not generally think of the American South prior to the Civil War as being democratic; despite its constitutional and representative political system, a large number of the South’s inhabitants –

⁶ Political units do routinely making decisions about who are and who are not *the people* – in relation to questions of immigration and voting rights for felons, for example – but this is probably best understood as an already, if problematically, constituted polity that is in the process of evaluating its definition of citizenship.

most notably black slaves – had absolutely no political voice. In other words, the antebellum South is undemocratic as a result of how it resolved the question of “Who are the people?” Thus, a polity apparently can define the people in an undemocratic way.⁷

On what basis can the concept of democracy help to resolve its boundary problem? While “[t]he domain problem cannot be solved by appeal to a democratic procedure...this does not mean it cannot be solved by appeal to democratic theory” (Miller 2009: 204). In other words, the democratic ideals of political equality, self-government, and self-determination may provide a basis on which to define the people democratically, even if democratic procedures such as voting are inadequate. In this paper I argue that there is indeed a *democratic principle* – a principle internal to the concept of democracy – which speaks to the problem of *constituting the demos*. Calling the aforementioned polity democratic seems ludicrous because there are some people within that territory who will be affected by a decision but remain unable to participate in its creation. This logic informs the affectedness principle which, I contend, constitutes the normative basis of democracy and can provide a coherent and well-grounded answer to the question: Who are *the people*?

II. Affectedness: *The Core of Democratic Self-Determination*

For a polity to be truly democratic it must define the people based on those who are affected by a particular decision. The affectedness principle constitutes the normative basis of democracy and is implicit in judging whether people are fairly represented in decision-making. Jurgen Habermas (1998: 458) notes that “...the only regulations and ways of acting that can claim legitimacy are those to which all who are possibly affected could assent as participants in rational discourses.” The basic democratic principle that those who are bound by laws should have a say in making the laws underlies the principle of affectedness. It is implied by Kant’s notion of giving the law to ourselves in his famous *Groundwork for the Metaphysic of Morals* (1785/1964). What sense would it make after all to: a) give laws to ourselves that would never apply to us, or b) not have control over laws that affect us due to the geographical origin of the decision? Ultimately, the principle suggests that all who are affected by a decision – that is “made significantly better or worse off” by it” (Miller 2009: 215) - should have a say in its creation. This directly answers the problematic question of “Who are the people?”: The people should be those who are affected by a given decision.

In this essay, I largely use the words democracy and self-determination interchangeably.⁸ Democracy means “rule by *the people*”⁹ and *the people* are determined by those affected by a decision. Self-determination, following Young’s useful definition, entails the ability to participate in deciding one’s actions and the conditions of one’s actions (1990: 27). In this sense, self-determination is another way of saying that all persons affected by a decision should have a

⁷ For a similar argument, see Goodin’s (2007: 46-47).

⁸ Technically speaking, I suggest that democracy refers to a political system in which individuals and communities are self-determining.

⁹ This concept of democracy should be distinguished from a discourse approach to democracy, which emphasizes the role of an active public sphere characterized by rational deliberation between competing discourses. While this is no doubt a component of a well-functioning democratic society, I follow Dahl (1999: 20) that democracy also has an important institutional component: In a democracy, the *demos* are the “sovereign authority that decides important matters either directly in popular assemblies or indirectly through representatives.”

say in it. I use the phrase “democratic self-determination” throughout the essay as a way of reinforcing the meanings I intend for both of those words. Self-determination qualifies democracy by reminding us that democracy means rule by the people – whoever, exactly, those people are. Democracy’ qualifies self-determination by clarifying that self-determination does not necessarily mean territorial, national, or state sovereignty, but a principle that those affected by a decision should participate in its creation.

According to this framework, democratic self-determination operates as a system of organized decision-making so as to empower affected parties to participate in relevant decisions. This structure is the opposite of domination, which refers to “structural or systematic phenomena which exclude people from participating in determining their actions or the conditions of their actions” (Young 1990: 31). Thus, domination exists whenever one is subject to institutions, rules, or outcomes, but does not have a voice in decision-making. Therefore, we can say that individuals are self-determining to the extent that they effectively participate in decisions affecting their actions or the conditions in which they act.

