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*Republicanism Beyond Borders? Preventing
Domination in the Absence of the State*

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Abstract

The aim of this thesis is to investigate the relevance of republican political theory to the current debates surrounding issues of global justice and democracy. I argue that a republican concern with domination contributes to these debates by making a clearer link between political participation and individuals' capacity to protect their interests. The thesis synthesises two major approaches in political theory that draw on the republican tradition in political thought. It argues that Philip Pettit's republicanism provides an appropriate link between participation and the prevention of domination. The thesis uses several rival approaches to the problem of global justice (drawn from Dryzek, Nagel, Held and Cohen and Sabel) to demonstrate that the uneven distribution of state capacities at the global level puts people at risk of domination. However, the rival approaches do not go far enough in explaining the role of democracy and political participation in preventing domination. The thesis develops a more robust theory of domination based on an account of basic interests. It argues that participation is valuable because it is the most effective way to ensure people can protect their basic interests. However, participation itself should be designed so it does not impose excessive costs on individuals. Throughout the thesis, the arguments are illustrated by reference to contemporary problems with developing and implementing international labour standards. In the concluding chapters, the theoretical discussion of domination is applied to develop practical suggestions that a major institution – the International Labour Organization (ILO) - could implement in order to improve the situation of people subject to domination.

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Introduction

There are many critical terms from our everyday moral and political vocabulary that might reasonably be applied to the global political order as it exists today. People might call it unfair, unjust, exploitative, unequal, undemocratic, oppressive and so on. Some of the familiar figures about the distribution of wealth and income might reinforce the use of some of these terms. The claim that around 85 per cent of the world's income goes to the richest 20 per cent of the world's population while 6 per cent goes to the poorest 60 per cent (Hurrell, 2008, p. 11) is generally taken as a good demonstration of its inequality, and for many of its unfairness and injustice. My primary aim in this thesis is to ask whether domination is a term that can be applied to the global political order, and if so whether doing so tells us anything very useful about how to deal with some of the problems we find. Answering this question requires us to start with a rough idea of what we mean by domination, and I do so by looking at the term as it is used in contemporary republican political theory. Broadly speaking, for contemporary republicans, domination is an injustice that relates to the capacity to act without regard for the interests of those affected by one's actions (Pettit, 1997, p. 22ff, Shapiro, 2003, p. 4). For the two main republican thinkers who form the focus of this thesis, a concern with domination already takes us some way towards a concern with political institutions. Both Philip Pettit and Ian Shapiro argue that, since domination results from misuse of the power to interfere with people's interests, the remedy for domination is to design political institutions so that people with such power are in some way made to track the interests of those they affect. For both thinkers, this involves some form of democracy. The basic argument here is that democracy is a way of making those able to exercise power explain to those over whom it is exercised how it serves the latter's interests. The task of explaining how this works will be left until later in the thesis. For now, three points are worth noting. First, republican political theory draws a much closer link between democracy and justice than many other branches of political

science, political philosophy and political theory¹. Domination is the primary injustice with which they concern themselves, and democracy, or democratic participation, is the primary institutional remedy for that injustice. Second, we need an account of the domains in which domination is possible, the way democracy works to alleviate it, and the way interests are affected when domination occurs. Third, if domination can be shown to be a significant problem at the global level, we would seem to have good reason to be concerned about the possibility of democratic means of alleviating it. This raises two questions that Charles Beitz distinguishes in a brief discussion of the prospect of developing a theory of global democracy as an extension of contemporary analytic cosmopolitanism:

The problem is simultaneously philosophical and institutional. The philosophical aspect is to distinguish the various kinds of reasons that explain why democratic forms are desirable at the domestic level and to judge whether and how these reasons are affected when the subject changes to governance beyond the state. The institutional aspect is to imagine what the range of realistically achievable alternative political arrangements is like at the global level, and to understand how they would likely operate in view of the incentives their procedures would establish (Beitz, 2005, p. 26).

After setting out the republican conception of domination and explaining the focus on this aspect of republican theory, this thesis addresses Beitz's problems. It does so in two main parts. In the first, mainly critical part, it sets out the answers that have been given to the philosophical and institutional questions by examining a set of four representative approaches, which are considered in four chapters. First, it identifies a global civil society approach in the work of John Dryzek, who places emphasis on democratic participation outside of and often in opposition to

¹ For example, Brian Barry concluded "that there is nothing inherent in democracy that necessarily makes it just. Democracy is a procedure for formally capturing the views of citizens and translating them into outcomes. That procedure has only tangential connections to the outcomes being just" (Dowding, Goodin and Pateman, 2004, p. 5).

the state. Dryzek scales up a domestic version of this argument to the global level. However, I argue that in doing so, Dryzek effectively demonstrates one of the ways in which domination can occur at the global level. Because some people do not have a state as a background source of protection, they are more directly vulnerable to civil society actions. Dryzek's approach thus provides broad answers to both parts of Beitz's questions. It identifies a desirable feature of domestic democracy and claims it can be scaled up institutionally to the global level. However, I am critical of these claims.

The second of the four chapters examines a statist argument that Thomas Nagel has recently reasserted. Although Nagel's argument is not explicitly focused on democracy, criticism and reconstruction of helps to show how a specific form of democratic equality is relevant to controlling the power of the state. The examination of Nagel thus gives us an answer to part of Beitz's first, philosophical question, namely why "democratic forms are desirable at the domestic level". Nagel also gives a broad answer to the second question, which is that institutions at the global level derive their legitimacy from the states that set them up. This argument is subjected to criticism on the basis that Nagel tries to carry over the legitimacy of internally democratic states to a global order in which not all states fulfil their responsibilities to their citizens.

The third of the four chapters looks at David Held's cosmopolitan democracy, which again provides distinct answers to Beitz's two questions. It argues that domestic democracy succeeds to some extent in doing justice to a cosmopolitan concern with individual autonomy, global integration and interaction require democratic institutions at the global level. I argue that Held's analogy between the domestic and the global levels is incomplete, and suggest that the discussion of Nagel provides us with the resources to complete it. Once this is done, though, Held's institutional proposals can be questioned.

Joshua Cohen and Charles Sabel provide a distinctive approach in that instead of proceeding from the domestic level, they take what they see as a version of democracy already at work in an international association. They argue that deliberative polyarchy in the EU works to enhance the

legitimacy of EU decision making and can be expanded to the global level. However, this argument is subject to a criticism based on the disanalogy between the EU in which all states are domestically democratic, and the global level at which they are not.

The next three chapters of the thesis turn to the more constructive task of showing how republican domination can be used in an answer to Beitz's two questions. The first of these three chapters deals mainly with the first of Beitz's questions. It provides a fuller theoretical account of domination and explains how institutions might be designed to alleviate it. Although I argue that domestic democracy at the state level is the main institutional means for reducing or controlling domination, I also hold that cosmopolitan concern with individuals requires that we try to identify transitional means to reduce or control domination even where states are not internally democratic.

The second of the three chapters addresses Beitz's second question more directly. It uses the International Labour Organization as an example, and explains how that specific institution can act to alleviate or mitigate the kind of domination identified. The third of the constructive chapters addresses some further criticisms, puts the arguments made into the context of the alternative proposals looked at earlier in the thesis, and identifies some possible avenues for further research. Finally, the conclusion offers an overview of the main arguments made through the thesis, summarises the key points, and raises some issues for further consideration.

Before proceeding to the main arguments, it is also worth addressing the issue of the empirical status of the proposals made in the thesis. I chose to address a specific issue in some detail in part because doing so allows for the development of a more consistent set of illustrative examples. However, I also hope to show that the use of specific examples can be used as the basis of a response to the charge that cosmopolitan political theories are utopian². First, I do not make any empirical predictions about the likelihood that any of the practical proposals I develop will actually be

² For discussions of the utopianism of earlier liberal forms of international political theory, see Brown (2005) and Dunne (2001).

realised³. The role of the more empirical parts of the thesis is to try to identify feasible changes that could be made to existing institutions and practices in order to address the problems identified. If these changes are feasible and likely to be effective but they are *not* realised, this would still stand as an effective criticism of the moral status of contemporary political practices in this area. The point is to try to reinforce the moral criticism on the basis that there are available alternatives to current practices⁴.

Second, one of my main worries about thinkers like Held and Caney's advocacy of strong cosmopolitan institutions is that they do not address the issue of whether or how democracy can be used to prevent arbitrary rule by such institutions⁵. The plausibility of my argument thus depends on whether my alternative proposals can be shown to be less demanding on international institutions, while still working to prevent domination. The International Labour Organisation is a useful test case for this kind of argument precisely because many of its activities are concerned with

³ Compare the comments Molly Cochran makes on the apparent similarities between the normative concerns of the cosmopolitan democrats she discusses and the concerns of functionalists and neo-functionalists in international relations theory. Cochran at times appears to make two separate suggestions. First, that the study of empirical research in international relations can be used to generate practical proposals that are grounded in normative concerns (which is an approach endorsed in this thesis). Second, that the existence of normative concerns is itself the basis for sociological explanations of change in world politics. This second possibility is not addressed in this thesis (see Cochran, 2002, p. 540).

⁴ A somewhat similar approach is found in some of the work of Thomas Pogge, who emphasises the relatively low costs of redistribution of wealth to deal with global poverty: "Because our responsibility is negative and because so much harm can be prevented at so little cost to ourselves, the reduction of severe global poverty should be our foremost moral priority" (Pogge, 2001, p. 22). For critical remarks on Pogge, see Freeman (2006, 2007). This is not to endorse Pogge's own practical proposals. It is also not to say that the justification of moral principles depends on whether they can be realised at low cost to those responsible for realising them.

⁵ Held provides some discussion of the role of democracy in preventing arbitrary rule in his book *Models of Democracy* (2006, 3rd edition). However, his discussion of cosmopolitan democracy in that book is mainly focused on the institutional changes necessary to realise cosmopolitan democracy rather than on the role of such changes in preventing arbitrary rule at the global level (see Held, 2006, p. 290ff).

building local level capacities rather than concentrating power at the supra-national level. I provide some suggestions for testing these claims in the concluding chapters of the thesis.

I will begin in the next chapter by providing a broad overview of republicanism and explaining why I have focused on Pettit and Shapiro's versions of republican political theory in particular.

One. Republicanism, Cosmopolitanism and Global Justice: An Overview

Outline of the Chapter

- I) Introduction
- II) Four key republican concepts
- III) Two versions of cosmopolitanism
- IV) Republicanism and contemporary political theory
- V) Choice of Rival Theories
- VI) Overview of Labour Standards
- VII) Conclusion and Summary

I) Introduction

What contribution can republican political theory make to contemporary debates about global democratic justice? At the most general level, my argument in this thesis is that there are four main contributions republicanism can make. These are drawn from the distinct forms of neo-republicanism elaborated in the work of Philip Pettit and Ian Shapiro. The most important of these is domination. I shall argue that a more robust and detailed conception of domination can make some of the problems faced by an institutional approach to global democratic justice more tractable. There are two further contributions to be drawn from Pettit's republicanism. The first is the distinction between *dominium* and *imperium*. The second is Pettit's more recent elaboration of a two-dimensional model of democracy. However, these components of Pettit's theory need modification. In particular, Pettit's conception of domination relies on a conception of interests that is not very clearly specified. I shall argue that Ian Shapiro's conception of basic interests is the most useful starting point for a more robust account of interests. In the body of the thesis, I shall argue in the first four main chapters that different approaches to global democratic justice are each lacking in certain respects. In the three chapters following them, I shall make a case for a conception of domination that helps us to address the problems raised earlier. If asked to define the approach I take here, I would describe it as

morally grounded institutional design. The moral priority I defend is the prevention or minimization of domination. I shall argue in the final three chapters that providing a more robust account of domination as a moral problem helps point to some ways in which that problem can be addressed through institutional design. Before moving on to that task, I want in this chapter to do several things to set the general argument in the context of contemporary debates about global justice and democracy. There are five main points. First, I will outline Pettit's key terms, domination, *imperium* and *dominium* and two-dimensional democracy, and Shapiro's account of basic interests. Second, I will set out the main general approaches to global justice and democracy and my major concerns with them. Third, I will look at some of the potential ways in which republicanism might be applied to the problems identified. Fourth, I will explain my choice of the rival theories of global justice I will criticise. Fifth, I will explain my choice of the global labour standards issue as a specific case for the application of the theory developed here.

II) Domination, Dominion and Imperium; Two-Dimensional Democracy and Basic Interests

My basic concern is that the current structure of international political institutions leaves great scope for actions that disregard the interests of vulnerable people. I argue that the various institutional proposals for reform of such institutions fail to address this problem adequately. A modified republican conception of domination can be applied to at least some of these problems and generates institutional proposals to deal with them although the limited contextualism I advocated above may itself limit the scope of these applications beyond a specific set of cases.

Pettit defines his conception of domination with the following three-step formula: someone dominates or subjugates another, to the extent that,

- 1) They have the capacity to interfere
- 2) On an arbitrary basis

3) In certain choices that the other is in a position to make (Pettit, 1997, p. 52).

It has been noted that the term “arbitrary” carries a lot of the normative weight in this definition⁶. For example, Henry Richardson states,

Pettit’s central achievement has been to articulate a normative theory that provides an apt basis for [a] range of institutions and virtues [whose point] is to foster a central aspect of human freedom, namely, freedom from domination, from being subject to the arbitrary will of another (Richardson, 2006, p. 176)⁷.

This comment also emphasises the link between moral concerns on the one hand and formal constitutional issues on the other⁸. Pettit packs a lot into the basic term, “arbitrary”. The best place to begin the unpacking is with Pettit’s own reference to interests. Expanding on the notion of arbitrariness, Pettit argues,

[An] act of interference will be non-arbitrary to the extent that it is forced to track the interests and ideas of the person suffering the interference. Or, if not forced to track all the interests and ideas of the person involved...at least forced to track the relevant ones (Pettit, 1997, p. 55).

Not much more is said in this context about what Pettit means by interests. However, I shall argue that a more robust conception of

⁶ Although the term “interference” also usually carries pejorative meaning, Pettit emphasises that interference need not always be subject to moral criticism: “although interference always involves the attempt to worsen an agent’s situation, it need not always involve a wrongful act: coercion remains coercion, even if it is morally impeccable” (Pettit, 1997, p. 54).

⁷ Bohman claims that in an earlier work, Richardson criticised Pettit for giving a non-normative definition of domination (Bohman, 2008, p. 198). If this is so, Richardson appears to have changed his mind in the more recent work cited above.

⁸ As Richardson points out, the normative definition of domination distances Pettit from historical republicanism, which tended to exhibit what we might call a sort of institutional fetishism:

Historically, republican theory tended to lack an explicit (or, anyway, non-esoteric) normative basis, and instead consisted mainly of an insistence on various constitutional mechanisms designed to establish the rule of law, disperse power, and provide opportunities for contesting governmental decisions (Richardson, 2006, p. 176).

interests is necessary for at least two reasons. First, a more detailed understanding of interests promises to shed light on the mechanisms by which domination can work. Pettit suggests at several points that domination can occur when control of particular resources allows people to drive a hard bargain. He gives the example of “the pharmacist who agrees to sell an urgently required medicine but not for the standard fee...only on extortionate terms” (Pettit, 1997, p. 54). In this case, it appears that one interest (the need for the medicine) is being arbitrarily traded off against another (broadly, the interest in being charged a fair price, and perhaps more specifically, the financial well-being of the pharmacist’s client). This suggests that more flesh can be put on Pettit’s accounts of how agents can have the capacity to act in arbitrary ways.

Second, a more detailed account of interests may help make clearer the distinction between relevant and irrelevant interests. Compare Pettit’s pharmacist example with the case of a jeweller who charges an extortionate price for some exclusive, collectable trinket. We would not usually think any relevant interests are at stake here. The jeweller might be acting in a broadly exploitative manner but we would not normally look with much sympathy on an obsessive collector who coughs up the cash for the bauble. This suggests we do need a more robust way of distinguishing between relevant or irrelevant interests. I can only offer a promissory note at this stage, but in the final chapters of the thesis I shall defend Ian Shapiro’s definition of basic interests in terms of “the obvious essentials that they need to develop into and survive as independent moral agents in the world as it is likely to exist for their lifetimes” (Shapiro, 2003, p. 45). I shall defend this view on the grounds that the capacities needed for independent moral agency contribute to people’s ability to live a decent or successful life. The rough definition thus needs considerable unpacking and modification to serve our purposes. However, it is valuable in that it draws attention to a general ethical concern with the substantive resources people need in order to achieve some sort of decent or satisfying life, and how that concern can be related to a republican concern with domination.

There are two further reasons for the appeal of Pettit's republican approach to the problem of domination. The first can be drawn from his distinction between *dominium* and *imperium*. These terms mark a rough distinction between, respectively, private and public forms of domination. The former are kinds of domination that occur between ordinary people in their everyday interactions, individually and collectively (Pettit, 1997, p. 130)⁹. The latter are cases of domination by the state. This distinction has made Pettit's republicanism attractive from a range of theoretical perspectives – most significantly feminism and multiculturalism¹⁰. In the context of global justice, the distinction is relevant precisely because of the comparative lack of powerful state-like institutions. One of my arguments is that the lack of such institutions makes the risk of *dominium* much greater. Furthermore, if the institutional structures necessary to prevent *dominium* are different from those necessary to prevent *imperium*, it will be unwise to simply try to replicate the latter structures in order to prevent *dominium*.

A second further source of appeal is Pettit's distinction between electoral and contestatory democracy – he calls this a two dimensional model of democracy. Pettit has made this aspect of his political theory more explicit and systematic in a series of papers published since *Republicanism* (1999, 2000, 2005). Nevertheless, the basic distinction relates to the prevention of domination in the following way. Pettit argues that laws and political decisions will not dominate people “so far as they are forced to track the perceived interests of those on whom they are imposed and do not represent an arbitrary form of interference” (Pettit, 1999, p. 170). Two-dimensional democracy is intended to put institutional

⁹ It might be asked whether one corporate entity can dominate another. It is almost certainly the case that this can happen. However, from the point of view of the broadly cosmopolitan perspective taken here, these cases are only of derivative interest: that is, if they result in domination of individuals.

¹⁰ See especially Iris Marion Young, whose book *Inclusion and Democracy* (2000) brings together a range of feminist and socialist concerns about democracy. Cécile Laborde (2001, 2006) has provided a republican perspective on contemporary issues raised by multiculturalism and secularism in France.

flesh on the bones of this account of non-dominating government. The aim is thus to show how democratic participation is linked to a general good – non-domination – that a wide range of people can endorse as contributing to a reasonably successful and decent life¹¹. The first, electoral, dimension is designed to provide minimal assurance that governments will take account of perceived interests: “Under a popular, periodic electoral system, whatever its other features, those in government will be unlikely to be re-elected if they display indifference to common, perceived interests” (Pettit, 1999, p. 171). However, since people will also have different interests in any diverse society, it is always possible that some people will end up worse off – being subject to interference in the sense noted in the definition above. As Pettit puts it, “if the common interest is to be advanced, therefore, the decision making procedure has to allow for some people to be treated less well than others” (Pettit, 1999, p. 179). This will not represent arbitrary or dominating interference if the “decision is made just on the basis of what course of action would promote the shared goal” (Pettit, 1999, p. 179). Contestatory democracy is thus designed to ensure that people can protect their interests against the arbitrary pursuit of collective goals.

I have three remarks that are relevant to how I will develop the question of how international institutions might be designed and might act to mitigate or reduce domination.

First, Pettit sometimes argues that this two dimensional model is specifically intended to prevent domination by *government* institutions. This leads to a strong emphasis on the common good:

Not only ought government to be oriented toward the satisfaction of people’s common, recognizable interests; those are the only factors that it ought to take its ultimate guidance from. Government ought to countenance no other master (Pettit, 1999, p. 107).

¹¹ As Pettit puts it, non-domination is a primary good in the sense that it “is something that a person has instrumental reasons to want, no matter what else they want” (Pettit, 1997, p. 90). I would stress that the conception of interests outlined here connects non-domination to the capacities people require in order to live a decent or successful life.

This suggests that Pettit's two-dimensional democracy is primarily oriented towards preventing *imperium* – domination by the state or government. He does not say much about the mechanisms necessary to prevent *dominium* – domination by private individuals or by non-state collective entities¹². Yet presumably such an account must play its part in any elaboration of republican institutions. Any account of the mechanisms needed to prevent *dominium* will need to be aware of the distinctions between the way *imperium* and *dominium* work.

Second, when applying a concern with preventing domination to issues of global justice, it is important to note two issues. If there are severe inequalities in the world, it is much more likely that particular policy decisions will affect some groups much more severely than others. This indicates that the contestatory dimension of Pettit's model will play a more significant role at the global level. Furthermore, in the absence of a world government, and in a world in which many states are weak or incapable, the likelihood of *dominium* is much greater. These points suggest that our attention should be on the elements of contestatory democracy most likely to protect those who have urgent interests at stake.

Third, as various critics of Pettit have pointed out¹³, too much contestation is itself likely to make action to prevent domination difficult. If the grounds for contestation are too vaguely defined, we are likely to get bogged down in continuous contestations, which would result in a similar outcome to giving everyone veto powers over decisions that affect them negatively – precisely the outcome Pettit wants to avoid¹⁴. Shapiro's basic response to this problem seems to me correct: "*Unless we limit rights of delay to those whose basic interests are threatened, we privilege*

¹² Perhaps a case could be made for a collective or common interest in preventing *dominium*, but Pettit does not seem make this case in his discussions of two-dimensional democracy.