On a community level this implies that communities should be able to participate in decisions to which that are subject. Since self-determination is the opposite of domination, we can state a general principle that each community should have enough decision-making power to manage its affairs, but not enough power for it to impede the ability of other communities to do the same. Self-determination therefore requires a reciprocal principle of non-domination.

The above entails that relations between different individuals and groups are “regulated both by institutions in which they all participate and by ongoing negotiations between them” (Young 2007: 41). More specifically, domination occurs when an actor has the power to arbitrarily interfere with the action of another, and such “interference is arbitrary when it is chosen or rejected without consideration of...the opinions of those affected” (ibid: 48). Thus, democratic self-determination means that those who are affected by a decision or course of action have moral grounds to participate in the decision, whether they are insiders or outsiders of any particular territorial border. This implies that self-determination is not complete independence, but requires instead that “people dwell together within political institutions that minimize domination among peoples” (ibid: 51). The impacts of such a conception on territoriality and sovereignty are discussed in the next section.

III. Issues, Not Territory: *The Case for Nonterritorial Political Boundaries*

A principle of democratic self-determination acts as a direct challenge to conceptions of self-determination characterized as complete independence, absolute territorial integrity, or state sovereignty, each of which is characterized by a principle of noninterference. Rather, democratic self-determination is a relational concept that assumes that noninterference is an utter impossibility in a highly interconnected and interdependent world (Young 2000; Young 2007: 39-57). Can one group really not interfere with another when their chains of production and consumption are already deeply interwoven? Are people in one region really not affecting people in another area when a stream of CO₂ or toxic waste or migrants or epidemics or drugs routinely travel beyond their borders? Simply put, a conception of self-determination as a territorially-based principle of noninterference is untenable because it presupposes a world of isolated, autonomous polities; such a world remains neither empirically true nor practically realizable.

Basing self-determination on territorial boundaries tends to be undemocratic insofar as the impacts of decision are not confined to territorial borders. This is not to say that a system of territorially-defined political units always gets the problem of constituting the demos completely wrong, but simply that, at best, it represents an approximation of the affectedness principle. “Sometimes the approximation is overinclusive, including in the demos someone whose interests are not affected by the decision of the demos.... Sometimes the approximation is underinclusive, excluding from the demos someone whose interests are affected by the decision of the demos” (Goodin 2007: 49). Therefore, to put a system of democratic self-determination into practice requires that we go beyond territorially-defined political boundaries. The question is: Where do we go?

If we seek to put democratic self-determination into practice, this suggests that political boundaries or decision-making units be flexibly defined in reference to the type and scale of the *issue* being addressed. Should an issue affect only a single neighborhood, such as a regulation about acceptable colors of exterior paint on homes, then the polity for that issue should be the neighborhood. If pollution from a coal plant in one region travels to several others, then the polity for that issue should be the region that houses the coal plant as well as the regions that breathe its emissions. Notably, for issues that affect people around the world, the polity must be global. Not only is this required by a commitment to democracy, but the possibility of global governance – on global issues– is necessary to effectively solve such dilemmas. An issue like climate change, whose effects routinely transcend territorial borders, requires coordinated decision-making at regional, national, and global levels.

With that said, the prospect of having multi-layered, issue-based governance presents complex implementation challenges and, in particular, the prospect of some *global* forms of governance raises democratic dilemmas. As Dahl astutely points out, larger governmental units become necessary to tackle matters of widespread importance, but this increase in size lessens the capacities of ordinary citizens to effectively participate: “although your government gains more control over the problem, your capacity to influence that government is diminished” (Dahl 1999: 22). Therefore, those concerned with democratic self-determination have a desire to both minimize and maximize the size of political units, so as to include everyone impacted by a decision, but to exclude those who are not. Thus, democratic self-determination calls for a modified form of the principle of *subsidiarity*: decisions that can be made locally, without effectively disenfranchising relevant affected parties, should be made locally.¹⁰ In general, a political community should be as small as possible to facilitate effective participation, but big enough so that all those “significantly and legitimately affected by a decision have a roughly equal opportunity to influence the making of this decision” (Pogge 1992: 371).¹¹

What impact does a flexible, multi-layered, and issue-based system of governance have on sovereignty? As was noted earlier, the dominant conception of sovereignty implies that a state is the “supreme authority within a territory” (Philpott 1999: 570). This definition has four components: supremacy, legality, comprehensiveness (all issues), and territoriality (Caney 2005: 149-50). The arrangement I am proposing – flexible political boundaries that are issue-specific

¹⁰ “Subsidiarity respects the notion that sovereignty resides in people. In other words, legitimate authority flows upward from the populace through the expression of their democratic will...Decisions are properly made as close to the level of the individuals who will bear their consequences as feasible” (International Forum on Globalization 2002: 60).

¹¹ Later in the essay, I cast doubt on the equal influence component of Pogge’s principle.

and defined in reference to the affectedness principle –upsets this definition of sovereignty.¹² We could not say that a unit necessarily has the final say on every issue that occurs or originates within its territory. A local community would likely be the final authority on a range of important issues, but not on issues holding implications outside of the community’s borders. For instance, “one could imagine a situation in which a small political unit has ultimate authority on cultural matters but that it lacks that on matters concerning protection of the ozone layer...” (ibid: 150). However, I do not think this entails that we must completely throw out the concept of sovereignty, but rather refine it.

Sovereignty is more usefully defined as the final, legal authority on a given range of issues across certain territories. That is, sovereignty implies legality, supremacy, and territoriality, but not comprehensiveness. While it is not possible to have two sovereign entities covering one issue within a single region, it is possible that multiple sovereign political units could exist within a given territory – each unit would be the final authority, however, on a different set of issues. While a state has the final say *on all issues* within a territory, sovereignty merely implies the final authority *on a given set* of issues within a territory. Crucially, then, comprehensiveness should not be considered a component of sovereignty.

However, territoriality, remains an important, though flexible, component of sovereignty.¹³ The sovereign authority on organizing an annual summer festival should well be the neighborhood council, whereas the final authority on emission of carbon dioxide must be global in reach. Therefore, in a system of democratic self-determination we should adopt a flexible approach to sovereignty: the sovereign authority on a given issue is all those who are affected by the decision and the territorial scope of that sovereignty, and in turn, is defined by the scale of affectedness.

This flexibility has immense appeal for balancing the demands of democratic self-determination with the need to solve both small and large problems. However, it admittedly leaves much to the imagination about how it might work in practice. The following two sections suggest preliminary answers two questions: First, how does democratic self-determination relate to claims of secession and autonomy? Second, what does democratic self-determination say about whether actors should all have an equal voice in every decision or whether their decision-making power should be proportionate to the degree that they are affected?

IV. Democracy and Political Autonomy: *Why Secession is Not Entailed by Democratic Self-Determination*

If political autonomy is to mean anything at all, it must mean that an independent community has the right to manage its own affairs without interference from political authorities outside their borders. Therefore, secession should be a basic right of political units within a system that guarantees the rights of autonomy. The right of exit may be considered one of the most fundamental rights of such units.

¹² Indeed, sovereignty is increasingly understood as being a “complex, divisible, and nuanced variable” rather than as a binary concept (Haywood and French 2009: 5).

¹³ Though sovereignty is still exercised over a given territory, that territory is defined in reference to the type and scale of issue being addressed. In this sense, territory is a derivative, rather than central, concept of sovereignty. For this reason, the concept of sovereignty present here is quite compatible with the concept of nonterritorial sovereignty presented by Haywood and French (2009).

This view can be described as a primary right theory of secession and holds that a group¹⁴ has a basic and inviolable right to secede, so long as the new state is viable and respects human rights (Wellman and Altman 2009). Pogge, in elaborating his system of vertical sovereignty, endorses a primary right of secession, arguing that “the inhabitants of any contiguous territory of reasonable shape...may decide...to constitute a new political unit” (1992: 378). While on its surface this principle seems a basic component of self-determination, this is not at all clear. If one defines self-determination as being a value attached to nation-states or other territorial units, then I believe self-determination does, in fact, require an endorsement of a primary right to secession. However, as I have argued, self-determination is not adequately captured by territoriality. Rather it should be conceptualized as the right of actors to have control over decisions that affect them.