¹³ See Shapiro, 2003, Ferejohn, 2000, 2001, and Van Parijs, 1999.

¹⁴ "If people had an individual power of veto then every...initiative could be stymied...as persons tried to push the relative costs of the initiative elsewhere" (Pettit, 2000, p. 1118).

the status quo, making it impossible for government to prevent domination” (Shapiro, 2003, p. 48, emphasis added).

I have outlined the features of a republican approach to domination that make it relevant to questions of global justice. First, there is the concern that the current structure of international institutions and international society leaves individuals vulnerable to domination. Second, there is the distinction between *dominium* and *imperium*, which is relevant to a situation in which government institutions are weak or absent. Third, there is the focus on the contestatory dimension of democracy, which focuses attention on the need for participatory institutions that are sensitive to the fact that people often have different interests at stake in particular decisions.

It is also worth summarising the connection between Pettit’s theory of domination and Shapiro’s account of basic interests. My argument is that Pettit’s claim that non-domination requires that agents be forced to track the relevant interests of affected people is incomplete as it stands. In order to complete the account, we need a clearer understanding of relevant interests. My claim is that Shapiro’s account of basic interests – defined as the resources needed for independent moral agency - is suited for this task when it is put in the context of a contribution to the responsible pursuit of a decent or successful life¹⁵. A further point Shapiro makes is that control of basic interests is itself a potential source of domination, in the sense that control over the basic resources people need to survive can be used to influence their ability to make choices. Distribution of resources thus becomes important, because “one’s access to goods and services affects one’s relative power and vulnerability to the power of others” (Shapiro, 1999, p. 232). On this view, it is not enough that institutions simply hand out resources. The way those resources are

¹⁵ It should be stressed that Shapiro does not claim that his account of basic interests is completely neutral with regard to conceptions of the good. Rather, his aim is to provide an account of how democratic justice enables people to pursue interests that contribute to their happiness and fulfilment in a responsible manner: “Whereas the idea of adequate pursuit of interests refers to the freedoms and resources that people need to live their lives, that of responsible pursuit of interests directs attention to what they may reasonably require of one another” (Shapiro, 1999, p. 88).

handed out is also important, since control of resources is a potential source of domination. The upshot of this is that my argument attempts to connect the concern (drawn from Pettit) with institutions that are designed to track interests with a concern (drawn from Shapiro) that people should be able to pursue a decent or successful life in a responsible manner.

III) Two Versions of Cosmopolitanism

The approach taken in this thesis is cosmopolitan in the very broad sense that it attempts to elaborate appropriate standards of political morality that are not confined within the borders of states, and claims that these standards apply to all people¹⁶. However, in order to justify taking a distinctively *republican* approach to cosmopolitan morality, it is worth beginning by setting out some basic worries about two important forms of contemporary cosmopolitanism. I shall call the first version analytical cosmopolitanism. The name is less than perfect, but it aims to capture two strands in the broadly liberal tradition that proceeds from the criticism of Rawls's attempt to limit principles of distributive justice to liberal states in *A Theory of Justice*¹⁷. These two strands are the moral claim that human individuals are the objects of moral concern and the more political claim that humans are owed some sort of equality in the distribution of

¹⁶ This is admittedly a very thin conception of cosmopolitanism. Significantly, a version of it might be seen in the work of David Miller, who argues that there are universal moral principles that apply across state borders but that these are weaker than substantive equality. See, for example Miller, 2002a. Brian Barry gives a more general definition of cosmopolitanism that appears frequently in the literature. Cosmopolitanism holds that "individual human beings have (ultimate) value; that each human being has equal moral value; and that the first two clauses apply to all human beings" (Barry, 1999, pp. 35-6).

¹⁷ Two of the most important texts here are Beitz (1979) and Pogge (1989). Both of these thinkers have since modified their positions somewhat. Compare Beitz (2001) and Pogge (2002). More recent cosmopolitan theories that take a broadly liberal approach include Caney (2004), Moellendorf (2002), and Tan (2000). Rawls's reply to Beitz and Pogge can be found in Rawls (1999).

resources. A second approach might be called critical cosmopolitanism¹⁸. This approach shares the moral universalism of Habermas's approach but places more emphasis on the need for participatory and democratic processes at the global level.

i) Analytical Cosmopolitanism

The first strand in the analytical or anglophone literature on cosmopolitanism is a claim about the moral status of individuals. Brian Barry and Thomas Pogge have set out a basic three-part formulation of this position in similar ways:

- 1) Human beings are *ultimate* units of moral concern. Families, tribes, nations, cultures and so on can become units of moral concern only indirectly.
- 2) The status as an ultimate unit of moral concern extends to all human beings *equally*.
- 3) Human beings should be treated as ultimate units of moral concern by *everyone* (Pogge, 1992, pp. 48-9. See also Barry's version in note 11 above).

Philosophers on both sides have also conceded that the basic principles set out in the argument are relatively weak claims that most people would

¹⁸ I am wary about using this term, since none of the authors referred to here actually use it. It is intended to signal the connection to critical theory in the Habermasian tradition. Habermas's own work in this area includes (1997, 2001, 2006). Some of other the main texts include Forst (2001, 2002), Brunkhorst (2002), Fraser (2005a, 2005b), and Gould (2004). Iris Young's (2000) and Seyla Benhabib's (2002, 2006) work are interesting cases because they accept some of the arguments about changing contexts and institutional structures of justice but attempt to make more room for existing cultural attachments than some of the other critical theorists referred to. Some commentators have argued that Habermas himself makes more room for these types of commitment than is usually acknowledged (see Laborde, 2002). As we shall see below, John Dryzek is more radical. He rejects the apparent reconciliation between Habermas and Rawls that Gutman discusses (2003).

endorse¹⁹. They are moral principles that do not make any strong institutional claims, as Beitz acknowledges:

Cosmopolitanism need not make any assumptions at all about the best political structure for international affairs; whether there should be an overarching global political institution...is properly understood as a problem for normative political science rather than as a problem for political philosophy itself (Beitz, 1998, p. 831)²⁰.

I have two main concerns about this approach. First, as David Miller has pointed out, and as several cosmopolitan philosophers themselves concede, the basic moral principles provide us with limited guidance in terms of actions.

David Miller has argued that in order for moral cosmopolitanism to be more effective in providing action-guiding proposals, a substantive account of what it means to treat people as targets of ultimate, general and equal moral concern is needed²¹. In more recent work on global justice, Beitz appears to concede this point:

Concentrating on the substantive reasons for concern about global inequality reduces the temptation to error by directing attention to policy measures that specifically address these concerns – for example, relief of poverty, improvement of nutrition,

¹⁹ For discussions of disagreement over such principles that focus on issues of cultural relativism, see Beitz (2001, pp. 115-6), Caney (2004, ch2 and ch3) and Miller (2008, ch7).

²⁰ See also Barry, 1999, p. 36: "Because it is defined in terms of a moral stance rather than (as with statism and nationalism) an institutional nostrum, there is a good deal of room for dispute about the institutions that would be best adapted to bringing about a cosmopolitan vision of a just world".

²¹ Caney also notes the need to provide a substantive account of human-well being. In response to the argument that such accounts are controversial, Caney makes two points. First, Caney argues that a substantive account requires "a more ecumenical view that genuinely encompasses the perspectives of all [and] enjoins us to be ever vigilant in our ascription of human interests" (Caney, 2004, p, 76). Second, "one instructive way of minimizing the likelihood of foisting a partial vision of human interests on all human beings is to protect each person's human interest in freedom of belief and expression" (Caney, 2004, p. 76).

empowerment of local communities and so forth (Beitz, 2001, p. 121)²².

The account of basic interests drawn from Shapiro is intended to address this issue, since it attempts to provide a substantive account of what it means to treat people as targets of moral concern.

The second concern brings us to the issue of redistributivist cosmopolitanism. My worry here is not so much about the principles of equality that redistributivists advocate, as with the possible institutional arrangements that might result when putting those principles into practice. As Andrew Hurrell puts this point,

[If] serious efforts to reduce global poverty do come about, then the potential power of external actors will grow and the dangers for democratic politics and political autonomy and for legitimate difference will come into starker relief (Hurrell, 2001, p. 47).

Hurrell's concern is thus a worry about the possibility that cosmopolitan institutions might concentrate and misuse power. Now a standard cosmopolitan response to this claim would draw on the distinction between moral and political cosmopolitanism and argue that this is not an issue for cosmopolitan morality – in Beitz's terms, Hurrell's worry is a worry for normative political science. I believe that the republican account of domination provides a useful response to this cosmopolitan argument. If domination has an impact on people's ability to fulfil or act on their basic interests, and this account of basic interests is connected to our understanding of what it means substantively to treat people as targets of (cosmopolitan) moral concern, then a concern with domination is relevant to a more substantive account of cosmopolitan morality. Pettit argues that domination results when institutions fail to track people's basic interests. As result, a concern with arrangements that ensure that institutions do track such interests is central to Pettit's republicanism²³. My argument

²² See also Beitz (2005). Miller's argument will be discussed in more detail in the chapter on Held, below.

²³ For a different argument that connects political principles of equality to a moral concern with individuals, see Held. Held argues that a proper concern with individual autonomy leads to principles of political participation on an equal basis (see Held, 2004, 2005).

here is that part of the substantive concern with the moral status of individuals should involve attention to the kinds of policies that can force institutions to track the interests of affected people. That is, attention to preventing domination as a form of arbitrary rule. The aim is to move from a substantive concern with basic interests and their role in a decent life to policy proposals that can reduce domination by helping to ensure that decisions track the interests people have at stake in particular decisions. Equality may play a role in some cases²⁴, but such a role is subordinate to the concern with preventing domination.

ii) Critical Cosmopolitanism

Critical cosmopolitanism is an approach that gains much of its momentum from critical theory and from Habermas's version of deliberative democracy in particular. It is more recent and perhaps more diverse and less firmly established than redistributive cosmopolitanism – indeed the name I have given it is not one its advocates themselves use. Although the approaches are complex, subtle and often ambitious in trying to bring together a range of political concerns, they do share an important central focus on participation²⁵. Nancy Fraser makes this point clearly:

In my view, the most general meaning of justice is parity of participation. According to this radical democratic interpretation of the principle of equal moral worth, justice requires social arrangements that permit all to participate as peers in social life. Overcoming injustice means dismantling institutionalized obstacles that prevent some people from participating on a par with others, as full partners in social interaction (Fraser, 2005b, p. 73)²⁶.

²⁴ For example, it may explain the particular conception of equality that is at play in electoral democracy.

²⁵ The emphasis on participation certainly serves to distinguish the critical approach from the analytical approach.

²⁶ It is also worth noting that, in this statement of her position, Fraser bases her claim about participation on a claim about equal moral worth.

Developing a point made in her earlier work²⁷, Fraser suggests that political theorists need to address the question of the *how* of political decisions about justice as well as the *what*, where the former is understood in terms of the capacity to participate in social interaction²⁸. My concern about this approach is that – at least as it is expressed in Fraser’s discussion of global justice – it sets up quite a sharp opposition between the *what* and the *how* of justice without providing a clear account of how to reconcile the two²⁹. For example, a major problem for this approach is the following question:

Merely showing that poor people or ethnic minorities do not participate is not enough, on its own, to demonstrate injustice or a lack of democracy. There might be a number of interrelated reasons why citizens decide to take no part in political affairs which are democratically innocuous (Dowding, Goodin and Pateman, 2004, p. 7).

The republican approach to domination outlined above does provide clearer guidance on this issue. My basic argument here is that the concern with domination provides a link between arbitrariness, interests and contestation. The contestatory aspect of Pettit’s republican inspired version of democracy in particular emphasises the importance of participatory procedures that are designed to ensure that decisions are forced to track the (relevant) interests of those concerned. As Laborde and Maynor put this point in their discussion of contemporary republicanism,

²⁷ See, for example, (1995, 1997).

²⁸ Fraser suggests that changes in the structure of global politics have also changed the question of *who* can claim to be included. This is a common concern with redistributivist cosmopolitans, as well as those who defend the view that questions of justice are still confined to states.

²⁹ Compare also Forst, who proposes a distinction between minimal and maximal justice. “Minimal justice calls for a *basic structure of justification*, maximal justice for a *fully justified basic structure*” (Forst, 2001, p. 181). Minimal justice includes the capacity to participate in political discourse, which includes a substantive “threshold of political and social equality” (Forst, 2001, p. 182). However, Forst does not specify what would happen if the discourses produce outcomes that conflict with maximal justice.

[The] tight conceptual fit between freedom and forms of political rule has strengthened the republican normative commitment to the political institutionalization of non-domination (Laborde and Maynor, 2008, p. 9).

Although my own view is that basic interests are more important as a component of a basic conception of domination, the point that republicanism establishes a closer conception between participation and other political values is nevertheless relevant.

As a final point, it is worth concluding this brief discussion of critical approaches to cosmopolitanism by addressing one of the more radical democratic arguments. Dowding, Goodin and Pateman sum up the basic argument quite neatly:

For more radical theorists, democracy – extending beyond the electoral process – is intrinsically valuable because...of the effects of participation on individual citizens, including the development of a public spirit or sense of justice (Dowding, Goodin and Pateman, 2004, p. 6).

A basic response to this claim runs as follows. A view in which democratic participation is seen as making it possible for people to pursue values and goods that are extrinsic to participation will also make room for those who find intrinsic value in participation. Those who find participation inherently valuable will have at least some opportunity to participate. The converse is less likely to be true: if a strong intrinsic view of participation is allowed too much influence, the demands of participation and active citizenship may make it increasingly difficult for people to pursue other things they value. For this reason, Shapiro argues that participation is best understood as what he calls a consumption good: “people should be free – but not forced – to engage in it” (Shapiro, 2003, p. 43)³⁰. This argument is brief, but it does suggest that it is

³⁰ See also Miller, who argues (in the context of a discussion of domestic democracy) that participation at local levels could be combined with competitive elections at national level. For Miller, this would have the advantage that “people would enjoy the benefits of participation in a forum...which is small enough to make participation meaningful” (Miller, 1983, p. 154). Miller’s attempt to reconcile participatory and competitive

possible to reconcile a view in which participation is seen as intrinsically valuable with a pluralist view of the values and projects people may want to pursue.

This rough outline of two of the main contemporary approaches to global justice suggests that they do share one problem. Put crudely, although they focus respectively on distribution of resources and participation, it is not clear that they provide an adequate answer to the normative question of why it is that these issues of central focus are targets of moral criticism³¹. I have suggested that the republican theory of domination points us in the direction of a clearer answer to the normative question: roughly, inequality and lack of participation are subject to normative criticism if they result in arbitrary curtailments of persons' ability to vindicate their interests. An account of domination thus promises to provide a way of stabilising the commitments to redistribution and participation that are different foci of the two approaches. I argue that it does so by reference to basic interests³². Furthermore, the reference to contestation suggests a close link between the prevention of domination and the need for political structures that are designed to track people's interests.

IV) Republicanism and Contemporary Political Theory

Having set out my worries about two of the main approaches to cosmopolitan justice and explained how a focus on domination might begin to address those worries, I now want to narrow the focus to

democracy suggests that both have advantages that can only be realised in certain conditions, as well as indicating that the intrinsic value of participation does not necessarily outweigh the value of competition.

³¹ I am using "normative" in the broad philosophical sense of attempts to make judgements about the goodness or badness of states of affairs. This contrasts with the sociological understanding of norms as structures that regulate social activity.

³² Pettit would probably argue that it does so by reference to a republican conception of freedom as non-domination. However, as I noted above, Pettit's account of domination in *Republicanism* does rely quite heavily on a reference to interests as the object of arbitrary interference.

republicanism itself and to explain why I have chosen to direct most of my attention to domination. Within political theory, republicanism is a broad term that has attracted a range of political philosophers³³. It is not possible here to cover all the different contributions that republicanism has made to political theory³⁴. It is possible to identify five main areas that are relevant to the discussion of global justice, however. First is the question of the role of historicist approaches to republicanism. Second is the issue of the relationship between republicanism and communitarianism. Third is the question of republicanism and citizenship. Fourth is the recent attempt to begin to address the possibility of republican cosmopolitanism. Fifth, there is the issue of republicanism and constitutional theory.

i) Republicanism and the History of Political Thought

The most significant and detailed examinations of republican themes have come from the history of political thought, and from the attempt to recover neglected republican ideas from the works of Early Modern political writers³⁵. My main preoccupation is with how this excavation of the republican tradition has been put to use in addressing contemporary political issues, particularly in the work of Philip Pettit. As a result, this thesis will not address the historical debates surrounding the emergence and progress of republican ideas, and will take Pettit's work in particular

³³ To some extent, republicanism has been seen as a "progressive, but non-Marxist, political doctrine" (Lovett, 2006). It has thus attracted a range of theorists who want to provide a progressive alternative to liberalism. For a more critical view of the idea of republicanism as an alternative to liberalism, see Gaus (2003).

³⁴ Laborde and Maynor (2008) is a useful starting point, though.

³⁵ The most significant exponents of this approach are Quentin Skinner (1978, 1997), and J.G. A. Pocock (1995), whose interpretative approach forms a distinct and influential school in the history of political thought. Other historically informed republican work includes Viroli (1992), Elkin (1987), Pagden (1987), Weintraub (1988), Rahe (1992), Bock (1990), and Baron (1966). Probably the most significant discussions of republican ideas in international relations theory are Onuf (1998), with a historical focus and Deudney (2008), with a focus on security theory.

as a statement of republican ideas that are most relevant to contemporary issues.

Despite this, there are two significant points I want to draw from the historicist approach to republicanism. The first is simply that the republican focus on history encourages us to focus on republican ideas that have actually been realised in practice in the past and on ideas that continue to be practiced. This approach justifies, for example, Philip Pettit's assertion that his two-dimensional model of democracy "is fairly true to established ways of conceiving of democracy; it does not represent a new-fangled idea" (Pettit, 1999, p. 105). As a broad point, this feature of republicanism provides something of an antidote to the more utopian tendencies of contemporary discussions of global justice.

The second point is Pettit's distinction between neo-Roman and Athenian traditions of political thought. This distinction also takes the form of a contrast between populism and communitarianism on the one hand and republicanism on the other in Pettit's work³⁶. Pettit draws a sharp contrast between an Athenian approach in which political participation is viewed as an intrinsic value, and a neo-Roman approach in which political participation is instrumental to the protection of freedom as non-domination, and should be restricted through various constitutional safeguards to prevent problems such as majority tyranny³⁷. The main attraction of the neo-Roman approach is that it is more compatible with pluralism. Pettit's rejection of the populist or Athenian tradition is (rather unusually) harsh. He rejects this tradition, which

[Hails] the democratic participation of the people as one of the highest forms of good and that often waxes lyrical, in communitarian vein, about the desirability of the close, homogeneous society that popular participation is often taken to presuppose (Pettit, 1997, p. 8).

³⁶ Compare also Rawls's distinction between Civic Humanism and Classical Republicanism, which some authors have taken as an opportunity to develop a somewhat republican interpretation of Rawls (Rawls, 2001, Audard, 2007).

³⁷ It should be stressed that the Athenian and neo-Roman models are ideal types. There is much discussion in particular about whether Athenian democracy was as participatory and discursive as its enthusiasts claim (see Pettit, 1997, for references).

This position seems hard to defend in a situation of cultural and political pluralism. Pettit's claim is that non-domination as a political ideal is compatible with pluralism, and that democratic participation is valuable and important as a way of promoting non-domination (Pettit, 1997, p. 8). The task of the final chapters of the thesis is to show how non-domination can be defended in these terms.

A further reason to find interest in neo-Roman republicanism is its focus on constitutionalism. As Pettit and others suggest, a concern with constitutions stretches back to Cicero's discussion of the Roman practice of sharing power between different interest groups or social classes in Roman society (Pettit, 1997, p. 5). The issue of constitutionalism raises a number of large questions, however, and I shall return to it later in this chapter.

ii) Republicanism and Communitarianism

As we have seen, in *Republicanism*, Pettit is quite explicit about distancing himself from the Athenian version of the republican tradition. Communitarian authors have been much more enthusiastic in their attitude to this tradition, and above all in relation to its emphasis on themes such as public participation and civic virtue³⁸. Since I do not have the space here to address all the subtleties and complexity of a possible argument between the Athenian and Roman traditions, I will try to do something less ambitious. I want to argue that the theory of domination outlined above and developed in detail below is still relevant from the perspective of one prominent recent communitarian version of republicanism. This version is found in various works by David Miller, and is particularly salient because Miller has developed some of his

³⁸ Pettit links the Athenian republican tradition to Hannah Arendt (1958, 1973). He also refers to Viroli (1992). Communitarians who have explicitly expressed sympathy to republican ideas include Miller, 2000, Sandel (1996) and Taylor (1995). Kymlicka also emphasises communitarian values in the context of promoting democratic debate, although not in an explicitly republican context (Kymlicka, 1999, 2001).

arguments in the context of global justice. I will start by setting out a rough outline of Miller's basic argument, which has four main steps.

- 1) Weak cosmopolitanism. We should be concerned about the well being of people everywhere.
- 2) National self-determination makes an important contribution to people's well being.
- 3) National self-determination means states will pursue policies that are likely to lead to unequal outcomes, particularly in the distribution of wealth. Attempts to restore equality will conflict with self-determination.
- 4) Therefore, national self determination conflicts with cosmopolitan or global egalitarianism.