On a certain level, democratic self-determination may be thought to have nothing to say about secession insofar as secession remains based on territorial claims. The conception of self-determination I have advanced takes the issue-type to be constitutive of the people rather than territory, nationality, or membership in an “encompassing group” (Margalit and Raz 1990). There are clear benefits to avoiding territory as well as nationality or group-membership as a way of ‘constituting the demos.’ One important advantage of the affectedness principle as a way of defining ‘the people’ is that it does not belabor the issue of how to define a national, ethnic or other “encompassing group. Margalit and Raz (1990: 85-90) outline six criteria for encompassing group membership:

- 1) The group has a common character and common culture;
- 2) The group culture should have a deep impact on people who grow up within it;
- 3) Membership is determined by mutual recognition;
- 4) Group membership is one of the primary ways people are identified;
- 5) Membership is a matter of belonging, not achievement;
- 6). Groups are not face-to-face groups in which all members know each other; they are anonymous groups where membership is determined by mutual recognition.

Despite the authors’ best efforts, these six criteria include more than the kinds of national/ethnic groups they intended to incorporate; many groups beyond national groups could potentially fit their criteria. Moreover, the issue of sub-groups complicates the notion of defining encompassing groups even further. In fact, the presence of sub-groups within encompassing groups suggests that such groups are not actually encompassing at all. Rather than trying to specify which groups count as culturally significant and politically salient, we ought to define groups based on those who are similarly affected. Such an approach would still capture truly encompassing groups but will do so in a less arbitrary way, while also making a strong case that minority sub-groups within a dominant culture would still have a claim to their own voice and, potentially, self-determination.

Now, this calls into question the basis of national claims to secession and territorial autonomy. Self-determination based on the affectedness principle does *not* endorse a primary right of secession, although it may frequently side with those making secessionist claims. A community

¹⁴ Such a group may be constituted on the basis of an ascriptive characteristic such as ethnicity or be brought together associationally by a shared desire to form their own political unit.

should be able to manage its own affairs without interference or domination from outside actors or institutions. Democratic self-determination must support this position.

However, at times what counts as its own affairs can be contested and, in such contexts, the affectedness principle does not blindly side with the right to secession. What if the autonomous decisions of a territorially-defined political unit have consequences for people outside its jurisdiction? In such cases, democratic self-determination ought not to support secessionist claims because doing so would hinder the ability of affected communities outside the seceding territory to have a say over the problematic actions. The key issue in such deliberations would be whether secession is more or less likely to empower actors to have control over the decisions that affect the conditions of their lives.

While in some cases, secession will further the cause of democratic self-determination, in other cases it will not. As Buchanan (2008: 607) notes, a primary right to secession can provide perverse incentives that could “encourage morally perverse behavior by states in their domestic affairs.” For instance, consider a case where a territorial unit secedes in order to facilitate violence or injustice against a subset of its population. The effort by southern states during the Civil War to secede in order to preserve slavery is an example of how secession can be used to impede the democratic self-determination of a portion of a domestic population. In addition to facilitating internal injustices, secessionist claims can inhibit the self-determination of external peoples, as well. That is, an inviolable right to political autonomy and, by consequence, a primary right of secession, can systematically exclude affected individuals and communities living outside of the seceding territory.

Secessionist claims, and more generally claims for political autonomy, imply the group making the claim views itself as a political unit. Typically, groups cloak such claims in the language of affectedness and this provides the moral weight behind the argument. When secession is likely to impede the self-determination of internal groups, claims to political autonomy lose their intuitive moral appeal. Claims for political autonomy, including the wish to secede, do not always map onto the principle of affectedness. Therefore, political autonomy is an inadequate concept for putting democratic self-determination into practice. In contrast, a concept of empowerment based upon the affectedness principle provides a more defensible basis for democratic self-determination (Young 1990: 251).

V. Unequal Effects, Unequal Voice: *Proportionality, Rights, and Veto Power*

One of the key theoretical questions involved with accepting the affectedness principle as the core of democratic self-determination is how should people’s interests and voice be represented? How would the affectedness principle pragmatically operate? Should everyone in the polity have an equal say on a given matter even if individuals are affected to different degrees? One potential interpretation of the affectedness principle states that everyone who is affected by a decision should have a roughly equal voice in making the decision. This notion should sound very familiar given that it is the way that most democratic decisions are organized: we begin with a clearly defined polity so that we know who is in and who is out, and all those who are in the political community receive one vote. In other words, this is the principle of *one person, one vote*; such a method of representation is currently used whether the political system used a majoritarian or proportional system for converting people’s votes into specific political representatives.

Yet, the one person, one vote system is not compatible with the principle of affectedness. Imagine that a relatively small group of people are deeply affected by a given policy: for example, mountaintop removal coal mining in southern Appalachia. Now, the entire population of the United States benefits from such coal mining insofar as it secures reliable access to a relatively inexpensive energy source.¹⁵ The people of Appalachia and the people of the rest of the United States are both clearly affected, but affected in fundamentally different ways. Those in Appalachia are having their homes and hollers destroyed, while those in the rest of the U.S. save money on their monthly electricity bill. Does it seem fair according to a principle of democratic self-determination that those relatively few people whose lives are deeply affected should be outweighed by the rest of the country simply because their votes are vastly outnumbered?

The question is not simply *whether* one is affected, but *how* one is affected. This suggests that the affectedness principle does not hold that everyone who is affected by a decision, in any way, should have an equal say. Rather, the affectedness principle claims that actors should have a say in decisions to the extent that they are affected by that decision. In other words, democratic self-determination should utilize a principle of proportionality for representing peoples' interests and voices in the decision-making process.

Given the widespread notion that certain fundamental or inviolable rights or capabilities exist, it seems that certain kinds of effects should do more than secure an actor a high *degree* of decision-making power. Certain effects that violate an actor's basic human rights should grant that actor *veto power* over relevant decisions.¹⁶ Such fundamental rights or capabilities are required for democratic self-determination to be meaningful. Certain conditions must be in place for self-determination to be meaningful. For example, an individual in utter poverty or who faces the constant threat of violence cannot be said to have effective self-determination. While I do not present and defend a coherent set of human rights in this essay, there is broad agreement within most societies, at least, about what basic kinds of rights or capabilities should be included; the UN's Universal Declaration of Human Rights speaks to this broad agreement, though it is itself a contested document. The key point is that democratic self-determination based on the principle of affectedness is compatible with a theory of rights.¹⁷ Whatever conception of rights or capabilities ultimately proves the most defensible, those rights or capabilities cannot be violated under any circumstances. Therefore, in democratic deliberation, actors who risk having their basic human rights violated by a certain decision ought to have veto power over that decision.¹⁸

¹⁵ While the market price of coal is inexpensive compared with other fossil fuels such as petroleum and natural gas, it does have high externalized costs at the site of extraction and combustion, as well as in terms of carbon emissions.

¹⁶ Similarly, Young argues for veto power for oppressed social groups "regarding specific policies that affect a group directly, such as reproductive rights policy for women, or land use policy for Indian reservations" (1990: 184). My proposal shares with Young's a commitment that groups of people should, on certain occasions, have a veto power over specific *issue-areas* that affect them in fundamental ways. The key difference between these two proposals is that I define social groups based on groups of people who are similarly affected, rather than purely on categories of gender, race, class, etc.

¹⁷ Brighouse and Fleurbaey (forthcoming) argue that the proportionality principle actually helps to reconcile liberal rights and democracy: "Letting other individuals decide what one must think, or where one must live, or whether one should be beaten, would be a blatant violation of the proportionality principle. Considered thusly, democracy and liberal rights do not clash; they both derive from the principle of proportionality."

¹⁸ The affectedness principle, in general, and this argument, in particular, raises a complicated dilemma that might be referred to as the 'opportunity cost problem.' Given the fact that many people around the world live in utter

However, the veto should not be idealized to the point where it is the standard way of resolving disputes; such a result conflicts with a key aspect of the deliberative democratic ideal that people should come together to present and discuss their views and reach an agreement that takes all affected people's interests into account. Therefore, while the veto should be a component of democratic self-determination, our shared political institutions should be set up in such a way so as to facilitate deliberation, dialogue and negotiation. These processes should make the use of the veto the exception, rather than the rule.

VI. Putting Proportionality into Practice: *Judicial and Deliberative Components*

A principle of proportionality, particularly one that grants veto power to some participants, immediately raises two important questions: 1) Who should make the decision about the degree to which an actor (individual or collective) is affected? 2) On what basis should we understand different levels of affectedness? While I suggest some possible answers to these questions, it is worth clarifying that issues of how to implement democratic self-determination are separate from the normative desirability of such a conception as an ideal. In other words, people may agree with a democratic conception of self-determination based on the principle of affectedness, but argue about the best means for putting such a system into practice. Therefore, while I provide some possible answers to the two difficult questions posed above, I mean them to be suggestive and to begin discussion about how the principle of affectedness may function as the basis of new systems of governance.