In order to reconcile the apparent conflict between global justice and national self determination that this argument generates, Miller appeals to a more complex list of priorities of global justice. These are: respect for human rights, prevention of exploitation, political self-determination for peoples and redress of historic injustice. There are three key points that I want to stress about this argument. First, Miller defines human rights in terms of claims to resources necessary for people to fulfil a basic need to live a minimally decent life³⁹. Second, the second step above is justified by reference to a range of republican arguments⁴⁰, so it is appropriate to see Miller's appeal to national self determination as a broadly republican claim. Third, it is important to stress Miller's concern with exploitation. In an early article on global justice, Miller gives a rough outline of an exploitative situation:

One [example] is a case where an international corporation sets up an operation in a developing country which would be seen as hazardous or in some other way unacceptable in an industrialized society, and which would therefore be outlawed or at least strictly

³⁹ See Miller, 2008a, chapter 7.

⁴⁰ In particular, Miller argues that republican civic virtue is a human value that can only be sustained in bounded, self-determining political communities (see Miller, 1995, 2000, 2008b).

regulated by the government...Why do we see such a situation as potentially exploitative of the foreign workers and the communities they belong to?...[Given] the levels of unemployment prevalent in many poor countries, those who sign up with the corporation are likely to be desperate to earn wages, and therefore willing to take on these jobs despite the health and other risks they pose (Miller, 1999, p. 206).

Although Miller is sceptical about providing a more general account of exploitation, I would argue that the outline of domination provided above resembles this kind of case and does point the way to a more general theory⁴¹. The fact that workers rely on the employer for basic needs puts the employer in a position to act without regard to their safety, because he can threaten to fire workers who complain. This is an example of lack of access to basic goods or services making one vulnerable to the power of others, as Shapiro might put it. Miller's example of exploitation thus bears a significant resemblance to the version of domination based on basic interests that is defended here. When person A has basic needs at stake, it is possible for person B who controls access to resources to act in ways that undermine the interests of A.

My point here is that we do not need to adjudicate between the Athenian and the Roman versions of republicanism in order to discuss the kind of situation Miller identifies above. We do not need to try to show directly that the communitarian or neo-Roman version of republicanism is incorrect or incoherent in order to see that the workers in this situation are being treated wrongly. Rather, both versions share a common concern with a kind of injustice that is more basic. Miller describes this as exploitation. For Pettit or Shapiro, it would be viewed as an example of domination.

⁴¹ One problem for Miller is that exploitation is often criticised on egalitarian grounds because some are left worse off than others in relative terms. This criticism is clearly not available to Miller in his discussion of global justice. For a discussion of egalitarian critiques of exploitation, see Roemer (1995).

iii) Republicanism and citizenship

Is there anything about a distinctively *republican* conception of citizenship that can be carried over to contemporary concerns about cosmopolitanism and global justice?⁴² Two of the most explicit critics of contemporary or neo-republicanism have argued that the most obviously distinctive features of classical or historical republicanism are something of an embarrassment to the neo-republicans. Robert Goodin focuses on the republican emphasis on status and relative standing. Goodin argues that a distinct and exclusive focus on status can undermine or conflict with morality, and lead to petty conflicts:

Internalizing concerns with one's image differs importantly from internalizing morality as such...particularly when the guardians of the image themselves internalize a code of image based honour, rather than a substantive code of morality as such...Republics grounded in this sort of honour are quintessentially duelling societies (Goodin, 2003, p. 64).

Goodin and Hanasz identify another even more morally troubling aspect of the republican tradition: its emphasis on militaristic and martial virtues. As Hanasz puts it, "Machiavelli brutally declared that human lives could be sacrificed when the common interest was at stake" (Hanasz, 2006, p. 286). Perhaps republicans are right to be embarrassed by these aspects of their tradition, and to turn away from them where possible. There are good republican reasons for this, though. Put simply, these versions of citizenship are a problem for republicans if they themselves result in domination. For the cosmopolitan version of republicanism defended here, the pursuit of status or martial virtue would itself be subject to contestation by other people on the grounds that it conflicts with their basic interests. Nevertheless, Goodin and Hanasz's criticisms should press republicans to think more thoroughly about citizenship, and

⁴² For more general theories of cosmopolitan citizenship, see the essays collected in Hutchings and Danreuther (1999).

perhaps to reflect more carefully on what exactly it is that republican citizenship is supposed to promote⁴³.

One possible response by republicans is to focus on more general civic virtues such as active citizenship, vigilance in the face of excessive state power, and responsible pursuit of moral values. The problem with this move is that it makes the gap between republicanism and other civic-minded political theories infinitesimally small. We can illustrate this by comparing David Miller's version of republican citizenship with Brian Barry's civic nationalism⁴⁴. Miller emphasises the importance of active and responsible national citizenship, and its importance for any feasible *trans*-national citizenship:

[Such] possibilities for transnational citizenship as may exist depend upon first strengthening citizenship and inculcating civic virtue within national boundaries, and then hoping that these qualities may carry across to wider constituencies (Miller, 2000, p. 95).

Miller does not say much about how this might actually work, but it would presumably be uncomfortable with the kinds of status-oriented and militaristic republicanism mentioned above. It also seems to rule out strong forms of ethnic nationalism: Miller is more explicit in distancing himself from these⁴⁵. However, if we reject ethnic nationalism, it is very

⁴³ Again, my own argument here is that a focus on a more robust conception of domination provides a better moral and practical structure to republican political thought.

⁴⁴ See also Rawls's response to republicanism. Rawls makes common cause with republicanism by stressing that active political participation by virtuous citizens is necessary to sustain the democratic liberties that form a central part of his version of liberalism:

Between classical republicanism...and the liberalism represented by Constant and Berlin, there is no fundamental opposition...[The] question is [just] to what degree citizens' engaging in politics is needed for the safety of basic liberties...[This] is a matter of political sociology and institutional design...Classical republicanism...is fully compatible with political liberalism, and with justice as fairness as a form thereof (Rawls, 2001, p. 144).

⁴⁵ He expresses a preference for the French model of citizenship in which any resident of France can become a citizen if they "absorb sufficient doses of French national culture" over the German model, in which ethnic descent determines claims to full citizenship (Miller, 2000, p 88).

hard to see what distinguishes Miller's republican citizenship from Barry's civic nationalism. Barry outlines civic nationalism in the following way:

It is useless to imagine that particularistic loyalties can be attenuated unless there is some wider focus of loyalty that can be charged with some emotional force. We do need nation states. But this does not mean the state as the property of a pre-existing ethnocultural nation (Barry, 1999, p. 55).

Barry emphasises that some form of emotional or affective attachment to the nation state may be needed to sustain liberal institutions, but that this is compatible with cosmopolitan morality. The only obvious difference is that Miller sometimes advocates a shared collective purpose or destiny as a source of civic virtue. As Barry notes, there are two reasons to be suspicious of this. First, Miller is not actually very explicit about what this might be in particular cases (Barry, 1999, p. 58). Second, and more importantly, a strong sense of national destiny can work against democracy, "For it offers the constant temptation to use it as a way of short-circuiting debate about the country's future and delegitimizing the views of those who reject it" (Barry, 1999, p. 59)⁴⁶. The obvious task for defenders of Pettit's version of republicanism is finding a form of civic identity that is strong enough to sustain institutions capable of preventing domination, without sliding into communitarian excesses in which strong conceptions of national destiny override healthy democratic debate⁴⁷. Whether this requires any strong sort of *national* identity is an open question. My view is that it depends on the kind of institutions that are required to prevent domination, and the answer to that institutional question becomes clearer when we have a better idea of the kind of

⁴⁶ Hanasz directs a similar criticism at republicanism, arguing that (communitarian) republicanism requires a degree of unquestioning loyalty to the republic that conflicts with democratic debate and contestation. I am unconvinced by Hanasz's version of the argument because he conflates communitarianism with republicanism too easily, ignoring Pettit's distinctions between Athenian and Roman versions of republicanism. See Hanasz, 2006, p. 298-9).

⁴⁷ Pettit's own argument is that broad norms of civility should accompany republican institutions. He does not claim that either national identity or the kinds of republican civic virtue criticised by Hanasz and Goodin are necessary for this.

domination we want to prevent. None of this is to suggest that we should reject the kinds of moderate civic and republican nationalism Miller and Barry advocate at the outset. It is to suggest that republicanism should put them in the context of institutions designed to prevent domination: how does civic virtue encourage people to take account of the affected interests of other people? More specifically, these institutions help prevent domination if they enable people to contest decisions that represent arbitrary forms of interference. Arbitrary interference is interference that is done without regard to basic interests, defined roughly as the resources needed to develop into an independent moral agent. The cosmopolitan concern is that people should be able to pursue their own interests in ways that are compatible with other people being able to pursue theirs. As Shapiro puts the point, a theory that aims at preventing domination, “aims at enabling people to live by their values, but always in ways that permit opposition and take due account of the affected interests of others” (Shapiro, 1999, p. 232).

To stress the point being made here: republicans (including cosmopolitan republicans) may have reason to be interested in broad questions of citizenship, civic virtue and nationality, to the extent these are relevant to the prevention of domination. However, cosmopolitans (including cosmopolitan republicans) have little reason to be interested in narrow conceptions of specifically republican civic virtue if these conceptions conflict with preventing domination.

iv) Cosmopolitan republicanism

To date, the most thorough attempt to work out a cosmopolitan version of republicanism can be found in the work of James Bohman⁴⁸. Bohman has argued for the extension of various forms of deliberative democracy to the global or cosmopolitan level as part of a cosmopolitan republican project. This project is distinguished from other forms of cosmopolitan democracy in two important respects. First, Bohman strongly emphasises the

⁴⁸ See also Laborde (2009, forthcoming) and White (2003).

importance of the unevenness of global integration and its effects on different people. Second, Bohman links deliberation to a specific normative or moral concern with preventing domination. Although these two basic points seem compelling, I am not at all convinced that Bohman succeeds in working through their implications.

a) Cosmopolitan Republicanism and Globalisation

The first move Bohman makes is to stress the uneven character of globalization and its effects. As he puts it,

[Even] if globalization enlarges the ways in which we live together in political space and time, it does not follow that all share the same fate within it...it is experienced in different ways by different peoples or political communities, with markedly different impacts at different locations (Bohman, 2004, p. 339).

To the extent that this argument cautions us against crudely scaling up domestic institutions and rules to solve global problems, it is a point well worth making. However, given this emphasis on differential effects and unevenness, I find it very odd that Bohman does not then turn his attention to the problems faced by those made worst off by globalisation. The main concrete example Bohman chooses as a case of the kind of deliberative politics he has in mind is the European Union. He describes EU decision-making processes in the following way:

[The] European union has developed a quite different form of institutional inquiry in its new decentralized form of decision-making via committees, where the implementation of legislative acts is assisted by hundreds of committees from member states. Much more dispersed than the broader authority invested in experts in the World Bank or the IMF, the European Union's 'comitology' is broadly subject to the epistemic norms of experts and their transnational epistemic communities. Such committees work by argumentation where each member seeks to change the standpoints and interests of others in the committee, while being open to reciprocal influence (Bohman, 2004, p. 348-9).

Despite the detail of Bohman's account, I fail to see how any of this addresses the problem of the uneven character of globalization and its effects. Bohman does not demonstrate how this process of deliberation serves to bring out the voices of those most seriously affected by decisions. Indeed the suggestion that committee members should have their standpoints and interests changed does not seem to me to offer sufficient guarantees to those whose interests may be most severely affected by particular decisions. Perhaps Bohman wants to show that the kinds of deliberative processes he describes are sufficient to bring out severely affected interests, but he does not offer anything in the way of either evidence or argument to demonstrate this. At most he has established that the EU deliberates more than the IMF, without showing whether or how this helps the worst off. Although he starts off with a plausible concern about the uneven effects of globalization, Bohman seems to get distracted somewhere along the way from the real ethical issue at stake in these uneven effects. As Charles Beitz puts it (in a slightly different context), we would do well "to concentrate attention on the situation of those who are worse off and to emphasise the respects in which their circumstances interfere with their living what might reasonably be described as decent and satisfying lives" (Beitz, 2001, p. 120). This issue is missing from the account of cosmopolitan republicanism that Bohman gives.

b) Cosmopolitan Republicanism and Domination

The real distinctiveness and appeal of Bohman's cosmopolitan republicanism lies in his attempt to show that a republican concern with non-domination can usefully be applied to problems of global justice. However, one reason for Bohman's apparent distraction from the substantive issues at stake is that his own account of domination is very vague. In one of his papers on the subject, he takes up the criticism that republicanism as formulated by Pettit is not sufficiently normative. He stresses that the way to give it normative content is to show why Pettit's concern with arbitrary interference matters from a moral perspective. This

argument seems broadly along the right lines, but Bohman's attempts to fill out the moral character of a concern with non-domination are not particularly satisfying. At one point, Bohman defines domination in terms of the arbitrary exercise of normative powers, and claims that

[The] most basic normative power of citizenship is the positive and creative power to interpret, shape and reform those very normative powers possessed by agents who seek to impose obligations and duties on others without allowing themselves to be addressed by others (Bohman, 2008, p. 199).

The problem is that Bohman's own proposal for mitigating or reducing domination seems very weak. He argues that the most fundamental democratic power is the capacity to "*initiate* new deliberation" (Bohman, 2008, p. 207, author's emphasis). Bohman argues that this is important from a democratic perspective because without the power to initiate deliberation, citizens will "be merely consulted, and thus unable to introduce new points of view and new relevant interests and opinions" (Bohman, 2008, p. 207). This objection misses Pettit's point in several ways⁴⁹, but the most relevant one here is that Bohman entirely neglects Pettit's emphasis on the importance of being able to ensure that decisions actually track the *interests* of those affected by them. As Pettit stressed even in his earlier work, "an act of interference will be non-arbitrary to the extent that it is forced to track the interests and ideas of the person suffering the interference" (Pettit, 1997, p. 55). Pettit's account of how contestation might prevent domination faces objections⁵⁰. However, Bohman's proposal lacks *any* equivalent account of how the capacity to initiate deliberation alone can result in decisions that are forced to track the interests of those subject to interference. Although I can only speculate here, I think Bohman's account of domination is

⁴⁹ The other important way in which Bohman's objection misses Pettit's point is in its mis-interpretation of Pettit's two-dimensional model of democracy. Part of this two-dimensional model places emphasis on the importance of electoral processes in generating a range of policies that are open to discussion and debate. See Pettit, 1999 and 2000. See also Pettit (2005) for an attempt to provide an analogue to this electoral process at the global level.

⁵⁰ See especially Van Parijs, 1999.

flawed because it connects a general concern with choice and voluntary relationships to institutional proposals for deliberation. At one point, Bohman does make this quite explicit. He argues that globalization makes it possible that we can find ourselves in different kinds of arbitrary relationships:

If social actions are indefinite in this way, then we cannot choose those with whom we must co-operate, and in the absence of such a choice the existing scheme of co-operation must be open for negotiation and deliberation (Bohman, 2004, p. 340).

I am not convinced that the lack of choice in our relationships is the main issue of ethical concern here. Rather, as Pettit's conception of domination suggests, the issue is the concern that decisions might fail to track the interests of those subject to interference. I do think we need a more robust account of interests and their relationship to domination than Pettit gives: as we saw above, Shapiro's account of basic interests provides us with the resources to do this. However, this account is not to be found in Bohman's version of cosmopolitan republicanism.

v) Republicanism and constitutionalism

As noted at the end of the discussion of historicist republicanism above, republicanism places a central emphasis on the role of constitutional restraints. More broadly, republicanism has had some influence in constitutional and legal theory⁵¹. Looked at from the other direction, there has been increasing discussion of the possibility of constitutionalizing international politics and the global order⁵². These latter projects explore

⁵¹ The most prominent examples of this are Michelman (1988) and Sunstein (1988, 1993).

⁵² The most prominent advocate of this approach is Habermas (1997, 2006). Habermas draws much of his argument about the possibility of a global constitutional order from the experience of EU integration. This raises issues about whether it is appropriate to generalise this experience. Other approaches include Held (1995) and Falk (2000), both of whom advocate legal structures designed to promote democracy. For a

the possibility of constructing formal constitutional structures at the global level. However, as Richard Bellamy has stressed in a recent article, republicanism has been more ambiguous than other political theories about what exactly constitutionalism means. In particular, it is ambiguous about whether a constitution has to mean a formal document, or whether it can also embody more general rules and principles about the sharing of power:

The prevailing understanding of a constitution is as an entrenched written document that sets out the fundamental law of a polity and is upheld by a constitutional court...Historically, though, republicans have regarded a constitution as a particular form of government that embodies certain ways of sharing and balancing power (Bellamy, 2008, p. 160)⁵³.

This republican distinction between more and less formal understandings of constitutionalism is relevant for this thesis in two respects⁵⁴. First, it directs our attention to the basic moral norms we want constitutional structures to protect. As we have seen, for Pettit and other neo-republicans, non-domination is the basic moral concern. This concern with non-domination does at least mitigate the criticism that some forms of republicanism amount to a sort of constitutional fetishism in which

discussion of the related issue of the conflict between democracy and international law, see Benhabib (2005).

⁵³ The same distinction appears in Miller's article in the same volume. Predictably enough, Miller stresses the importance of active citizenship and a common identity in sustaining a republican conception of the common good. He asks: "Can there be active citizens without a political community held together by a common sense of belonging?" (Miller, 2008, p. 155). My reply to this is, roughly, that in the absence of a common sense of belonging, we need to think though more carefully the moral standards we want constitutional structures to protect.

⁵⁴ A version of the distinction also appears in Pettit's *Republicanism*, although the focus is still on legal structures:

We find constitutionalism in place wherever there are legally established ways of constraining the will of the powerful even if the constraints are not recorded in a formal constitution (Pettit, 1997, p. 173).

power is shuffled about through constitutional means without really thinking about why this is being done⁵⁵.

Secondly, the distinction broadens the scope of republican interest from formal, legal structures to more general policy proposals that might help restructure power relationships in ways that mitigate or reduce domination. This is important, not least because the possibility of a formal global constitution remains something of a distant prospect, regardless of how attractive it might be as a long term aim. As a recent book by Andrew Hurrell suggests, the second, less formal, of Bellamy's conceptions of constitutionalism seems the most relevant one in the context of international politics. Hurrell's book, subtitled "Power, Values and the Constitution of International Society", explicitly refers to a set of three less formal conceptions of the idea of a constitution⁵⁶:

[First], constitution in the sense of the broad institutional practices, norms and conventions of behaviour which, taken together, define how a polity has been constituted; second, constitution in the sense of the processes by which a polity is constituted and through which change takes place; and third, constitution in the sense of the vitality, strength, or healthiness of the polity (Hurrell, 2008, p. 20).

It is worth stressing the absence of any reference to formal, entrenched constitutions here. As Hurrell also notes, discussions of constitutionalism tend to be immodest undertakings. The concern with sharing of power opens a connection to a literature on power that we cannot begin to address adequately here. Instead, I want to try to direct our attention to the (hopefully more modest) project of trying to understand how

⁵⁵ Richardson stresses this point about Pettit's republicanism: "the purported exercise of a normative power- the power to modify the rights and duties of others – is essential to the idea of domination" (Bohman, 2008, p. 198).

⁵⁶ Hurrell's title also explicitly situates his work in the English School of International Relations, although he rejects Hedley Bull's claim that a "thin pluralist international society of states provides the best available means of upholding world order" (Hurrell, 2008, p. 12). Hurrell instead advocates greater attention to the links between moral and political cosmopolitanism. This strikes me as an attractive approach.

domination works in the context of a specific example, and of the kind of policy proposals that might be used to mitigate or reduce it. It seems to me a mistake to move too quickly to formal, constitutional mechanisms when other, less intrusive, proposals might be available in the specific context.

I have looked at five broad ways in which republicanism might be applied to cosmopolitan concerns about global justice. I first argued that historicist republicanism is not directly relevant to a thesis of this type. However, historicism is useful in reminding us of the possibility that republican ideas can come to have practical influence. It is also useful in emphasising a distinction between Athenian and Roman schools of republican thought. Second, I looked at the distinction between communitarian and neo-Roman republicanism. Here, I argued that one of the most important contemporary accounts of communitarian republicanism in fact involves an appeal to a very similar moral concern that applies at the global level. Miller's concern with exploitation is very similar to the version of domination I work with here, although Pettit and Shapiro's work provide the basis for a more robust account of domination. Third, I looked at the relevance of republican concerns about civic virtue to issues of cosmopolitan or trans-national citizenship. I argued that cosmopolitan republicans have good reason to be concerned about general issues of civic virtue and citizenship, since these are relevant to the question of the kind of institutions that can prevent domination. However, the distinctively *republican* versions of civic virtue and citizenship are seen as something of an embarrassment to contemporary republicans. Any discussion of citizenship by contemporary republicans is thus likely to have to share common ground with more general discussions of this issue, focusing on virtues such as responsibility and active participation.

Fourth, I looked at the most detailed contemporary attempt to apply republicanism to cosmopolitan concerns about domination. Bohman's suggestion that domination is a moral or normative standard that can be applied in issues of global justice is a promising one. His argument that

deliberative democracy is relevant to preventing domination is also interesting. However, I argued that Bohman does not offer a sufficiently robust account of how domination works, or why it is of ethical concern. This affects his institutional proposals, which are excessively vague. Nevertheless, his account does press us to think about how and why a republican concern with domination is important. In brief summary, my own view is that we need to connect Pettit's concern with interests more directly to a general ethical concern with the conditions that enable people to live decent or satisfying lives. Doing this has the added potential of making a concern with domination of more general ethical appeal.

Finally, I have looked at the broad issue of constitutionalism. Republicanism has made a significant contribution to constitutional theory, and one obvious avenue would be to try to apply this contribution to the possibility of some sort of formal global constitution. I have rejected this avenue, partly because the possibility of a global constitution seems a rather distant prospect⁵⁷. More specifically, I believe that closer attention to the issue of how domination works in practice can suggest policy proposals that are less drastic and demanding than writing a formal global constitution. I aim to illustrate this argument using the example of international labour standards.

V) Choice of rival theories

My other main tasks in this chapter are to explain my choice of targets for criticism and my choice of an illustrative example. The overall aim of the thesis is to show that there is something missing from the accounts of legitimacy found in established approaches to global democratic justice. The different approaches fail, in various ways, to take account of the fact that different basic interests are at stake in many decisions. Some people

⁵⁷ Of course, an effective global constitution might also require a concentration of political power that is itself unattractive from the perspective of limiting or mitigating domination.

are dependent on particular relationships and institutional arrangements to provide for their basic interests, while others are not. This difference can result in domination, understood as arbitrary reduction in an individual's capacity to vindicate her basic interests⁵⁸. The deliberative or participatory element of my argument comes in through emphasis on the importance of structures in which decision makers have incentives or pressures to show that their decisions do not result in domination⁵⁹.

There are four general approaches to global democratic justice that I want to criticise. I choose specific authors as typical examples of these approaches. This is in part in order to provide a tractable discussion but also in part because each author brings something specific to the debate that is of particular relevance to my argument here. The four approaches are global civil society, represented in John Dryzek's work; statism, represented in Thomas Nagel's work; cosmopolitan democracy, represented in David Held's work; and global deliberative polyarchy, represented in Cohen and Sabel's work. I will provide a brief justification for these choices.

i) Dryzek

John Dryzek has made one of the most consistent attempts to apply deliberative democracy to issues of global politics⁶⁰. Dryzek develops a specifically *discursive* model of deliberative democracy⁶¹. This project is intended to preserve the more radical aspects of Habermas's approach to deliberative democracy in the face of Habermas's own recent attempts to

⁵⁸ Pettit's account of domination will thus be modified by the addition of a conception of *basic* interests and an account of how having basic interests at stake can result in domination. This account is developed with reference to Shapiro's work on democratic justice.

⁵⁹ As Shapiro puts it, "By strengthening the hand of the weaker party, government can increase the likelihood that insiders will deploy their wisdom to search for the deliberative solutions that may be waiting to be discovered" (Shapiro, 2003, p. 49).

⁶⁰ Dryzek, 1999, 2006.

⁶¹ See Dryzek, 1990, 1996, 2000.

reconcile his theory with more mainstream approaches to liberalism and democracy⁶². Broadly speaking, Dryzek continues to emphasise a participatory, bottom-up deliberative approach that he contrasts with constitutional, formal state based democratic structures⁶³. The attempt to separate deliberative democracy from the coercive structures of the state links Dryzek's approach to contemporary theoretical and empirical work on global civil society⁶⁴. We can see this contrast in Michael Walzer's basic definition of civil society: "The words 'civil society' name the space of uncoerced human association, and also the set of relational networks – formed for the sake of family, faith, interest, and ideology – that fill this space" (Walzer, 1997, p. 7). For progressive intellectuals and activists, global civil society has become closely associated with protest movements and politicised non-governmental organisations: global civil society has come to have an explicitly political meaning⁶⁵.

There are two important parts of Dryzek's work that I will focus on. The first is his claim that the lack of state structures at the global level is an opportunity for the unconstrained, uncoerced deliberation he favours. Dryzek fails to address the inequalities of resources and deliberate repression that many groups face, however. He sometimes seems to hold that political protests will form naturally or spontaneously around important issues. However, it is far from clear that these protests will involve those with the most urgent interests at stake. One of the most

⁶² See, for example, Cochran, 2002 on Dryzek's distinction of his own position from Habermas. The changes in Habermas's approach can be seen by comparing Habermas, 1986, 1996. For a discussion of Habermas's reconciliation with contemporary Rawlsian liberalism, see Gutmann, 2003. Iris Young's book *Inclusion and Democracy* is a different attempt to develop deliberative democracy. Young's is much less suspicious of state action than Dryzek's, and Young explicitly relates her work to Pettit's republicanism.

⁶⁴ The literature in this area includes Kaldor (2003), Keane (2003), Chandler (2004), Aaronson (2001), and the global civil society yearbooks edited by Albrow, Glasius and others. Brown (2001) provides a more sceptical discussion.

⁶⁵ This understanding is, unsurprisingly, disputed. See Wolf: "[Civil] society is a name for all social activity that lies outside the state. It should not be appropriated by a limited subset of pressure groups" (Wolf, 2004, p. 7).

basic criticisms of global civil society is that activists from wealthy western countries are vastly overrepresented and that those on whose behalf they claim to speak have little or no voice.

The second point relates to Dryzek's apparent enthusiasm for unconstrained forms of political action. Dryzek does not seem to address the problem that lack of constraint can involve lack of responsibility. He does not provide any account of the normative constraints on civil society action, yet, in a situation where ordinary state structures are absent, such an account seems to be precisely what is needed.

Dryzek thus raises one of the most important issues for global civil society: how to provide an account of political responsibility appropriate for situations in which different affected groups have different interests at stake.

ii) Nagel

In contrast to global civil society, statism is one of the most firmly established approaches to international order and politics⁶⁶. Thomas

⁶⁶ One of the classic essays on statism is Kant's "Perpetual Peace" (1795/1796). Kant's basic claim there is that states are the only feasible law-governed relationship between people, but that this does not exclude moral duties that apply between non-citizens. Kant's difficulty is in describing an institutional framework that can make the moral duties stable. The concession to morality distinguishes statism from realism. The relationship between Kant's moral philosophy and his political philosophy is too complex to address here. Kant is a central reference point for cosmopolitans as well as statists, and the difference seems to depend on whether or not Kant's *Critique of Pure Reason* is read as providing a general method for addressing ethical issues such as issues of justice. Cosmopolitans argue that this is the correct way to understand the First Critique. (see Höffe, 2006 and O'Neill, 2003 for discussion of these issues). More recent examples of statist approaches in the international relations literature include Bull (1977) and Nardin (1983), Frost (1996) and Jackson (2000). Philosophical discussions include Blake (2001), and Sangiovanni (2007). For a cosmopolitan critique of some of these statist arguments, see Caney (2004, 2008). The focus on law governed relationships also helps distinguish statism from communitarian approaches like Miller's (1995, 2008) and Walzer's (1983). The latter

Nagel has attempted a consistent philosophical restatement of the statist position in the context of contemporary egalitarian justice (2005). The other major candidate as a contemporary example of statism is Rawls's *Law of Peoples*. To some extent, both of these works might be seen as attempts to restate Kant's basic position in contemporary terms. However, Rawls's argument is complicated because he introduces the idea of a public political culture as a source for political values. This has led some commentators to complain of a communitarian shift in Rawls's approach⁶⁷. As a result, it is not entirely clear that Rawls upholds a purely or consistently statist approach. In contrast, Nagel places central emphasis on the role of equality in relation to the coercive legal structures of the state. Roughly speaking, Nagel denies that public political culture is the main source of standards of justice for states. Rather, the nature of what states do in imposing coercive laws on their citizens imposes requirements of justice. Since Nagel does appear to include democracy as part of his conception of equality, this makes his distinctively statist approach relevant to our concerns here. In focusing on legal, coercive structures, Nagel does provide a seemingly clear criterion for distinguishing between states that generate demands of justice and non-state structures that are bound by less stringent moral norms.

There are two main issues about this approach that I will address. First, Nagel is rather quick to assume that all states are well functioning. This sometimes leads him to suggest that states provide a background against

emphasise the importance of affective cultural ties and common purposes in addition to (or perhaps in extreme cases in place of) law-governed relationships. A recent attempt to accommodate and reconcile the growth of international and global institutions with statism is Hurrell (2008). Hurrell's basic approach accepts Bull's focus on states and international society but shows the additional role of non-state actors, particularly in areas such as the environment.

⁶⁷ See, for example, Tan, 2004. It is worth noting that some defenders of Rawls's *Law of Peoples* have argued that Rawls attempts to construct the morality of the law of peoples out of *international* public political culture (Wenar, 2006). This raises the question of why Rawls did not choose a more individualistic, cosmopolitan international public culture as his starting point. Roughly, the most philosophically compelling answer is that states remain the most plausible institutional structures for the protection of certain basic rights of individuals.

which other interactions and transactions can be seen as fair and voluntary. However, there is plenty of reason to dispute this basic assumption: there are many states that are not remotely well-functioning⁶⁸. This is an empirical argument, so it might be claimed that it does not touch the more normative point Nagel is trying to make. In response, we could argue that if Nagel relies too heavily on an ideal of well functioning states, he will fail to identify many of the more pressing moral concerns that appear when states are in fact weak and incapable.

Second, Nagel's conception of equality is considerably more opaque and complex than it first appears. He bundles together conceptions of distributive justice, procedural fairness and democracy in his conception of equality in a way that makes it very hard to discern the precise connection between coercive laws and equality. This bundle requires considerable unravelling before it becomes clear why equality matters. Furthermore, the specific notion of equality that is relevant to the issue of democracy is quite limited in its scope.

Nevertheless, Nagel's article does prompt us to think more carefully about what equality is *for* in relation to states. Reflection on this issue presses us to come up with a more specific account of the role of equality in allowing individuals to limit the power of the state. It also presses us to think more clearly than Nagel does about the possible moral responsibilities that fall on non-state actors. Another, independent, reason for focusing on Nagel's article is that he presses the question of how we might get from a statist world order to a more globally just, perhaps cosmopolitan order. Nagel is sceptical about the possibility of doing so in an orderly, just or legitimate fashion: he thus poses a significant independent challenge to cosmopolitans.

⁶⁸ Jackson (1991) is an influential introduction to these issues.

iii) Held

Nagel's criticisms of the possibility of global justice are directed at cosmopolitanism in general. However, within the group of thinkers who describe themselves as cosmopolitans, there is room to distinguish between moral and institutional cosmopolitanism. The former group includes thinkers like Charles Beitz and Brian Barry who emphasise that moral cosmopolitanism is a position with few direct political or institutional implications⁶⁹. I want to leave this group aside, partly for the reasons outlined above⁷⁰. A broader reason for not choosing to focus on this group is that my main concern in this project is with the moral implications of following particular versions of institutional structures. By avoiding the question of which particular structures are required by their preferred moral view, the *moral* cosmopolitans seem to rule themselves out of consideration. The institutional cosmopolitans include thinkers like Simon Caney and David Held, who are much more explicit about the kinds of institutional structure cosmopolitanism requires. Broadly speaking, they advocate strengthening institutions that can promote cosmopolitan principles of justice at the sub- and supra- state levels. Although Caney proposes a similar multi-layered scheme of cosmopolitan institutions to

⁶⁹ Thomas Pogge is one of the cosmopolitan political philosophers who formulated a version of the cosmopolitan moral claim about the equal, general and ultimate moral status of individuals. However, Pogge has done a great deal of work in devising specific institutional proposals that he often connects to minimal negative moral duties, so it is inappropriate to categorise him solely as a moral cosmopolitanism (see, for example, Pogge, 2001). Beitz provides further discussion of these issues in the afterword to *Political Theory and International Relations*. His remarks are not entirely clear, but he seems to be saying that humans are the units of ultimate moral concern but that it is only the existence of a global basic structure that generates demands of justice as an expression of that moral concern. In the absence of such structures, concerns of justice would not be appropriate as expressions of moral concern (see Beitz, 1999, pp. 198ff).

⁷⁰ David Miller emphasises this point: "Cosmopolitanism...comes in two very different forms. Its weak ethical version – formulated in terms of a principle of equal moral worth or equal concern – can be accepted by almost anybody barring a few racists or other bigots" (Miller, 2002, p. 84).

Held, he is much less specific than Held about the role of democracy and participation. As a result, Held's cosmopolitan democracy seems like the most appropriate target.

I have a number of concerns about Held's approach. The first set of concerns relate to the way Held moves from a commitment to basic cosmopolitan principles about the status of individuals as targets of ultimate, general and equal moral concern to political and institutional principles relating to a cosmopolitan democratic order. This move depends on provision of substantive principles about what it means to treat people as targets of moral concern. Filling out these principles leads us to question Held's move to strong cosmopolitan institutions as an ultimate aim.

A second worry about Held is his application of equality to a world in which people are likely to have very different interests at stake. Held does not make clear or explicit why it is appropriate to treat people equally in these cases.

A third concern relates to Nagel's question of how we get from here to there. Some cosmopolitans try to dodge this question by suggesting that it is an issue for normative political science and institutional design. This answer is inadequate. If it is likely that pursuit of moral principles will impose significant and serious burdens on particular groups, we either need to rethink the moral principles themselves or (perhaps preferably) think harder about more responsible and less onerous ways of putting such principles in practice. It is hard to see how anyone could deny that this is itself a task with independent moral significance, even if it is not a part of meta-ethical thinking about the meaning of equality. Furthermore, it again presses us to think about appropriate principles for cases where people do have different interests at stake. It is also worth noting that it is quite hard for a thinker like Held to dodge the question in this way, since he is more specific about the institutional structures his approach requires.

iv) Cohen and Sabel

The potential difficulties with pursuing an institutionally robust cosmopolitan democratic order may lead us to look for a less ambitious approach as a target. Alternatively, the pursuit of such an order might lead us to think more carefully about how we proceed towards a cosmopolitan target on the basis of the institutions we actually have. One approach that does seem more focused on existing institutions is Cohen and Sabel's deliberative polyarchy model. The label "deliberative polyarchy" gives this approach a rather obscure, esoteric appearance. Cohen and Sabel's use of this label is presumably a reference to Dahl's polyarchy, which is a more concrete, minimally legitimate term for electoral institutions that fall short of a more demanding ideal of democracy⁷¹. However, it is important to stress that Cohen and Sabel do not (unlike Dahl) make any room for electoral institutions in their approach. Rather, they suggest that deliberation among qualified groups is sufficient to produce politically and morally legitimate policy decisions. Cohen and Sabel take the decision making structures of the European Union as a basic model for their approach, suggesting a greater degree of institutional density than Dryzek's deliberative model⁷². Nevertheless,

⁷¹ See Dahl, 1989, for a description of the basic institutions of polyarchy. Dahl himself is sceptical about the possibility of transnational or global democracy. He prefers the term "bureaucratic bargaining" to describe the kinds of processes Cohen and Sabel identify.

⁷² The literature on the democratic accountability and legitimacy of the European Union is an enormous and ever growing part of the general debates around the EU. Overviews of EU integration include Moravcsik (1998), Rosamond (2000), and Chrysochoou (2001). Haas (1958) is a seminal work. Discussions of the EU's democratic legitimacy include Greven (2000), Schmitter, (2000), Bellamy and Castiglione (2000) and Moravcsik (2002, 2008). By comparison, Cohen and Sabel are quite unusual in attempting to generalise the EU experience to the international level. Cosmopolitans such as Pogge (1992), Held (1995) and Bohman (2008) make approving gestures towards the EU but tend to keep their distance. Perhaps this is a result of the problems faced by Ernst Haas's attempts to generalise the experience of EU integration to international experience. Critics point out that Haas's model (drawn from the EU experience) has not been exported to other processes of integration, and has not even been applied consistently within the EU see Brown, 2005, p.

the approach is less institutionally ambitious than Held's cosmopolitanism. For example, Cohen and Sabel give little attention to the problem of the level of resources needed to sustain a highly participatory, multi-layered cosmopolitan democratic order.

I have three central and closely related worries about Cohen and Sabel's approach. First, their definition of what it means to have relevant knowledge or experience to make particular decisions is very flexible. At one extreme, it could lead to a form of technocracy, if only people with specific technical knowledge are counted as experts. At the other extreme, the range of people with at least *some* relevant knowledge could be considered to be very broad. More importantly, we should not just include different voices because doing so generates epistemically or technically acceptable policy decisions. Rather, the point is that particular people will have to bear the burdens of those policies, and have some reasonable claim to ask how far the policies respect their legitimate interests.

This brings us to the second objection. Cohen and Sabel do not provide a clear account of how their approach generates incentives to consider the interests of those people affected by particular decisions. Conventional electoral democracy can be defended on the basis that it does generate an incentive for those in political power to consider a wide range of interests, but Cohen and Sabel do not include any equivalent mechanisms in their deliberative polyarchy model.

The third objection relates to Cohen and Sabel's attempt to generalise from the EU experience. Membership in the EU is conditional on states achieving a degree of internal competence and democratic legitimacy. This requirement protects rights to participation and contestation by

124). Moravcsik (2004) may be relevant. Slaughter (2004) describes a structure of government networks that bears some resemblance to Cohen and Sabel's deliberative polyarchy, although with little direct reference to deliberative democracy. Similarly, Kuper (2004) defends a version of global democracy that is explicitly separated from both deliberative and electoral structures. Cohen and Sabel rely quite heavily on the work of Kingsbury, Krisch and Stewart (2005). Martin Shapiro (2005) offers a sceptical view of the attractions of expanding the EU experience to the global level which does refer to deliberative democracy.

citizens. These rights can be used against the state itself, but also against international institutions and non-state actors. The situation outside the EU is often different. Many states do not protect even the most basic freedoms of association or political participation, and their citizens thus lack the basic capacity to contest decisions that affect them.

The main value of Cohen and Sabel's approach is that it presses us to think more carefully about how to proceed on the basis of the institutions we actually have. They suggest that the EU is an appropriate model for a version of global deliberative democracy, but they neglect the *dis*-analogy between the EU and the broader global order. In particular, their approach raises the question of what to do when basic rights to protest, participation and contestation are not well protected.

VI) The Labour Standards Issue

My final task is to explain my choice of labour standards as an example that I use to illustrate and apply the arguments about domination and possible ways to mitigate it. A concern with the possibility of domination in employer-employee relationships occupies a prominent place in Pettit's discussion of areas where republican theory can be applied. This is unsurprising: Pettit's republicanism is centrally – but not exclusively – concerned with the way social relationships can affect the well being of individuals⁷³. Interestingly, Pettit's discussion of the dominating effects of employer-employee relationship gives strong emphasis to the role of status:

The image of workers as wage slaves casts them as dependent on the grace and mercy of their employer, and as required to court

⁷³ This is a general republican concern that stretches back at least as far as Rousseau, who gives prominent place to a concern with relationships of dependency on “men” rather than “things”. See, for example, Rousseau (1968/1762). Other issues of republican concern include environmentalism, feminism and multiculturalism. See especially Pettit (1997), p. 135ff.

paths of caution and deference in dealing, individually or collectively, with their bosses (Pettit, 1997, p. 141).

This seems mistaken to me, mainly because it draws Pettit into the kinds of republicanism that Goodin and Hanasz criticise. An excessive or exclusive focus on status can make republicanism seem parochial and limited to a particular cultural context. More important is the issue of how control of resources puts employers in a position where they can arbitrarily interfere with workers' interests. Shapiro makes the basic point well:

Anyone in a position to threaten a person's basic interests evidently has great power over him. An employer who can fire an employee in a world where there is no unemployment compensation has power of this kind (Shapiro, 2003, p. 45)⁷⁴.

In a situation where it is claimed that "only 20 per cent of the world's population has adequate social security coverage and more than half lack any coverage at all" (ILO, 2008), it should be clear that vulnerability to the kind of domination Shapiro refers to is a problem of global scope. My broad argument is that a proper analysis of how domination can work in particular cases points us in the direction of more effective ways of mitigating or reducing it. These potential solutions extend beyond basic state provision of social security, but are linked together by a general concern with providing resources so that workers are not dependent on a single source in order to provide for their basic interests. I examine the ILO as an appropriate institution to address some of the problems of domination that emerge from employment relationships in the global economy. An overview of the history, institutional structure and enforcement powers of the ILO can be found in appendix one.

⁷⁴ To be fair to Pettit, he does acknowledge a similar point, expressing a concern that "individual contracts of employment are wrested from workers under the spectre of destitution, and that they put the employer in a position of domination relative to employees" (Pettit, 1997, p. 142). My complaint is that it is unfortunate that this more basic concern is tangled up with concerns about status that are perhaps more difficult to generalise.

A brief overview of the literature on global labour standards is also in order. One of the most influential works in bringing the issue of global labour standards into public debate was Naomi Klein's *No Logo: Taking Aim at the Brand Bullies* (1999). This is a self-consciously biographical and even polemical work, which the author herself has defended as an account of an emerging movement rather than a coherent manifesto for change⁷⁵. Although critics of Klein's work complain that it adds nothing substantial to the debate about policy responses to the problems workers in developing countries face, it is nevertheless significant that the work has generated so many direct and often critical responses⁷⁶.