The first challenge is to decide who decides which individual or collective actors are meaningfully affected by an issue or decision and, hence, deserve a seat at the negotiating table.¹⁹ It does not make sense to leave this decision to a democratic vote or assembly because this makes it possible or even likely that a minority group whose basic rights are being violated will simply be outvoted.

In this model of democratic self-determination, the judiciary makes the most logical sense to decide who is affected and by what degree of proportionality. I envision a network of

poverty, it could be argued that they are affected by each and every spending decision made in wealthier countries: the costs of a repaving a road, for example, could, if directed toward humanitarian aid, help save many people's lives. In this sense, even relatively trivial 'local' decisions could be opened up to claims for nearly global democracy. This problem is especially acute if one subscribes to an extreme cosmopolitan view of responsibility (e.g. Singer 1972), which holds that all people who are not themselves in dire poverty are responsible for addressing poverty, regardless of whether one has benefited from that poverty or helped create it. However, if one adopts a 'social connection model' of responsibility (Young 2007), in which an actor is responsible for the well-being of others to the extent that they are structurally connected to that poverty (either by causing it or benefiting from it), then the problem is less severe. Not every spending decision could be challenged by others on the basis of the opportunity cost of not spending the money to help those in poverty. However, 'local' spending decisions by people in Community A could still be challenged by poor people from Community B, if Community B can make a strong claim that they are poor *because* of Community A, or that Community A has substantially benefited from Community B's poverty. In my view, this conclusion does not seem problematic, but rather democratically legitimate: if decisions made in Community A cause or take advantage of Community B's poverty, Community B ought to have some decision-making power over relevant decisions in Community A.

¹⁹ Whether that seat is figurative or literal – that is whether a representative or direct form of deliberation is utilized – is a question that I do not address in this essay. I suspect that the answer to this question will be closely related to the scale of the issue being addressed: smaller issue areas will be more conducive to directly-democratic procedures, while larger issues will tend toward representative procedures.

judiciaries, each of which covers a broad issue-domain, e.g. “Environment, Energy, Pollution, and Waste,” “Trade, Finance, and the Distribution of Labor,” and “Secession, Conflict, and Violence.” Claimants could then bring to the court specific issues (e.g. emissions from a particular factory or from a broader class of factories) that they believe are in need of negotiation. If the court agrees that they have a legitimate claim, other parties would then have an opportunity to file a claim of affectedness, which the court would take into consideration. Ultimately, this judicial process would create a deliberative body – an issue-specific polity – that would be tasked with resolving the conflict and/or deciding on an appropriate policy.²⁰

Supposing this judicial approach provides an adequate answer to the *who decides?* question, it still leaves open how affectedness should be measured. As Miller has recently noted, a proportionality principle runs into a “morass of problems” in regards to implementation (Miller 2009: 217). While I agree that an attempt to literally weight people’s votes in proportion to their degree of affectedness is bound to be endlessly controversial and problematic, this does not entail that we should dispense with proportionality as an ideal that should guide democratic decision-making. One approach to this challenge is to simply distinguish between different levels of effects; in other words, differentiate between the degree of an actor’s affectedness – and to provide a basis for including and excluding actors from participation. The goal of such a scale would be to provide a rough but practicable guide to proportionality and to exclude the class of actors who are likely to be affected, but in some relatively trivial way.

I tentatively suggest a four-tiered scale of affectedness that judiciaries could utilize to distinguish between different orders of affectedness:

- *1st Order Affectedness*: An actor is (or may be)²¹ affected in a way that violates the most fundamental human rights to life and bodily integrity. Actors in this category are put at risk of severe bodily injury or death from either a current state-of-affairs or a potential policy.
- *2nd Order Affectedness*: An actor is (or may be) affected in a way that, while not immediately life-threatening, is likely to seriously restrict or threaten basic human rights or capabilities, including, but not necessarily limited health and movement (e.g. Nussbaum 1995). For example, actors who are at risk from toxic waste that, while not likely to prove immediately fatal, is likely to have serious long-term health effects, would be placed in this category.
- *3rd Order Affectedness*: An actor is (or may be) affected in a way that does not violate the most basic human rights, yet threatens or restricts self-determination and/or self-development (Young 1990: 251) in such a way that it is likely to have a significant impact on the quality of one’s life. Actors who are impoverished by

²⁰ In essence, this reverses the role of the judiciary in the current system of democratic decision-making. Currently, we unjustly define the people (based on territory, rather than affectedness), allow this misconstrued polity to make a decision, and then subject that decision to judicial review to ensure that it ~~is~~ respects people’s basic rights. In the model of democratic self-determination proposed here, the judiciary’s task is preliminary: to define the polity based on claims of affectedness. Whatever decision ultimately emerges from this well-constructed polity would be considered just.