Despite their criticisms of Klein and of the anti-globalization protest movement in general, analysts of the effects of globalization on workers do acknowledge the plausibility of one of the central claims made by critics of globalization. This is the prediction of a race to the bottom in labour standards: employers will be able to use the availability of locations with lower labour standards as a bargaining tool to threaten developed nations to lower standards and prevent developing nations from raising them⁷⁷. The plausibility of this thesis has led to it being seen

⁷⁵ The criticism that Klein's work is not a coherent manifesto is developed in detail by Heath and Potter (2004), who criticize the emphasis on counter-cultural movements in Klein's work. Heath and Potter suggest that the suspicion of institutional solutions among counter-cultural movements is itself an obstacle to developing effective solutions to the problems Klein identifies. For a claim that transnational social structures make it possible for civil society groups to influence labour and business practices, see Braithwaite and Drahos (2000).

⁷⁶ For a strong statement, see Wolf: "Analytically, her book *No Logo* adds nothing to the debate about globalization. Psychologically, however, it is brilliant. Klein succeeded in connecting the sense of personal inadequacy and guilt of the affluent western young to the plight of the world's poor" (Wolf, 2004, p. 227).

See also *The Economist*:

http://www.economist.com/agenda/displaystory.cfm?story_id=E1_GTDQRN&CFID=45578785&CFTOKEN=58456869 and
http://www.economist.com/business/displaystory.cfm?story_id=E1_TQNJQNJ accessed 6th March, 2009.

⁷⁷ One of the other major criticisms critics of globalization make is that competition leads to lowering of wages. This is of course a separate and equally complicated issue. Two responses to the basic claim are as

as conventional wisdom. Empirical studies of labour standards have found that there is little support for conventional “race to the bottom” wisdom, however⁷⁸. For example, David Kucera looked at the effect of *de facto* enforcement of core ILO labour standards on foreign direct investment and concluded

[This] study finds no solid evidence in support of the ‘conventional wisdom.’ If anything, the balance of evidence leans in the opposite direction, with all evidence of statistical significance suggesting that FDI tends to be greater in countries with stronger worker rights (Kucera, 2001, p. 2)⁷⁹.

There are two points that are worth remarking on from Kucera’s study. First, Kucera uses the ILO’s list of fundamental principles and rights at work – a list that does not include rights to social security or unemployment insurance (Kucera, 2001, p. 1). It would be interesting to know if strong rights in other areas such as freedom of association are correlated with provision of social security. If so, this would suggest a link between worker participation and protection of workers in this area⁸⁰. A further empirical question is whether provision of social security is itself

follows. First, Wolf argues that moving low-skilled employment to poorer countries is more of a benefit to both developed and developing countries, creating opportunities in both cases (Wolf, 2004, p. 240). Second, both Bhagwati and Wolf question whether moving to countries with low wages is always attractive: other economic considerations may prevent this. Kymlicka (1999) makes a similar point in response to Held.

⁷⁸ See also Held, 2004, ch1. Held acknowledges that there has not been a global race to the bottom on labour standards or wages.

⁷⁹ Kucera cites similar evidence from Rodrik (1996) and the OECD (2000), but points out that these studies were not definitive, and that alternative measures of labour standards to the ones used are needed (Kucera, 2001, p. 1). Kucera also warns, “A ‘race to the bottom’ does not depend on investors being truly attracted to countries with lower labour standards. Perception, true or false, will suffice” (Kucera, 2001, p. 1).

⁸⁰ Rodrik (1999) found that democracies do pay higher wages, and suggests that “democracies allow more efficient bargains by removing the impediments that authoritarian regimes install so as to repress wages” (Rodrik, 1999, p. 25). Whether bargaining over social security provision is easier or more efficient in democracies seems open to question.

associated with higher labour standards, or indeed whether more open, diverse economies are associated with higher standards⁸¹.

A second point relates to the question of enforcement. Kucera rightly focuses on the *de facto* practice of labour rights, rather than the existence of standards or legislation that are not necessarily enforced in practice⁸². This raises the large question of enforcement of labour standards. There are empirical problems with gathering evidence in this area. A summary of some of the different approaches to gathering evidence of violations of labour standards and trade union rights can be found in appendix two.

Ensuring the enforcement of labour standards is unsurprisingly much more difficult than writing legislation and getting countries to ratify it. Not long after the appearance of *No Logo*, Fung, O'Rourke and Sabel published the volume *Can We Put an End to Sweatshops?* They argued for an approach they call "ratcheting labour standards", in which the central focus is on publicity and social pressure, rather than on robust, even coercive legislation. The aim is "to use monitoring and public disclosure of working conditions to create official, social, and financial incentives for firms to monitor and improve their own factories and those of their suppliers (Fung, O'Rourke and Sabel, 2001, p. 4). This approach partly builds on the interests in deliberative democracy of Fung and Sabel. However, the emphasis on social pressure and public disclosure received a rather sceptical response, both from respondents in the original volume⁸³ and from subsequent commentators⁸⁴. More recent

⁸¹ A recent paper from the ILO has restated the importance of social security provision in the context of the global financial crisis. See Ernst and Escudero (2008).

⁸² Some studies have focused on *ratification* of the ILO's core labour standards and claimed that countries with higher levels of ratification have a greater share of US investment. As Bhagwati points out, though, these studies miss the point somewhat, since "ratifications are not a good guide to what protections exist for workers in reality" (Bhagwati, 2004, p. 130). See also Young, who notes: "The primary problem with labour regulation in much of the world...including in the United States, is lack of enforcement rather than lack of standards" (Young, 2006, p. 109n.18).

⁸³ See, for example, Basu (2001) and Moberg (2001).

⁸⁴ For example Compa (2003) and Spooner (2004). Fung has maintained his focus on deliberative democracy as a source of labour standards (2002). O'Rourke has withdrawn somewhat, suggesting corporate codes

responses have seen renewed emphasis on effective unions at the state level. This can be seen in both enthusiasts and critics of free trade. Compare Wolf and Compa:

Trades unions can limit the ability of employers to exploit their bargaining power over the workforce, protect individuals against bullying and other forms of exploitation and insist on elementary standards of safety and health (Wolf, 2004 p, 186).

To advance workers' rights in the global economy requires strong regulation and enforcement at both the national and the international level. Domestic labour law is key. So is an expanded role for the ILO, as well as new linkages of labour rights to trade agreements. Trade sanctions against abusive countries and firms are an important tool. Workers' rights also rely on strong trade unions that can organise, bargain and strike effectively (Compa, 2004, p. 215)⁸⁵.

A strong reason for renewed emphasis on local level enforcement and monitoring of labour standards is the worry that both strong international enforcement and the ratcheting labour standards approach fail to give adequate voice to workers themselves. As Elliott and Freeman point out, monitoring by outside agencies can be expensive and inefficient in comparison to more direct involvement of workers⁸⁶. On the other hand, "antisweatshop campaigns to date have made little headway in empowering workers themselves" (Elliott and Freeman, 2003, p. 70).

and informal monitoring are only part of a range of solutions to the problem of enforcing standards (2003).

⁸⁵ It is important not to gloss over the significant differences between these approaches: Wolf would reject Compa's emphasis on trade sanctions as a tool, and place limits on the extension of union powers into areas beyond the basic ones he sets out.

⁸⁶ In support of this, they cite Reebok's director of human rights programmes, Doug Cahn:

We have inspections of factories, both announced and unannounced. But you just don't have the assurance that things will be the same the next day...The best monitors are the workers themselves (Elliott and Freeman, 2003, p. 72).

There is a persistent concern that campaigns of this type do more to empower western consumers than workers.

More broadly, Kucera's evidence suggests that the enforcement and monitoring of labour standards is patchy and inconsistent rather than being pushed to the bottom. If countries with effective labour standards are not directly threatened by globalization and economic liberalization, this suggests that our emphasis and concern should be with those groups for whom monitoring and enforcement are not effective. This includes the poorest workers in developing countries, and workers in authoritarian states where there is no respect for fundamental rights such as freedom of association.

There are two points to draw from this overview. First, the possibility of a race to the bottom in global standards is less troubling than the uneven and patchy enforcement of existing standards, and the possibility that uniform standards would be insensitive to legitimate local variations. Second, we can distinguish three general approaches to the problem.

- i) Informal approaches. These approaches rely on social pressure and devices such as threats to reputation. A curious feature of these approaches is that advocates include both radicals like Klein and enthusiasts for globalization.
- ii) Strong international labour standards. This approach has been criticised by both opponents and enthusiasts of globalization, mainly on the grounds that it is insufficiently sensitive to local variations in levels of development.
- iii) Strong local labour standards. This approach finds some support among enthusiasts for globalization, perhaps mainly because they argue that the threat globalization poses to the state is exaggerated. It also finds support among trade union activists who are suspicious of informal approaches that threaten to crowd out unions.

These three approaches are advocated in different combinations and with differences in strength of emphasis. For example, Bhagwati seems to

advocate a combination of informal approaches and local labour standards, but with limits on the strength of unions (see Bhagwati, 2004, p. 246). On the other hand, Compa advocates a combination of very strong international and local standards (see Compa, 2004, p. 215). As Elliott and Freeman point out, the main concern here is whether workers in developing countries have an adequate voice in the proposed combinations. This again presses us to think about how to identify those with the most urgent interests at stake.

This last observation brings together the example discussed in this last section and the more general concern with contemporary republicanism. In the case of global labour standards, the unevenness of globalization and the institutional responses to its downsides lead to situations in which different people can have different interests at stake. Pettit and Shapiro's emphasis on domination – and their attempts to relate non-domination to different forms of democratic participation and enfranchisement – seem to me to be more sensitive than any of the main alternative approaches to this problem. Defending this claim, and showing how the analysis of domination can be used to point the way to plausible policy responses in the area chosen for close examination, will be the two main tasks of this thesis.

VII) Conclusion and Summary

In this chapter, I have set out my reasons for focusing on specific aspects of contemporary republican political theory. I provided an outline of Pettit's theory of domination and indicated why I believe it needs to be supplemented with an account of basic interests drawn from Shapiro. Following that, I set out my concerns about two contemporary versions of cosmopolitanism: redistributivist and critical. I then looked at possible alternative aspects of republican political theory and suggested why these

have not formed central issues for this thesis. The aspects I identified were: historicist republicanism, communitarian republicanism, republicanism and citizenship, cosmopolitan republicanism, and republicanism and constitutionalism. Having set out my criticisms, I outlined my reasons for choosing alternative understandings of global justice as targets for criticism. Finally, I set out my reasons for using global labour standards as an example for the application of my arguments.

Two. Dryzek's Global Discursive Politics: Global Civil Society Without a State?

Outline of the Chapter

- I) Introduction
- II) Three Criticisms of Global Discursive Democracy
- III) Dryzek and the Eclipse of the State
- IV) Democratic and Moral Functions of the State
- V) Conclusion and Summary

I) Introduction

John Dryzek has developed an explicit and detailed defence of the role of informal civil society actors in global politics. Broadly speaking, Dryzek rejects the increasing emphasis on formal, state-based political authority in Habermas's more recent work. Instead, he focuses on discursive democracy as operating through communication and social learning in order to act in a "non-authoritative fashion" (Dryzek, 2006, p. 24). For Dryzek, the relative lack of formal political institutions at the international and trans-national level is an advantage because it leaves more space for discursive democracy to operate. In order to examine his work, it is important to set out a couple of the underlying themes of his approach.

First, Dryzek does not set out explicitly his objection to state power and the role of discursive democracy in responding to such power in his work on global politics. As a result, it is necessary to try to reconstruct his basic opposition to the state and the role of discursive democracy. At bottom, Dryzek's concern seems to be that formal structures of state power constrain and limit the possibility for open-ended discursive processes that provide opportunities for critical self-reflection (see Dryzek, 2006, p. 25). On this interpretation, Dryzek's opposition to the state is that its formal structures constrain and limit the opportunity for genuinely open and non-coercive processes of communicative action based on critical self-reflection.

Second, in his earlier work, Dryzek appeared willing to accept some division of labour between different forms of political agency. He distinguishes between the state on the one hand and the public sphere or civil society on the other. Traditionally, political activism has been aimed at getting the state to do various things: a group that achieves this is included by the state. However, Dryzek argues that inclusion within the state only results in democratic gains when goods that the state does - or can - provide are at stake: "such gain can only be secured when the defining interest of the entering group can be connected to an existing or emerging state imperative" (Dryzek, 1996, p. 476). There are some things states are willing and able to do: when states do them, the people demanding those things are included. When states do not do them, they exclude people; in these cases, civil society may take over to provide the goods in question or continue to pressure the state. This position implies that there is some kind of division of labour between what we can reasonably expect states to do, and what civil society or the public sphere can do. Dryzek clearly favours civil society because he believes that it is "relatively unconstrained" (Dryzek, 1996, p. 482): the open-ended nature of political discussion is taken as a sign that coercion is less pervasive in civil society than in the state. On this view, "exclusionary" states are in some ways more democratic because they give more room to civil society and the public sphere. As Cochran notes, Dryzek's preference for civil society over the state becomes more and more pronounced. Furthermore, he sees the comparative absence of coercive institutions at the international level as a sign that global politics is more likely to be discursive, and as more attractive for precisely that reason:

Transnational discursive democracy does not have to be integrated with any particular set of formal institutions...Democracy is about communication as well as voting, about social learning as well as decision making, and it is the communicative aspects that for the moment can most straightforwardly be pursued in the international system (Dryzek, 2006, p. 25).

A third point is that Dryzek seems to see the public sphere as comprising all forms of political activity that go on outside the state. He does not draw many sharp distinctions beyond that: the public sphere includes both

NGOs and informal types of public mass action. However, it does seem possible to draw a rough distinction between different types of activity in the public sphere. NGOs are institutionalised: they have sources of funding, and can both make protests through various forms of direct action (Dryzek's example is Greenpeace's Brent Spar protest) *and* in some cases act to provide goods themselves (as when charities provide food aid during famines). Other parts of the public sphere or civil society are less formal than this, working through indirect forms of mass action or social influence such as boycotts⁸⁷.

Dryzek's criterion for who should participate in discursive democratic activity is voluntariness: "civil society consists of *voluntary* political association oriented by a relationship to the state but not seeking any share in state power" (Dryzek, 1996, p. 481)⁸⁸. It is also important to stress that civil society operates through various informal types of social pressure. Dryzek argues that it does not lack power to influence or change behaviour. However, the capacity to influence comes from social pressures rather than the direct exercise of coercive power⁸⁹. As a rough definition, then, discursive democracy might be described as "use of non-state based forms of political influence by groups who voluntarily identify themselves as having an interest at stake in a particular issue". As

⁸⁷ This distinction is sharper than the one drawn in some definitions of civil society:

Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated (LSE, Centre for Civil Society, accessed May 02, 2008, http://www.lse.ac.uk/collections/CCS/what_is_civil_society.htm)

I draw attention to the differences within civil society and the different forms of collective action that are possible there, rather than on the boundaries between civil society and other arenas.

⁸⁸ Dryzek later describes civil society actors as "self-selecting" (1996, p. 482).

⁸⁹ Dryzek claims that there are four ways such influence can work. First, by changing the terms of (official) political discourse. Second, by legitimating non-state forms of collective action such as sit-ins. Third, by constructing distinct policy-oriented forums. Fourth, by creating fear of political instability that prompts governments to respond (Dryzek, 1996, p. 481).

Cochran points out, Dryzek argues that participation should in general be as broad as possible: democratization progresses when franchise increases⁹⁰.

II) Three criticisms of global discursive democracy

My first criticism of this approach targets the claim that criteria for deciding who has an urgent claim to participate in particular decisions should be based on self-selection or voluntary choice. Cochran identifies this as a potential strength or advantage of Dryzek's approach, pointing out that it allows for democratization from the bottom up:

We must consider the possibility that the obligation to realize democratic autonomy may only be appropriate at sites or around issues where a problematic situation is identified by those affected, when say an international public sphere has been formed by interested individuals. This could be viewed as an alternative form of democratic autonomy, one that does not depend on rights guarantees, but works of its own accord to create access to international public deliberation and decision-making where it may not exist and only where it is required (Cochran, 2002, p. 521-2).

The main worry about this claim is the problem of how to identify groups that actually do require some form of democratic participation in decisions that affect them. Taking the formation of public spheres or discursive fora around a particular issue as a sign that the people who form them are the only people with interests at stake is not always satisfactory. The sweatshops and labour relations example provides an illustration of some of the problems that might appear here. The most basic problem is that in many cases, people with very large interests at stake do not and even cannot protest about their working conditions. This is because they may

⁹⁰ Increases in franchise should not come at the expense of the scope (the range of issues subject to democracy) or authenticity (the quality in terms of actual engaged participation) of democratic participation (see Cochran, 2002, p. 524).

be subject to sanctions from their employers. Another variation on this problem is that informal mass action may focus on one highly visible aspect of a particular problem to the exclusion of other areas of concern:

Campaigns to harness consumer demand for labour standards are inherently limited because they target production of brand-name good in export markets rather than conditions in the agricultural and informal sectors in Less Developed Countries, where workers are worse off (Elliott and Freeman, 2004, p. 129)⁹¹.

In these cases, the fact that ethically oriented consumers have become aware of the problem of sweatshop labour has led to various forms of informal protest and social pressure of the type Dryzek advocates. However, the public spheres that have formed around these issues do not seem to have succeeded in identifying and helping all the groups with interests at stake in the labour standards issue: commentators complain that “Consumer activism and corporate responses to it are still too narrowly focused on brand-sensitive firms” (Fung, O’Rourke and Sabel, 2001, p. 18). I do not wish to dismiss public activism of this type⁹². The growth of the anti-sweatshop movement has put the issue of labour standards on the political agenda and may, in Dryzek’s terms, have had some effect in changing the terms of the political discourse. However, I do not think it has succeeded in identifying all the groups that have significant or urgent interests at stake in this issue.

A second part of this objection is that while informal, self-selected groups may be quite effective at publicising particular issues, they may be less effective at generating solutions to the problems. Dara O’Rourke refers to this problem when he discusses a student-based sweatshop monitoring organisation, the Worker Rights Consortium. The main criticism of the consortium is that it represents “a ‘gotcha’ model of monitoring, more focused on identifying problems and embarrassing firms than on resolving problems” (O’Rourke, 2003, p. 18). Various commentators have

⁹¹ See also O’Rourke, 2003, p. 22.

⁹² For more generally sceptical comments about activism against globalisation, see especially Wolf, 2004, p. 6.

argued that workers themselves are often best placed to come up with practical solutions to the problems they face in the workplace:

Workers themselves have the strongest interest in combating sweatshop conditions...According to some researchers, employer-sponsored monitoring systems that aim to reform sweatshop conditions but fail to involve workers in a meaningful way are often ineffective or actually harm workers (Young, 2006, p. 125).

This suggests that, in many cases, some people will be better placed to come up with practical solutions than others. However, this raises the general question of deciding which voices to include or exclude from particular decisions. In general, looking at the problems with the claim that discursive democracy should be based on voluntary or self-selecting groups prompts us to ask why some groups do not participate or raise issues. In some situations, it may be that other costs conflict with their willingness and ability to do so. This is different from saying that they are simply not committed to democracy: it may be that they would take advantage of democratic and participatory opportunities if the costs of doing so were less onerous.

A second objection to Dryzek's argument targets his claim that civil society is a more attractive site for democratization because it is "relatively unconstrained" and the elements of coercion found in the state are less pervasive there. Dryzek sometimes appears to suggest that the lack of formal, electoral processes of accountability at the global level may actually be an *advantage* for discursive democracy because it leaves more room for discursive democratic innovation⁹³:

In applying [discursive democracy] to international politics, influence can be exercised over international governmental organizations, the content of treaties and diplomatic negotiations,

⁹³ This is slightly different from his earlier argument, that there are just fewer formal institutions at the global level than at the domestic level of the state: The earlier argument claimed that the lack of such institutions was a "golden opportunity" for discursive democracy (Dryzek, 1999, p. 35).

and the actions of states and corporations within the system (Dryzek, 2006, p. 27).

My main objection to this is that it is not at all clear that absence of constraint is the same as absence of domination. The fact that particular groups can exert influence or even informal power at the global level can in some cases be more of a problem than an opportunity. Basu gives a clear example of the sort of problem that can occur when there are limited constraints on the capacity to exercise informal sanctions:

Once consumers in a rich country are given the moral responsibility to enforce standards and they are told that in Ethiopia workers are paid ninety cents for a day's work, it is easy for the consumers to believe that this is not a living wage and begin a boycott of Ethiopian goods, unmindful of the fact that such a boycott could cause unemployment and drive the incomes of many workers down to zero (Basu, 2001, p. 62).

Similarly, focus on high profile and visible forms of abuse of workers may simply push those same workers into less visible but equally abusive and dangerous industries, as Basu points out with regard to efforts by rich countries to boycott imported goods made with child labour⁹⁴.

In these cases, the problem is that it is possible for civil society groups to act without establishing whether their actions have – or might have – damaging effects on the more basic interests of the sweatshop or child labourers they are trying to help. This suggests that the problems with civil society are not always just cases of obvious abuses of power for morally reprehensible ends. Even well intentioned actions can impose unintended costs on those the action is intended to help.