²¹ An actor may already be affected by a current policy or course of action and, as a result, is entitled to some decision-making power; or, an actor may become affected if a certain policy or course of action is undertaken and, as a result, is entitled to some decision-making power. A polity should include all those actors who may be significantly affected by one or more of the policies being considered.

a current state-of-affairs or are likely to be impoverished by a potential policy would fall into this category.

- *4th Order Affectedness*: An actor is or may be affected, but is affected in such a minor way that the effects cannot be fairly categorized in any of the above three categories. For instance, an actor who is likely to lose money from a policy change, but would still have adequate resources to lead a well-rounded life, would fall into this category.

Actors that the judiciary decides fall into the first three orders of affectedness would have a right to participate in the deliberative body, in which, ideally, a broad consensus would emerge out of discussion and deliberation. However, if a consensus cannot emerge, those with different levels of affectedness will have different roles in the final decision-making process. Those with 1st order affectedness would have deliberative and voting rights, as well as veto power over decisions.²² Those in the 2nd order would have deliberative and voting rights, but not veto power. Those in the 3rd order would have deliberative rights, but not voting rights; this allows these actors to shape the discussion and contribute to a consensus, but does not allow them to vote if such a consensus cannot be reached. Finally, those in the 4th order, though affected on some level, would not be allowed to participate in the deliberative body; the *democratic costs* of enlarging the polity to include them do not justify the gains from their participation.²³

One challenge of the affectedness principle is that many issues are likely to affect nearly every person in the world in some far-removed way. This is why Mill argued that only actions which harm others “directly, and in the first instance” could be grounds for intervention (Mill 2002: 14). The four-tiered scale presented here, while clearly still open to interpretation, does move us beyond Mill’s notoriously vague conditions. Though such a system is not perfect, it does constitute a potentially workable method for approximating the principle of proportionality and enabling actors to participate in decision-making in ways that reflect their degree of affectedness. Whether one ultimately agrees with the scale I have proposed, democratic self-determination demands that actors be given different decision-making power according to their degree of affectedness. A method of scaling affectedness is important to distinguish between actors that are affected in some fundamental way from those that are only indirectly affected. Such scaling is also necessary to ensure that every issue does not become a question to be decided by the entire world.

Conclusion: A Way Forward?

In this essay, I make the case that: 1) Democratic theory does have an *internal* principle of defining *the people*; 2) This principle is the principle of affectedness and it is the core normative concept of democracy; 3) Putting democratic self-determination into practice means moving beyond territorial polities to decision-making bodies that are defined flexibly by the type and scale of issue involved; 4) Democratic self-determination does not automatically endorse a primary right to secession; and 5) Democracy is not best actualized by the *one person, one vote*

²² In general, I see actors participating in the deliberative body as collective actors, because many people will usually be affected in a similar way. Therefore, veto power would generally apply to groups of actors, rather than to single persons.

²³ See Miller (2009) for a good discussion of the trade-offs between enlarging and restricting the size of a ‘democracy’s domain.’

principle, but by decision-making power that is roughly proportional to the degree an actor is affected. While there are a variety of ways this might be approximated, I suggest a system that utilizes a network of judiciaries to afford actor's decision-making power based on their degree of affectedness, including veto power for those actors whose basic rights or capabilities are threatened by a particular decision or course of action.

With all that said, important questions still remain. How ought we weight people's interests? Do subjective or only objective effects count? And, how are we to decide *a priori* who is affected by a decision, when the nature of that decision will determine who is affected? Nonetheless, this theory of democratic self-determination, I believe, offers a promising way forward. Not only does the principle of affectedness provide a compelling normative basis for democracy, but it suggests how the intractable, transborder problems that characterize our interconnected and globalized world may be solved.

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