We can find a version of this criticism in Iris Young's work when she states, "unbridled freedom of expression and association leads to gross unfairness in an economic system where some interests and opinions have greater access to resources than others" (Young, 2000, p. 147). This basic argument has much intuitive plausibility. It may be true to

⁹⁴ See Basu, 1999, p. 1115-6.

some extent that the lack of formal constraints on civil society actors at the global level makes it easier for civil society to exert various forms of social pressure. However, the absence of formal constraints does not mean that inequalities of power and capacity to influence are also absent. It is important to be careful here, though: inequalities by themselves may not always be the problem. The fact that a particular view is held by people who lack the resources to publicise it is not by itself a reason to give those people the chance to make their view public. Similarly, the fact that a view is held by a minority is also not by itself a reason to give that minority disproportionate power, for example by giving them a veto over public policies⁹⁵.

Again, I do not think we should be too hasty in dismissing the role of civil society groups in these cases. They have managed to put some of the issues surrounding sweatshops and abuse of workers on the political agenda. However, many of the commentators on the sweatshops issue seem to converge on the view that informal civil society action is best viewed as a supplement or accompaniment to more formal systems of monitoring and enforcement. O'Rourke is particularly emphatic about this:

[With] increased transparency, improved technical capacities and new mechanisms of accountability to workers and consumers, non-governmental monitoring could complement existing state regulatory systems (O'Rourke, 2003, p. 25).

There are couple of things that are worth noting here though. First, O'Rourke's proposal that non-governmental monitoring could complement government action is far from being unconstrained: he alludes to a range of possible restrictions and rules that might be used to ensure that monitoring is transparent and accountable. Second, while O'Rourke stresses that monitoring should not be seen as a *long term* alternative to official, formal monitoring and enforcement, he also does not seem to see it as an attractive *short term* second best. Unconstrained

⁹⁵ Philippe Van Parijs criticises Phillip Pettit for suggesting that minorities should be given veto powers to protect their interests. Van Parijs's general argument is that vetos may allow certain minorities to preserve the status quo and interfere with programmes designed to promote justice (Van Parijs, 1999).

monitoring is not seen as a solution for a situation in which there is no background of more general political freedom or freedom of association, for example. I want to return to this point below.

My third objection to Dryzek's discursive global democracy is that it seems very vulnerable to a criticism that David Miller directs at theories of global civil society, and at Robert Falk's claim that people might become "citizen pilgrims" in a global polity. There are two strands to Miller's argument, one of which I find compelling, the other less so. In criticizing Falk, Miller says of the citizen pilgrim that,

There is no determinate community with which she identifies politically, and no one, except perhaps other members of her group, with whom she stands in relations of reciprocity (Miller, 2000, p. 96).

The first part of the argument is that a particular community with historical, cultural and affective cultural bonds is necessary to sustain social justice. This is the basic argument we find in Miller's work on nationality (see Miller, 1995). I want to leave this argument aside for the moment. The second argument is that ongoing relationships of reciprocity require more than just motivation to take a moral stance on political issues: they often also require willingness to compromise on certain issues. As Miller stresses, this may require us to change or alter our priorities – including our moral priorities - in some cases:

This involves, for instance, taking a long-term view of the community's interests rather than a short-term one. It involves recognizing when trade-offs have to be made between different objectives and trying to achieve a consistent balance so that, for instance, you do not find yourself simultaneously voting for tax cuts and for an expanded public health service (Miller, 2000, p. 85).

I think Dryzek's proposals about global discursive democracy are particularly vulnerable to the second part of Miller's criticism, namely that members of an emerging global polity have little reason or opportunity to recognise the need for trade-offs between different priorities. Dryzek's general claim that civil society actors can act in an unconstrained, self-

selecting fashion only seems to reinforce Miller's argument: without ongoing relations of reciprocity or cooperation, different actors have little incentive or opportunity to moderate their claims in the face of other moral priorities. For Dryzek, unconstrained civil society is sometimes seen as a way to escape from these demands for compromise and trade-offs. In civil society,

Discourse need not be suppressed in the interests of strategic advantage; goals and interests need not be compromised or subordinated to the pursuit of office or access; embarrassing troublemakers need not be repressed; the indeterminacy of outcome inherent in democracy need not be subordinated to state policy (Dryzek, 1996, p. 482).

For Miller, these claims might seem like an attempt to use civil society to escape from the demands of political responsibility altogether.

Oddly enough, Dryzek's own discussion of a specific example serves to emphasise the problem. He uses the example of the Greenpeace protest against the disposal of the Brent Spar oil platform. Dryzek argues that Greenpeace was freer than its opponents to "act in a reflexive fashion in pursuit of the environmental values the organization cherishes" (Dryzek, 2006, p. 123). The outcome of the protest was that Shell changed its proposal to sink the platform at sea, opting instead to dismantle the platform on land. This option turned out to be about as environmentally damaging as the original proposal. Nevertheless, Dryzek presents this as a victory for Greenpeace because the organization was able to "reinforce the idea that deep ocean marine environments should be off limits to dumping" (Dryzek, 2006, p. 123). However, it also turns out that the affair did great damage to Greenpeace's reputation because it later emerged that it had exaggerated the amount of oil that was left on the platform (Grant and Keohane, 2004, p. 20). It might be the case that Greenpeace's apparent unwillingness to negotiate formally with Shell led to an outcome that was not any better for the environment than dumping. It also seems that unwillingness to submit to more formal processes of environmental evaluation led to an outcome that ultimately damaged Greenpeace's reputation and credibility.

Similar concerns appear from the literature on sweatshops and labour relations. As Lance Compa points out, some protestors against sweatshops “see their role as keeping the heat on corporations through public exposure and denunciation rather than through negotiation for better codes of conduct, since any negotiation requires some measure of compromise with the hated corporate adversary” (Compa, 2003, p. 214). This can conflict sharply with the practices of unions, for whom collective bargaining will always require some measure of accommodation and compromise with employers and governments. The problem, as we have seen, is that an uncompromising moral stance on this issue may leave many workers in an even worse position if blanket boycotts or bans on certain practices cause factories to close and leave people unemployed. Here again, the moral priorities of the anti-sweatshop protestors conflict with other moral concerns. Milr would presumably argue that these different groups have little reason to accept trade-offs on their different priorities, and some may thus continue to make irresponsible and impractical demands at the expense of any real progress on the issue. For Miller, this type of compromise is only possible against the background of ongoing association and interaction we find within bounded national communities. We thus seem to have two extremes: at one end, Dryzek’s reflexive, discursive space in which groups form voluntarily around issues. At the other, Miller’s communities, which are bound together by ongoing relationships of reciprocity, as well as identities based on common culture, history and shared experience. I think Cochran is right to suggest that this division is too sharp. She holds out

[The] hope that shared problems, which are not limited to demarcated political realms, *can lead* to persons learning of the value of social cooperation and the creation of community through repeated interaction in relation to those problems (Cochran, 2002, p. 538).

This seems like a promising alternative to the sharp division between Dryzek and Miller’s visions. There do seem to be circumstances in which people stand in a more robust and demanding moral relationship that

requires compromise and trade-offs between different priorities. These situations do not seem to be confined within the boundaries of the nation state. Nevertheless, I think we need a more thorough account of why such situations might raise moral demands on the participants, as well as a more sociological account of how they might work to generate a sense of community.

I have raised three objections to Dryzek's claims about discursive democracy and its role in global politics. The first objection is that self-selection or voluntary participation may not be the best criterion for deciding whether particular groups have a very urgent interest at stake in a particular issue. Both Dryzek and – to some extent – Cochran seem to suggest that the fact that pressure groups or grass roots protests form around particular issues is a sign that the people involved have an urgent interest at stake. This claim seems very doubtful in a world in which different groups have very different levels of capacity to take part in civil society. As the sweatshop example makes clear, some workers are vulnerable to reprisals from their employers if they protest or blow the whistle on abusive working practices. These workers have to weigh up the costs of protesting against the costs of losing their jobs and livelihoods. Nevertheless, it is these workers who have the most direct interests at stake. The example suggests that we need to be wary of claiming that protests will naturally emerge around particular issues on the one hand, and also of the claim that, because nobody has protested about an issue, there is no demand for democratic participation.

The second criticism suggested that absence of constraints is not the same as absence of domination. The claim that global protest movements are not constrained by ordinary democratic rules and processes does not necessarily mean that they cannot inflict arbitrary outcomes on other people. A frequent complaint against the apparently effective anti-sweatshop boycotts is that they can leave workers worse off by closing factories. In this case, social sanctions and informal protests may be less attractive precisely because they can act outside the boundaries and constraints of ordinary political processes.

Finally, I suggested that Dryzek's argument is vulnerable to Miller's point about responsibility. Dividing issues up so that people can protest and exert political influence in an unconstrained way may lead people to act in a less responsible way. Again, moral outrage at sweatshop conditions often needs to be tempered by the awareness that these kinds of jobs may be the only source of income for some people.

The general source of these problems is Dryzek's apparent lack of attention to the possibility that people can stand in institutional relationships outside the state. In some cases, these relationships might constrain political action and make it difficult for people to use that action to protect their interests. In other cases, the fact that certain people stand in a particular kind of relationship may mean those outside the relationship need to take more care when wielding political influence. So, there is a danger in anti-sweatshop protestors using their influence over multi-national corporations without regard to the complex set of interests of workers, and of the need to weigh those interests against each other in some circumstances.

III) Dryzek and the eclipse of the state

Dryzek's discussion of globalization and the state starts with some fairly familiar points about globalization. He goes on to draw some interesting and distinctive conclusions about the way globalization might represent an opportunity rather than a threat for the discursive type of democracy he favours. There are two issues with this approach that I want to raise. First, it is not entirely clear why Dryzek thinks the potential eclipse of the state under conditions of globalization is a good thing. He is obviously critical of and even hostile towards the state as a political agent, but it is not always clear what the basis of his criticism is. Second, his criticism does not contain any account of the moral function states might serve, and the role conventional democracy might play in that moral function. I will develop the first point in this section and the second one in the next section.

As he acknowledges, Dryzek's description of globalization is a familiar one:

[The] organizations being undermined are states, whose territorial boundaries are eroded by increasing flows of trade, investment, finance, people, communications, ideas and cultures, which cannot easily be controlled by national governments (Dryzek, 2006, p. 298)⁹⁶.

However, in contrast to Held, Dryzek does not see this capacity of globalization as a threat to democracy. Instead, he suggests that the absence of formal, state based democratic structures is an opportunity for discursive democracy because it creates more room for democratic movements to act reflexively. Reflexivity is understood by Dryzek as "sensitivity to the degree to which actions themselves create the contexts for action" (Dryzek, 2006, p. 86). Although we now have a range of political institutions and actors at the global level, these institutions are not subject to direct control by formal democratic processes. For Dryzek, this means that they are more open to influence and social pressure by grass-roots, bottom up action such as protest movements and consumer boycotts. These actors are themselves more able to act reflexively, according to Dryzek. Whereas states and corporations are constrained by imperatives such as security and profit motives, civil society actors are able to reshape and adapt their motives more easily:

[This] uneven distribution of the capacity to act reflexively, biased it seems in favour of civil society actors who are disadvantaged when it comes to more conventional sources of political power, has important implications for the wellsprings of transnational democracy. If transnational democracy requires decentralized power in the hands of reflexive actors, then civil society actors should be central (Dryzek, 2006, p. 123).

⁹⁶ Dryzek draws this account of globalization from Beck (1999) and Giddens (2000). For more sceptical interpretations of the claim that globalization is undermining the state, see Evans (1997), Kymlicka (1999), Wendt (1999), Wolf (2004) and Bhagwati (2004).

On this view, globalization is seen as an opportunity for discursive democracy because the absence of formal structures of democracy leaves more room for civil society to act reflexively.

Cochran notes Dryzek's emphasis on the possibility that the state can undermine civil society through co-option and collusion. However, she expresses doubt about whether this is really likely. As she puts it, "[Dryzek's] primary concern is that oppositional civil society, the great motor of democratic change, can be significantly compromised through collusion with the state, but is this likely to happen in one fell swoop?" (Cochran, 2002, p. 535). I agree with this doubt, and think the criticism can be deepened by developing it in two directions.

First, it is not at all clear what it is about state power that Dryzek objects to. As we have seen, he clearly sees the potential undermining of the state by globalization as an advantage for civil society, but he does not explain what is so objectionable about the state in the first place. Dryzek's brief definition of a state is a good place to start in working out (somewhat speculatively) what his argument might be. The state "may be defined as the set of individuals and organizations legally authorised to make binding decisions for a society" (Dryzek, 1996, p. 475). On this view, the distinctive capacity states possess might be understood as their capacity to make decisions that apply (in principle) to all members of a society. One distinctive tool that states aspire to possess is a monopoly on the legitimate use of coercion. However, a focus on coercion alone seems too limited. Rather, an important and distinctive tool that governments can use is uniform regulations that apply across whole territories. These regulations are usually coercive, but perhaps do not always have to be so. As Young points out, the uniformity of state regulation is sometimes just as troubling for critics of state power as its coercive character:

Activities to meet needs and provide social services that come under the bureaucratic rationality of the state, moreover, disorganise the democratic communicative potential of family and community, replacing them with normalizing, dominating, and

pacifying regimes to which clients must submit or do without help (Young, 2000, p. 183).

However, it is important to ask whether regulations that stretch across entire territories are always seen as sources of oppression and conformity, or whether civil society groups actively pursue such regulation in any cases.

The sweatshop case provides a useful counterexample to Dryzek's claims. In particular, there is the frequently stated worry that bans on sweatshop and child labour in one area will push workers into more dangerous employment in other areas. As Basu points out, the political and moral challenge is to identify which practices are always unacceptable, and enforce bans on them:

There seems to be some agreement that some minimal restrictions, such as children being prevented from working in hazardous conditions or under bonded labour conditions, are worth enforcing legally (Basu, 1999, p. 1115).

Similarly, Basu stresses that it is important to consider which kinds of blanket legislation are most effective. With regard to prohibition of child labour, "if a ban is deemed desirable, a good way to implement it is by making schooling compulsory. This is because a child's presence in school is easier to monitor than a child's abstention from work" (Basu, 1999, p. 1115). In both cases, the important point is that these bans should operate across whole societies in order to ensure that all potential victims are protected. This suggests that there are at least some cases where the distinctive capacity of the state to impose rules that apply to whole societies can be beneficial in protecting very vulnerable people.

Although civil society groups have had some effect in bringing sweatshop conditions to public attention, many commentators have worried that one possible outcome of this focus on civil society action and informal sanctions is that it may undermine more traditional institutions for protection of workers rights: namely, trade unions. Trade unions require state legislation in order to act against corporations: some unions thus ask "will a rush to corporate codes of conduct undermine effective labour law enforcement by governmental authorities and undermine workers'

power in trade unions?" (Compa, 2003, p. 211). Because unions operate very close to the boundary between state and civil society, they seem precisely the sorts of institution that Dryzek would object to, since they seem at greater risk of co-option because of their proximity to the state. However, as we have just seen, unions and the workers they aim to protect often need some form of state legislation, because this is the best way to ensure that all members of vulnerable groups such as child labourers are actually protected. Furthermore, while Dryzek worries about co-option of civil-society groups by the state, he seems to ignore the possibility that civil society groups may also be vulnerable to co-option by corporations. As O'Rourke points out, there is concern that NGOs are also vulnerable: "Some critics warn that companies are controlling these processes, co-opting NGOs by changing them from watchdogs to 'partners' and undermining strong local laws and unions" (O'Rourke, 2003, p. 22). Even if NGO monitoring is attractive, it may be better if it is used to expose violations of national, government legislation. This may be preferable to imposition of unclear standards by NGOs. Compa cites another relevant (but anecdotal) example, in which an NGO representative took part in negotiations with a firm. In this case, factory managers bombarded the trusted local NGO representative with "arguments that trade unionists are used to hearing and refuting, but which were new and plausible to him" (Compa, 2003, p. 214). The upshot was that "He emerged from a meeting with management agreeing that workers had to increase productivity and work more diligently before wages could be improved and before supervisors could ease their discipline" (Compa, 2003, p. 214). The contrast between trade unions and other NGOs is that unions are more used to using local labour legislation in negotiations with corporations. In principle, they are also more directly accountable to workers than other NGOs – although this may vary in practice. In these cases, proximity to government may be an advantage for unions, because legislation gives them a tool to use against firms.

The upshot is that all these cases undermine Dryzek's opposition to the use of state power – an opposition that is rooted in the idea that formal political mechanisms suppress and distort the reflexivity of open ended

discursive political processes. The arguments outlined suggest that civil society groups -and particularly unions - need states in order for their protests to become effective. Different states might (in principle) make legislation that is sensitive to local conditions and try to ensure that it is applied across the whole society. Unions have a role to play in ensuring that such legislation is put in place and used once it is in place. As Young points out, civil society activists at the global level have begun to recognise the value of strengthening state level legislation along with the capacities of unions: "Most analysts conclude that NGO activity should work to support unionization and to pressure for greater government protection of workers' rights to form or choose unions" (Young, 2006, p. 129)⁹⁷. This contrasts sharply with Dryzek's approach, in which civil society should be kept separate from the state, and is even seen as plausible substitute for state action⁹⁸.

A second way to develop Cochran's criticism of Dryzek's argument is to ask whether there really is much evidence for the claim that states tend to co-opt or undermine civil society activity. The sociologist Peter Evans argues that evidence suggests that precisely the opposite is true. Citing evidence from studies by Robert Putnam and several others, Evans argues that it is more accurate to view the relationship between civil society and the state as a symbiotic one: "just as modern markets depend on economic decisions being made in a predictable institutional framework, likewise civic engagement flourishes more easily among

⁹⁷ This contrasts somewhat with her emphasis in *Inclusion and Democracy* on cosmopolitan regulation. Young appears to conclude that state action is more appropriate in this case.

⁹⁸ Young's argument here also seems to undermine a further point that Dryzek makes:

Irrespective of what interest groups seek, states must meet certain imperatives. Unfortunately for advocates of state-sponsored group representation such as Cohen and Rogers and Young, promoting the organization of disadvantaged groups is not one of those imperatives and I can imagine no scenario under which it becomes one (Dryzek, 1996, p. 478).

Young's example suggests that this is almost a case of wilful myopia on Dryzek's part. Pressure from NGOs does seem to be one conceivable scenario under which states might feel compelled to adopt better labour legislation. The scenario is not beyond imagination.

private citizens and organised groups when they have a competent public sector as an interlocutor” (Evans, 1997, p. 79). This is not to deny that the state and other public institutions could be threatened under conditions of globalisation. Evans argues that this might come about because of the ideological commitments of powerful global actors: “Bent on maximising its room for manoeuvre, trans-national capital could easily become an accomplice in the destruction of the infrastructure of public institutions on which its profits depend” (Evans, 1997, p. 72). The point, though, is that the retreat of these institutions would weaken civil society. This is because “a move toward less capable and involved states will make it more difficult for civic associations to achieve their goals and will thereby diminish incentives for civic engagement” (Evans, 1997, p. 81). This directly contradicts Dryzek’s claims that civil society is most likely to flourish in areas that are not usually reached by state activity, and that an exclusionary state is more likely to be accompanied by a flourishing and active civil society⁹⁹. The example of trade unions that I cited above can be used to illustrate and reinforce this point. Trade unions actually require a competent and active state because they use state labour legislation to hold firms to account for abuses of their workers. Broadly in line with Evans’s analysis, this suggests that unions need the state in order to carry out many of their aims. Evans’s view is also broadly in line with the approach that Nancy Fraser takes, and which Cochran cites with some approval. On this view, the concern with the possibility that civil society might be co-opted is seen as less pressing:

[More] important is the concern that publics become ‘strong’ in the sense that Nancy Fraser (1992) has outlined (i.e. the need to

⁹⁹ By “exclusionary” state, Dryzek means a state that does not attempt to represent civil society interest groups in political processes. Perhaps in order to make clear the distinction between left- and right- wing approaches to civil society, Dryzek distinguishes between actively exclusionary states and passively exclusionary states. The former actively try to repress and destroy civil society associations, as with Thatcher’s attacks on the union movement. The latter simply leave minimal constitutional protections of civil society in place (see Dryzek, 1996).

make radical change real through access to parliamentary decision making) (Cochran, 2002, p. 535).

We thus have two ways to reinforce Cochran's argument against Dryzek. First, Cochran suggests that Dryzek is overly concerned about the possibility of states co-opting civil society groups. However, this concern can seem unmotivated if we do not have a clear idea of what is distinctive about state power. I have tried to suggest an answer to this question by emphasising states' capacity to use laws that (in principle) apply to all the members of a particular society. The sweatshop example then revealed why this capacity can be useful in some circumstances – although it is important to note that it is not clear how far we can generalise from this particular example. Second, there is reason to challenge Dryzek's claim that a strong or capable state *will* necessarily undermine civil society activities. Evans argues that a capable and active state can mobilise and motivate civil society by providing incentives to press the state to act to help particular groups. The sweatshop example illustrates this point by showing that trade unions need an active state to achieve many of their aims¹⁰⁰.

As I stressed in the outline of Dryzek's work above, it is important to note the way his emphasis changes from a possible division of labour between the state and civil society, towards a preference for an unconstrained realm of civil society action in his more recent work. I think this change in emphasis is regrettable because there is a large – and in my view fairly obvious – blind spot in the latter approach. Dryzek suggests that the absence of strong, centralised, state-like political institutions in the

¹⁰⁰ A further point Dryzek might make is that an active state might undermine the distinctive claim that politics is an intrinsically valuable activity, precisely by encouraging people to think in terms of strategic and instrumental advantage. Jon Elster argues that there is no necessary contradiction between an activity being instrumental and being intrinsically valuable: chess is an activity that has the instrumental aim of winning the game, but is also intrinsically valuable. A game chess that could never be won would lose its intrinsic value. Similarly, political deliberation that never resulted in a positive outcome would not be politics at all. It might be a form of conversation or argument with its own intrinsic value but it would be wrong to call it politics, according to Elster (see Elster, 1997).

international system is a “golden opportunity” for discursive democracy (Dryzek, 1999, p. 35). This is because decentralised institutions are more open to the influence of discursive democratic processes. As Dryzek puts it,

[Decentralisation] is not a sufficient condition for democratic control, but it is a necessary one. The lack of centralised authority in transnational governance is at least one less impediment to democratization (Dryzek, 2006, p. 108).

The problem here is that, in comparison to domestically democratic states, some of the other minimal necessary conditions for meaningful civil society association are also missing¹⁰¹. Dryzek claims that, “[Beyond] laws protecting the basic citizenship rights of expression and association, one should not expect much in the way of positive state action to promote the well-being of civil society” (Dryzek, 1996, p. 484). Whatever we think of this claim about states promoting civil society, it is clear that there are many states that do not even provide these minimal rights of free speech and association. Given the importance of free speech and association for the formation of unions, this is especially pressing for those who campaign for improvements in labour standards. As a result, Elliott and Freeman in particular stress that pressure towards freedom of expression and association within states that do not yet accept or practice those standards is a long term goal. They stress that it is important not to denigrate the achievements of civil society, NGOs and unions. However, such achievements remain a second best when compared to achieving

¹⁰¹ More generally, the fact that one of several necessary conditions for democracy is met should not lead us to undue optimism. To illustrate, consider left-communitarians like Miller and Walzer. They might argue that a strong sense of communal, cultural and even national identity is necessary to sustain various forms of democracy and social justice. However, if these strong identities are present but protections for minorities and individual rights are not present, the strong identities may work against democracy and social justice. So, for example, some strong religious affiliations may condone the oppression of women. I do not wish to endorse Miller and Walzer’s arguments about social justice here. Rather, I am trying to make the more general point that the existence of one necessary condition for democracy might work *against* democratization when other necessary conditions are absent.

freedom of expression and association that are seen as preconditions for genuine bottom-up determination and enforcement of labour standards by the people most directly affected by their violation¹⁰².

The attractive aspect of Dryzek's arguments about discursive democracy is that they encourage us to think in more practical terms than some cosmopolitan thinkers. Because institutions of global governance are complex, "it is more practical to think of the democratization of particular mechanisms that do exist rather than their subordination to some grand institution-building logic. It is in complex situations that such grand logic is likely to go astray (or become coercive)" (Dryzek, 2006, p. 161). This approach contrasts quite sharply with the approach of more obviously cosmopolitan thinkers like Held and Fraser. For Fraser,

[Transnational] movements are counterpowers. Their efficacy requires the existence of institutionalized sovereign powers that can be constrained to act in the general interest. Failing major institutional renovation, neither transnational social movements nor public sphere can assume the emancipatory democratizing functions that are the whole point of public-sphere theory (Fraser, 2005a, p. 7).

Dryzek's worry about the possible consequences of grand institution-building schemes does seem to the point here. Increasing the power of large scale institutions is potentially troubling in the absence of even the most basic freedoms of speech and association for some of the poorest and most vulnerable people¹⁰³. However, I think he goes too far in seeing

¹⁰² Similarly, Bhagwati points out that many trade unions in poor countries are still campaigning for the most basic rights necessary to operate effectively:

Many unions from other poor countries support the AFL-CIO efforts because they want solidarity from the organized unions in the United States in their struggle to win civil and political rights, including the right to organize (Bhagwati, 2004, p. 246).

¹⁰³ Andrew Hurrell makes this point with regard to cosmopolitan redistributionists such as Pogge, Beitz, or Caney: "if serious efforts to reduce global poverty do come about, then the potential power of external actors will grow, and the dangers for democratic politics and political autonomy and for legitimate difference will come into starker relief" (Hurrell, 2001, p. 47).

global discursive politics as a realistic and attractive long term alternative to genuine change in the direction of greater freedoms of association and expression for the worst off. At its worst, his approach seems vulnerable to precisely the criticism that has been levelled at NGOs who aspire to greater participation in WTO decision making. As Narlikar points out, it is possible to contrast representatives of democratic governments in the WTO with NGOs:

In the case of democracies, these representatives bear some accountability to their peoples, no matter how far removed they are from the electorate in practice. By contrast, not even the best of NGOs are democratically elected or bear any form of legal accountability to the society that they claim to represent (Narlikar, 2005, p. 136).

On this view, the long term aim might be to encourage the domestic democratisation of the members of the WTO. The use of NGOs to act as a source of additional democratic legitimacy seems to be seen as a rather poor substitute. This contrasts with Dryzek, who sees the use of NGOs and other civil society movements as a realistic long term substitute for more structured democratic participation even at the domestic level.

My own view is that we need to think more carefully about the possible role of NGOs, civil society actors and democratic states in the *short term*. What I want to avoid is a situation where citizens of non-democratic states are entirely cut off because their governments are non-democratic. Dryzek's view holds out the possibility of some forms of democratic action cutting across the boundaries of non-democratic states, but I think this is something of a false promise if this is not directed towards the ultimate aim of providing the citizens of those states with their own democratic institutions. My position is much closer to the views expressed by Carothers and Slaughter, who both seem to take civil society and democratically inclined government officials as potential sources of democratisation *within* non-democratic societies. Again, this contrasts with the possibility of civil society actors in democratic societies acting for

or on behalf of citizens of non-democratic states¹⁰⁴. It also requires us to think about what kind of democratic and moral demands might fall on these groups and individuals, and how they might express their democratic aspirations in the absence of familiar electoral institutions.

IV) Democracy and the moral function of the state

To conclude this discussion, it is worth pausing to reflect again on Dryzek's attitude to the state. It can sometimes seem that Dryzek repeats a basic mistake of liberal political theory. As Shapiro puts it, "the characteristic liberal mistake is to focus on the forms of tyranny performed by and through government as the only - certainly the principal - kind of tyranny that should worry political theorists" (Shapiro, 1999, p. 31). The obvious initial response is to emphasise that "Government can be an instrument for mitigating domination as well as a source of its generation" (Shapiro, 1999, p. 32). As I argued above, the distinctive way that governments do this is by imposing legal rules that (in principle) apply to all members of a political community. This capacity can be used to mitigate domination, for example by preventing unscrupulous employers from allowing children to work in dangerous industries such as glass making. It can also be used to share burdens widely across societies, so that there is less chance that one particular group is dependent on another for basic resources. The problem is how to use democracy to keep this power within reasonable limits. Institutional

¹⁰⁴ A further point is that Dryzek sometimes expresses nostalgia for the type of opposition that took place in totalitarian states. For example, the democratisation of Eastern European countries after 1989 left "[Little] or nothing in terms of oppositional public spheres. The gain was a liberal democratic state, the loss was of discursive democratic vitality" (Dryzek, 1996, p. 485). This only seems very troubling if we think that the loss of oppositional public spheres was total or permanent. It would be somewhat eccentric for campaigners to continue campaigning for an end to Soviet communism after the end of Soviet communism, but they might move on to other issues. The other alternative - that we might sustain totalitarian states in order to indirectly encourage the vitality of oppositional public spheres - just seems too repellent to contemplate.

relationships carry a combination of benefits and risks, and the problem is how to keep the risks under control. My worry about Dryzek is that he sometimes exaggerates the lack of institutional structures and institutional relationships at the global level. On the one hand, it is not clear that a lack of institutional structure necessarily *is* a good thing, since as we have seen, it is possible for people to impose moral priorities such as elimination of child labour without consideration of the broader needs of children. On the other hand, it is also not clear that the absence of formal democratic structures at the transnational level will make the institutional structures we do have more amenable to the types of unconstrained democratic control that Dryzek advocates. The problem is rather that they are different from those we find at the level of the state and will need different forms of democratic control. Dryzek sees the apparent absence of institutional structures at the global level as a golden opportunity for discursive democracy. My own view is that the absence of familiar democratic structures requires us to look carefully at the distinctive institutional relationships that *can* appear when different states have uneven levels of democratic capacity, and think about the kinds of democratic requirements these institutional relationships raise. So, for example, what are the democratic moral requirements on a trans-national corporation that employs citizens of a poor country with no independent trade unions, weak welfare provision, and no democratic political processes?

Dryzek argues that mainstream, conventional democratic theory has tended to focus on the connection between democracy and state power. He cites Dahl as an example: "Advocates of the democratic process have always meant it to be applied to the state" (Dahl, 1989, p. 37)¹⁰⁵. Since it is one of the central aims of this thesis to argue that there are institutional relationships outside the state that raise moral demands for some form of democratic participation, I am inclined to agree with Dryzek's rejection of this claim. However, I do not think Dryzek provides a clear or systematic

¹⁰⁵ Since Dahl is discussing democracy in the context of an anarchist challenge to the possibility of legitimate coercion, Dryzek may be quoting him out of context here.

account of the moral position that underlies his argument about democracy. The basis of his moral claims seems to be that the unconstrained political participation that is possible outside the influence of the state is preferable to the more structured forms of participation that we find in decision making by democratic states. To some extent, we have already seen some reasons to be suspicious of this claim. The discussion of the sweatshop example shows how civil society actors in the anti-sweatshop movement are sometimes in a position to impose moral priorities on poor and vulnerable people without reference to, or consideration of, the full range of needs those people have. When - in an attempt to close sweatshops - they impose boycotts that threaten to leave workers destitute, we have a case of this kind of imposition and it is necessary to acknowledge that it is morally troubling. Dryzek may reply that these actions are not morally troubling because they are not coercive, but the example only serves to emphasise that this objection is not convincing. To be sure, the anti-sweatshop protestors are not using *state* coercion against the owners or operators of the sweatshops. However, they are using a sanction – the threat that they will withdraw their business – against the owners in order to get them to comply. This is still coercion, on any conventional understanding¹⁰⁶. It also impacts indirectly on the workers if the effect is to close the factories that are the sources of their livelihood. Dryzek suggests that civil society “consists of voluntary political association oriented by a relationship to the state, but not seeking any share of state power; that is, association is self-limiting” (Dryzek, 1996, p. 481). Limited to what, though? In his discussion of the ways that civil society can make its power effective, Dryzek does seem to include forms of action that count as coercive. This includes the threat of political instability, for example, and possibly the use of mass action such as boycotts. His discussion of the Greenpeace action against Shell’s plans for Brent Spar might also be counted as a form of coercion, since Greenpeace could use the threat of adverse publicity against Shell. The problem is that Dryzek’s account of what counts as civil society action is

¹⁰⁶ See Hart, (1961), for example.

broad enough to include some forms of coercion. However, if his objection to state action is that it is specifically coercive, he is in danger of contradicting himself. More generally, I do not think Dryzek gives any clear or convincing account of the moral demands that fall on states; again, because of this his suspicion of state action can seem rather unmotivated. I think we need an account of the moral demands that fall on the state; I will give a brief outline of what this account might look like, in part to distinguish my own position from the one Dryzek offers.

I want to emphasise four basic features of the moral position that informs my account of the state.

i) Our moral duty to all other people is expressed in terms of a duty to provide everyone with the basic resources necessary to live what counts as a successful or flourishing life. Several authors make similar claims¹⁰⁷. However, there are predictable controversies about both the content and the institutional implications of these claims. I cannot address these controversies here: my aim at the moment is the more modest one of showing how a moral claim like this fits with the idea that the state is a moral agent – precisely the account that I think is missing from and distorts Dryzek’s understanding of the state.

ii) The state is a moral agent in the sense that it is one institutional structure that allows for the provision of at least some of the necessary basic resources. I agree with Bob Goodin’s claim (Goodin, 1995) that the state is a moral agent, but am somewhat dubious about his claim that the existence of such a collective moral agency lets individuals off the moral hook. I would argue instead that the duty to promote individual flourishing requires institutions. More specifically, it requires institutions that enable people to fulfil parts of their moral duty without undermining either their

¹⁰⁷ See especially Raz, (1995) and Fabre (2003). Raz’s formulation is, “every person should have access to an adequate range of options to enable him to have a successful life” (Raz, 1995). Raz argues that his view of these matters has both conservative and radical implications. The conservative implication is that it does not matter morally that not everyone has access to the same options, whether comparing within or across societies. The radical implication is that some options may have to be changed if all people are to have access to them (Raz’s example is gay marriage).

capacity to live a successful life or their more general capacity for moral agency¹⁰⁸. The state is one such institution. However, I think it changes people's moral responsibilities rather than exculpating them. For example, once we have a state, we have a moral responsibility to strengthen and sustain its capacity to provide a successful life for all citizens. This responsibility will hopefully be less onerous than the responsibility to provide a flourishing life that might hold in the absence of a state. However, part of the reduction of that burden might be in the service of enabling people to fulfil more immediate moral demands, such as duties to family and friends.

iii) The state's capacity to fulfil the duty to provide a successful or flourishing life requires the concentration of power. This may be necessary to prevent people defecting on their duties in ways that undermine the state. However, the concentration of power can also take forms that pose threats to both people's moral agency and to their capacity to live a successful life. As a result, restraints on the state's capacity to exercise its power are needed.

iv) Democracy is often presented as one of the key ways in which this power is restrained. There are obvious and large controversies about how – and even whether – this works in practice. However, democracy is most often defended in terms of its tendency to do better than other forms of government when it comes to protecting the rights and even the well being of democratic citizens.

These four points are rather vague and abstract. I hope they do not sound trite. My purpose in providing this outline is to try to make a link between a moral understanding of the role of the state and an argument about the moral function of democracy. This account is absent in Dryzek's work and I think this is why his suspicious attitude to the state often seems unmotivated. Without an account of this sort, it is not clear

¹⁰⁸ The sweatshop example can be used to illustrate this: a parent may have a moral duty to provide for her family, and be in a situation where a job in an illegal sweatshop is the only way to fulfil this part of her moral duty to them. However, a job like this with long hours and poor conditions may undermine both her ability to live a more generally successful life, and to express other forms of meaningful moral agency.

why the state is the target of so much criticism. Furthermore, I think the outline above pushes us to think more carefully about the different moral functions democracy might play. The argument implies that there may be other ways to fulfil these moral functions, and that we might compare their effectiveness with the effectiveness of the state. Perhaps most importantly, the argument emphasises that although the state provides a specifically institutional relationship that is designed to promote a set of moral ends, the nature of the relationship itself poses a potential threat to those joined together by the state. Again, democracy as it exists within states can generally be understood as an attempt to reduce or eliminate that potential threat. Dryzek's question is whether there are forms of participatory and activist politics that can flourish in a global situation where an overarching global state is absent, but where there are vast differences in the distribution and types of power available to different actors. Although he acknowledges that civil society is not inevitably a force for good, he does not address the question of whether democracy might be necessary to *restrain* some of the political actors he discusses. I think this is the central difference between the approach I advocate and Dryzek's approach. To some extent, Dryzek focuses on the possibility that seemingly small-scale and powerless civil society actors – often treated with condescension in the literature on globalization – can actually wield more capacity for change than is acknowledged. This question seems to be pursued to the exclusion of the question of whether or how such power can be exercised *responsibly*. This is why I am inclined to find Dryzek's approach unattractive. Furthermore, because he makes a virtue out of the flexibility and lack of constraints on the civil society actors he favours, it is not open to him to respond by saying that his account is just incomplete, and that further details about possible constraints are forthcoming. The problem thus seems to be a deep one. The flexibility that Dryzek favours is not always morally attractive, but it lies at the heart of his distinctive approach to global democracy.

Applying this broad moral approach to the sweatshop issue, it is important to note that the specific actions required to even begin attempting to fulfil the basic moral demand will often come into conflict in

practice. As Young points out, developing countries often face a dilemma between providing decent working standards and encouraging development.

There is no excuse for national and state governments in the United States not to enforce labour standards in the apparel industry, or any other industry, and the record here is rather poor. Some governments in less developed countries, however, can say with some justification that they are under severe constraints that prevent them from improving working conditions... These governments will say that they desperately need investment and jobs, and that to get them they must compete with other poor states to promote a 'favourable' investment climate (Young, 2006, p. 118).

Now, we saw in the introduction that this kind of conflict is not necessarily the real issue. Kucera (2001, 2004a) and others have argued that in many cases, higher labour standards do not prevent companies from investing in countries. The problem for many developing countries is more the *perception* that this is the case, and the pressure this perception exerts on them to lower their standards. In any case, the problem remains that the governments themselves feel under some pressure not to enforce or implement effective standards, and that this pressure may come in part from the desire to attract jobs that offer some of their citizens an improved standard of living. However, the moral significance of the other actors involved in these cases is not that they are relatively free from these constraints and the apparently painful trade offs that often have to be made. Rather, it is that the constraints on the state in this case mean that it is not able to lighten the moral obligations that apply. For corporations, the fact that the state is not able or willing to enforce labour standards means that they have more direct obligations to ensure that some such standards are met. For individual consumers, the possibility that companies are using sweatshop labour and states are unwilling or unable to prevent this generates a more direct obligation to press for higher labour standards. Dryzek might argue that the fact that western consumers are not constrained by the same moral conflicts facing

developing country governments allows them to be more uncompromising in their moral demands. I think this would pick out the wrong kind of flexibility. The relevant kind of flexibility in this case is that wealthier western consumers can adapt their demands for goods at little personal cost. As Young points out,

Middle-class clothing consumers in the developed world...benefit from the large selection and affordable prices that the industry offers them. Persons who benefit relatively from structural injustices have special moral responsibilities...because they are able to adapt to changed circumstances without suffering serious deprivation (Young, 2006, p. 128).

Because the state is an ongoing, institutional association, it generates a demand for political responsibility understood as a need to balance different moral demands when they come into conflict. However, as Young points out, it is wrong to suggest that the absence of the state somehow absolves people of responsibilities of justice, or of the need to consider how different moral priorities might conflict. As she points out by referring to Locke's social contract theory, civil society does not imply an absence of structural or moral constraints:

[The] need and desire for political institutions arises because socially connected persons with multiple and sometimes conflicting institutional commitments recognize their relationships are liable to conflict...The moral status of political institutions arises from the obligations of justice generated by social connection: such institutions are instruments through which these obligations can be discharged (Young, 2006, p. 105).

My worry about Dryzek's approach is that he misses the point that the obligation to weigh different and possibly conflicting interests falls more heavily on individuals and non-state institutions when state institutions are weak or absent. When states are unwilling or unable to enforce labour standards, the moral obligation to ensure they are met falls in part on corporations, in part on consumers, and in part on workers themselves, and requires these actors to weigh this obligation against other commitments. So, for example, western consumers considering

boycotting products with the aim of closing sweatshops are required to weigh this aim against the need to protect the livelihoods of poorer citizens of developing countries.

V) Conclusion and Summary

Dryzek's argument about global discursive democracy is distinctive because it takes up the claim that a *lack* of conventional democratic political structures is an opportunity for a different form of democracy. One way to summarise this position is to see Dryzek as taking an argument about the function of civil society in Soviet and post-Soviet states and applying it to the global level. As Michael Walzer points out, this approach can be found in the work of anti-Soviet dissidents like George Konrad. Konrad "urged his fellow dissidents to reject the very idea of seizing or sharing power and to devote their energies to religious, cultural, economic and professional associations" (Walzer, 1990, p. 21). Walzer rejects this idea in part because civil society "left to itself, generates radically unequal power relationships, which only state power can challenge" (Walzer, 1990, p. 23). So, Walzer's objection to civil society that is not in some way constrained by the state is that it may itself produce some forms of domination¹⁰⁹.

The arguments in this chapter can be seen as an attempt to deepen this criticism and apply it to the specific problems of a seemingly global political movement against sweatshops. The first three criticisms of Dryzek's argument looked at problems with his claim that global discursive democracy is attractive because it is unconstrained. The voluntariness argument is unconvincing because we cannot simply take people's actual participation in anti-sweatshop protests at face value. There are people with more urgent interests at stake who face constraints on their capacity and willingness to take part in monitoring or protesting about working conditions. Furthermore, it can be argued that those people are in many cases best placed to comment on working conditions

¹⁰⁹ See Brown (1999) for criticism of the idea of global civil society.

and even to propose solutions to the problems they face. Similarly, the claim that protest movements are attractive because they can act in an unconstrained way is unattractive. Often, this lack of constraint may lead to people with greater power imposing moral priorities on less powerful people without regard to a broader range of considerations. Interestingly, the sweatshop case shows that this can happen even when the more powerful people have quite good intentions. It is possible to impose moral priorities such as opposition to sweatshop labour through the kinds of informal mass action Dryzek favours. However, we have seen how this can actually make some poor and vulnerable people worse off, and I think this should be seen as more morally troubling than Dryzek acknowledges. Finally, Dryzek's argument is vulnerable to Miller's point that some forms of global civil society action work against the traditional demand for political responsibility that - for Miller in particular - is only found in nation-states. If global discursive democracy is unconstrained and people can join and leave movements at will, there is no demand for them to weigh different and conflicting priorities against each other. I agree with the general point about responsibility, but I hope to show that relationships that generate these kinds of responsibility are not confined within the state. To give a brief illustration, sweatshop workers themselves are in a relationship in which their job provides them with basic means for survival and possibly a higher standard of living than they could otherwise expect. This is an ongoing relationship. If they press for better working conditions, they may have to weigh this against other considerations such as competitive advantage against other firms. It is worth stressing that this is not an attractive trade off to make. However, the point is that the workers are not simply in a position where they can act without regard to a range of important considerations. This contrasts quite starkly with the position of Western consumers who can often make choices about which goods to buy without much personal cost.

The point I want to take forward from this is that it is worth looking for ongoing institutional relationships that *can* provide some of the minimal conditions for political responsibility that Miller stresses. I do not see why we must limit these relationships within the boundaries of the state.

In the second and third parts of the chapter, I developed two points about the role of the state in Dryzek's argument. In the second part, I suggested that it is not clear exactly why Dryzek objected to the use of state power. In general, I think he is too focused on the use of state power as a source of domination but neglects its role in preventing or mitigating it. Furthermore, I argued that one of the distinctive things states can do is to make regulations that (in principle) apply across whole territories. This may be troubling if the rules states make are insensitive to legitimate differences between people. However, the sweatshop case shows how these types of rules can also be useful in some circumstances. For example, setting minimum standards that apply across all industries in a territory may prevent child workers in highly visible industries such as clothing manufacture from being driven into less visible industries such as agriculture or production of raw materials.

Finally, I attempted to give a brief outline of the moral function states might serve. Although a fuller account will be given in the more constructive chapters of this thesis, I think this is important at this stage because this type of account is missing from Dryzek's argument and this can make his suspicion of the state seem rather unmotivated. The basic argument I gave is that the state is one of the institutional structures through which a moral obligation that is owed to all people can be discharged. If the state did not exist, the obligation might fall more directly on individuals, making it more onerous. There are a couple of points to stress about this. First, the absence of a state does not make the obligation void; if anything, where the state is absent, the obligation may become more demanding. Second, even where the state does exist, its existence does not nullify the individual moral obligation. Rather, the obligation becomes an indirect one: people are required to sustain the state, on the assumption that this is generally the best way for them to ensure the obligation is fulfilled. Third, the state can itself pose a threat to people's ability to lead successful lives, and this threat means state power should be limited in some ways. I suggested that democracy plays an important role here.

We thus have three main points I want to take forward for further discussion. First, the possibility that there may be institutional relationships outside the state that generate something like the political responsibility that Miller stresses. Second, the point that states can mitigate domination, and that one of the distinctive ways they do this is by making rules that apply in principle to all citizens. Third, that states are one of the institutional means by which moral responsibilities can be discharged, but that these very institutional structures pose a potential risk to people and that this risk might be limited through democracy.

As a final point, I want to add a comment on Cochran's point about bottom-up democratisation. Cochran stresses the contrast between the grand, cosmopolitan institution-building approach that we find in Held, and the bottom-up, civil society based approach we find in Dryzek. I generally find the bottom-up process attractive, in particular because I am concerned about the effects that cosmopolitan institution building might have on localised individuals and groups. However, I am not convinced that the unconstrained, rather unstructured approach that Dryzek stresses really qualifies as bottom-up at all. One of the charges levelled at protestors such as the anti-globalisation movement is that they are rather irresponsible and privileged members of wealthy societies. Wolf gives a very sharp statement of this point: "They fall rather in the category of spoiled children" (Wolf, 2004, p. 10). This can seem like rather a cheap shot, but perhaps it has a more serious point behind it. When sweatshop workers live in countries with limited rights to free speech and association, or face pressure from employers, it is very hard for them to make their voices heard. As a result, it seems inappropriate to claim that protest movements are really bottom-up at all. The rules that provide even a minimal degree of credibility to the claim that political protests in western countries represent those with the most urgent interests at stake are missing. This presses us to think about how we might identify those who have genuine and urgent interests at stake, as well as asking how and why they could be included in decisions that affect them.

Three. Nagel: Statism, Global Justice and Equality

Outline of the Chapter

- I) Introduction
- II) Arguments for statism: coercion and co-operation
- III) Nagel: Coercion, collective authorisation and global justice
- IV) Basic Goods, Coercion and Voluntariness
- V) Dependency, the State and Democracy
- VI) Derivative Legitimacy
- VII) Normative Perversity Again?
- VIII) Two examples
- IX) Coercion, dependence and basic goods
- X) Conclusion and Summary

I) Introduction

My aim in this chapter is to respond to statist arguments that attempt to confine principles of justice within the boundaries of the state. My main target is Thomas Nagel, who argues that a combination of coercion and collective authorisation by fellow citizens provides the source for claims to egalitarian justice. Although I look at other statist arguments in section I below, Nagel is my main target for several reasons. First, his argument about coercion and collective authorisation forces us to think about exactly what it is that states do. In particular, it emphasises that states are institutional structures that provide for the basic needs of their citizens. I address this issue in sections II and III. Second, his argument for egalitarian justice within the state bundles together a range of different egalitarian concerns. I will argue that pulling apart these concerns and looking at them in the context of the role of states helps us understand that Nagel's argument for equality in relation to states relates to the role of democratic political equality in preventing arbitrary use of state power, rather than any of the other egalitarian concerns. I address this in section IV. The main point of these first sections is thus to try to explain the connection between basic needs, the state, equality and democracy. In section V, VI and VII, I turn to a different argument from the statist. This is the claim that the legitimacy of international institutions is derived from the states that set them up. I argue that this claim is of limited moral and

empirical relevance when many states are unwilling or unable to provide basic goods for their citizens. I argue that Nagel's account needs to be modified in a more cosmopolitan direction. Once this is done, it becomes clearer that moral principles for dealing with institutional relationships outside the state are needed.

II) Arguments for Statism: Co-operation and Coercion

In recent years, a number of arguments attempting to confine the scope of egalitarian justice - and particularly egalitarian *distributive* justice - within the boundaries of states have appeared. These arguments have partly been motivated by the debates around John Rawls's replies to his cosmopolitan critics in his *Law of Peoples*. Several of the defenders of statism have explicitly defended different components of Rawls's argument, although not all statist claim to defend Rawls's argument as a whole¹¹⁰. In this section, I want to set out the basic arguments that have been used to defend statism and the responses to them. In the next sections, I will look in more detail at two specific statist arguments.

Simon Caney picks out two statist arguments for detailed criticism. The first can be called the co-operation argument. The second can be called the coercion argument. Although Caney does not pretend that these are the only statist arguments¹¹¹, I believe it is worth focusing on these particular arguments because it is only by bringing versions of them together that we can come to a proper understanding of the specific role of equality in relation to the state.

¹¹⁰ As I noted in my introduction, Rawls himself does not fit easily into the statist category. This is partly because of his emphasis on deriving principles of justice from ideas embedded in the political culture of political societies. Brian Barry caricatures Rawls's later position sharply when he describes it as "a rather muddled version of Michael Walzer's anti-enlightenment particularism" (Barry, 2001, p. 331n27). For a detailed cosmopolitan critique of the *Law of Peoples*, see Beitz (2000). Freeman (2006) is probably the most consistent attempt to defend all of Rawls's arguments in the *Law of Peoples*.

¹¹¹ See Caney (2008, p. 489ff) for a longer list of possible statist arguments.

The argument from co-operation draws on the liberal idea of the state as a scheme of social and political co-operation and argues that principles of justice only apply to states. Samuel Freeman provides a detailed elaboration of the argument in his recent defences of Rawls¹¹². It is argued that sovereign states are the only schemes of social and political co-operation that raise demands of justice, because states are the only actors that provide the basic structure that makes social and political co-operation possible (Freeman, 2007). The problem with this argument is that, as Simon Caney argues, none of the four explanations Freeman gives as to why states are special or unique sites of justice are persuasive.

Freeman's first argument is that justice simply applies to the distinct economic and legal structures of the state. The claim is that economic and legal structures are the only relevant basic institutions. However, as Caney stresses, Freeman does not explain why this claim defeats other accounts, such as the common cosmopolitan argument that relationships of co-operative interdependence raise demands of justice¹¹³.

Second, Freeman claims that applying principles of justice to the basic institutions of the state is the only way to realise pure procedural justice. However, this argument again does not explain why basic institutions at the state level are the only appropriate sites for procedural justice. International institutions could also be appropriate sites for procedural justice.

Third, Freeman claims that principles of justice are intended as a guide for political actors within existing schemes of legislation. This is unpersuasive because it is not clear why political actors should only be concerned to apply those principles to domestic affairs (Caney, 2008, p. 495).

Finally, Freeman claims that political actors are needed to apply principles of justice, and states are the only political actors capable of doing so. Caney's response is that this gets things the wrong way round.

¹¹² See Freeman (2006, 2007).

¹¹³ Examples of the latter view include Beitz (1999a), Pogge (2002), and Young (2000).

Normatively, we do not tailor our principles of justice to existing agents. Rather, we reform existing agencies if this is needed in order to implement principles of justice (Caney, 2008, p. 496).

These four responses to Freeman's argument can be summarised by stressing that he has not shown what it is about *states* as distinct actors that makes principles of justice uniquely applicable to them¹¹⁴.

The second approach Caney picks out is the coercion argument. Peter Blake defends this approach. Blake starts with a liberal claim that autonomy is valuable. He argues that this means that any coercive political system needs special justification, because coercion restricts autonomy. A commitment to justification of coercion requires a commitment to relative principles of distributive justice. Blake claims the global order is not coercive in the same way states are, and that, as a result, egalitarian or relative principles of distributive justice do not apply at the global level.

Caney provides a number of detailed arguments against Blake's claim, but the following is perhaps the most simple and effective response:

Suppose we concede that (state) coercion requires justification. It is far from clear why a commitment to justification entails a commitment to egalitarianism. This again depends on what 'justification' requires. On one view, justification requires giving the philosophical reasoning for one's view. However, on this view 'justification' is compatible with libertarianism so long as the state provides an account of the reasons supporting it. Blake's vindication of (domestic) egalitarianism thus requires an argument showing why (state) coercion requires a more substantive pro-egalitarian kind of justification than this other kind of justification (Caney, 2008, p. 505).

¹¹⁴ As a further point, Freeman also claims that all political decisions and actions at the global level are derivative of states as the primary actors. Since this argument is pretty much identical to Nagel's derivative legitimacy argument, I shall leave it for consideration as part of the discussion of Nagel below.

The basic point here is again that Blake owes us an account of why state coercion leads to a commitment to egalitarian distributive justice. Caney argues that a commitment to justification alone is not enough. It is not clear what is so special about coercion that it requires a specifically egalitarian justification.

I have moved rather quickly through the co-operation and coercion arguments that Freeman and Blake advance, and the replies Caney provides. I have only tried to do enough to show that the arguments are incomplete as they stand. I have not tried to go into more detail here because I believe the statist argument needs more careful reconstruction. Once it is reconstructed in an appropriate way, I hope it will become clear that the kind of equality that is distinctively appropriate at the state level is of a different kind than the distributive equality that statist concern themselves with.

III) Nagel: Coercion, Collective Authorisation and Global Justice

In his provocative article, “The Problem of Global Justice”, Thomas Nagel follows a rule from John Rawls which states, “The correct regulative principle for a thing depends on the nature of that thing” (Rawls, 1999, p. 25). Nagel calls this a “political” approach to the question of where demands of egalitarian justice come from. On this view, the specific nature of the relationships in which we stand generates specific moral demands. However, there is a crucial difference in the way they use this rule to generate principles of egalitarian justice from the existence of separate political societies. For Rawls, the “thing” at stake is a political society with a liberal background culture: even in his early work, he stresses that his aim is to make explicit and systematic principles that are implicit in the political culture of a democratic society¹¹⁵. Nagel rejects this

¹¹⁵ Cohen stresses this point. He notes that Rawls’s explicit aim is to describe principles of justice “for a democratic society”, where democracy implies a political culture in which citizens are seen as free and equal. See Cohen (2003, p. 86 and 95-6).

emphasis on political culture¹¹⁶. For him, the “thing” in question is a state. The demands of egalitarian justice follow from the existence of a *state* and from a distinctive capacity that states wield (or at least aspire to wield) over their citizens. More specifically, for Nagel, the complex combination of coercion and collective authorisation that states wield over their citizens generates a demand for egalitarian justice. This is because states’ use of this capacity involves or implicates the will of their citizens, and for Nagel, this involvement or implication of will requires special justification. To quote his basic statement of his position,

A sovereign state is not just a co-operative enterprise for mutual advantage. The societal rules determining its basic structure are coercively imposed: it is not a voluntary association. I submit that it is this complex fact - that we are both putative joint authors of the coercively imposed system, and subject to its norms, i.e., expected to accept their authority even when the collective decision diverges from our personal preference - that creates the special presumption against any arbitrary inequalities in our treatment by the system (Nagel, 2005, pp. 128-9).

Nagel denies that the same demand applies to relationships outside the complex of coercion and collective authorisation: there is no justice outside the state. This does not mean that there are no moral demands outside the state. In the terms of contemporary international relations, he is no realist: indeed, he might be seen as a cosmopolitan in an older, Kantian sense. However, Nagel argues that the only moral demands that

¹¹⁶ With regard to Rawls’s claim that theocratic societies that lack electoral processes might be seen as legitimate as long as they respect basic human rights, Nagel states “This seems to me a mistake. The political conception of justice need not be based on a strong personification of peoples” (Nagel, 2005, p. 135).

apply outside the state are minimal humanitarian ones that would hold even if we were not in any institutional relationship at all¹¹⁷.

Nagel does not deny that people *do* in fact stand in institutional relations besides those between fellow citizens of a state. He even concedes that they may be necessary to fulfil basic humanitarian demands. However, he denies that these sub- and supra- state institutions raise demands of justice. This is because they are closer in character to voluntary associations, being established through bargaining by mutually self-interested parties. He states, "There is a difference between voluntary association, however strongly motivated, and coercively imposed collective authority" (Nagel, 2005, p. 140). This constitutes a challenge to those institutional cosmopolitans who hold that increasing trans-national cooperation means that we have institutional connections between people that generate egalitarian demands of justice on a global level¹¹⁸. For Nagel, the absence of a world state means that these institutions lack the distinctive characteristic that raises demands of egalitarian justice: they are not coercively imposed and collectively authorised.

One instinctive response to this argument is to question Nagel's sharp distinction between coercive and voluntary schemes. Various commentators have expressed this intuitive doubt¹¹⁹. As Andrew Hurrell puts it,

[Nagel's] view of justice places too much weight on the difference between coercive and non-coercive situations; and, more importantly, underplays the extent of changes that have in fact taken place in the density of international institutions, in the extent to which they do in fact exercise power and can be said to be co-authored (Hurrell, 2007, p. 310).

¹¹⁷ "This moral minimum does not depend on the existence of any institutional connection between ourselves and other persons" (Nagel, 2005, p. 131).

¹¹⁸ For discussions and defences of institutional cosmopolitanism see, for example, Beitz (1979), Buchanan, 2000 and Wenar, 2001.

¹¹⁹ See also David Miller. Miller states that although Nagel is right to see the nation-state as "a privileged context for justice", he is "wrong to reduce that privilege to the fact of coercion" (Miller, 2008, p. 278).

Hurrell's response raises the possibility of a sliding scale of different densities of interaction and power: some interactions are more "dense" than others, and raise more stringent demands of justice than others. However, it is precisely this "sliding scale" approach that Nagel singles out for sceptical attention towards the end of his paper. Leaving aside practical concerns, he asks if this approach makes moral sense: "Is there a plausible position covering this case that is intermediate between the political and the cosmopolitan conceptions?" (Nagel, 2005, p. 142). This immediate response is thus incomplete. However, I want to point out two more effective responses to Nagel's argument. The first is simply that Nagel is vulnerable to the same criticism that Caney levelled at Blake. Nagel does argue that coercive legal systems require special justification, but he does not give any detailed explanation of why this justification has to be specifically *egalitarian*¹²⁰.

A second response to Nagel is found in Arash Abizadeh's article on global justice. Abizedah claims that Nagel's argument is normatively perverse. He formulates Nagel's argument in the following way:

If x requires concern by the state for the relative deprivation of an individual, then x is ongoing state coercion against that individual regulated by a system of law carried out in her name, i.e., actively engaging her will (Abizedah, 2007, p. 351).

The problem with this argument is that it

[Implies] that a state can exempt itself from the demands of justice simply by ensuring that the coercion to which it subjects persons is pure coercion without any pretence of accountability, i.e., by denying to those whom it coerces any standing as putative authors of the system of coercion (Abizedah, 2007, p. 351).

¹²⁰ Caney claims "Nagel simply assumes that justice can only apply within the kind of coercive framework that is constituted by the modern state and gives us no argument for this assumption" (Caney, 2008, p. 498). I do not think this is right: I believe Nagel makes the same move from legally authorised coercion to a commitment to justification that Blake makes, but that this then makes Nagel vulnerable to Caney's criticism of Blake.

The perversity of Nagel's argument results from his combination of coercion with collective authorisation. Nagel's argument *requires* coercion *and* collective authorisation as necessary conditions for the normative demands to come into effect. However, this argument generates the perverse consequence that any state or other scheme of social interaction can avoid the demands of justice simply if those imposing it deny that it is authorised by those on whom it is imposed¹²¹. They can avoid demands of justice by denying that one of the necessary conditions is met.

In what follows, I look at these two arguments in turn. I first turn to the question of why states generate specific demands of equality. It is worth stressing from the outset that Nagel bundles a range of different conceptions of equality together in his statist conception of justice. He includes not only distributive equality but also democratic equality. My task will be to try to explain the rationale for *democratic* equality. I shall not look at distributive justice here¹²². I then turn to the normative perversity issue. I believe Abidezah's argument needs some modification, but that when suitably qualified, it still demonstrates that Nagel's argument yields normatively perverse outcomes when applied to two issues: the way states treat non-citizens and the way international institutions treat individuals.

IV) Basic Goods, Coercion and Voluntariness

¹²¹ Abidezah notes that the same argument can be found in A.J. Julius's paper, "Nagel's Atlas" (2006).

¹²² Much of the recent literature on global justice has revolved around the issue of why states raise demands of *distributive* equality, departing from John Rawls's denial that his principle of distributive justice applies at the global level. Freeman argues that Rawls believed that the difference principle is only appropriate when institutions that guarantee the protection of the basic liberties are in place. Shapiro points out that few people have noticed that Rawls required *democratic* institutions as part of the structure of basic liberties. There is an interesting question about whether Rawls believed the application of the difference principle was contingent on whether it would be affirmed by democratic decision making processes. For discussion of some of the relevant issues, see Cohen (2003).

One of the puzzling things about Nagel's argument in "The Problem of Global Justice" is that he begins by emphasising the importance of a coercive, collectively authorised system for the co-ordination of actions that promote justice, but never explains *what* these institutions are co-ordinating. These institutions are needed to assure people that their conduct is part of a reliable and effective system of collective action:

The only way to provide that assurance is through some form of law, with centralized authority to determine the rules and a centralized monopoly of the power of enforcement (Nagel, 2005, p. 116)¹²³.

However, Nagel never addresses the issue of whether the nature of the goods, benefits and burdens the state works to provide is itself relevant to questions of justice.

Nagel also seems to run together the claim that the state is coercively imposed with the claim that it is not voluntary: "The societal rules determining its basic structure are coercively imposed: it is not a voluntary association" (Nagel, 2005, p. 128). This may seem uncontroversial, but as Andrea Sangiovanni points out in his discussion of Nagel in relation to the issue of coercion, there are in fact at least three senses in which the state might be seen as non-voluntary. Sangiovanni uses a thought experiment in which the coercive institutions of a state are destroyed by a terrorist attack: the police and military are rendered incapable of coercively enforcing the states' laws. He then asks us to suppose that the state is nevertheless able to continue to co-ordinate the provision of various goods and services. However, at a certain point a group of wealthy gentlemen decide that, because the system of laws and

¹²³ Nagel denies that any such system of legally co-ordinated action exists at the global level. This empirical claim is highly doubtful, though. Andrew Hurrell observes, for example, that

[There] have been an ascending scaled of multilateral actions on the part of both the UN and regional bodies: from non-recognition to the application of sanctions, to conflict resolution and political reconstruction, to peacekeeping/ peacemaking with a strong humanitarian component and a heavier emphasis on military force and coercion, to military intervention to restore an overthrown government (Hurrell, 2008, pp. 63-4).

co-ordinated action is no longer *coercively* imposed, it no longer meets the full set of conditions for demands of justice to apply. Sangiovanni suggests that the gentlemen are wrong. What makes the state system non-voluntary is not just its coercive enforcement, but the fact that most of those involved depend on it for an important set of basic goods that they need to fulfil the most basic human needs:

For all but the most well off, attempting to secede from or opt out of the legal system *would* be excessively burdensome; in leaving the association, they would lose access to those basic goods and services required to develop and act on a plan of life (Sangiovanni, 2007, p. 12, author's emphasis).

Sangiovanni's argument thus yields an important distinction between two senses of the claim that the state is non-voluntary and the claim that it is coercively imposed. The state is non-voluntary because most people depend on its system of co-ordinated co-operation for the provision of basic goods. This is distinct from the fact the state is imposed by a system of coercive laws. We can supplement this account by adding that the fact that some people are able to afford to exit the relationship at little or no personal cost while others are not able to do so creates a relationship of dependency.

A third understanding of the claim that the state is not a voluntary association can be found in Sangiovanni's affirmation of the basic cosmopolitan claim about the equal, general and ultimate moral status of individuals. Although Sangiovanni is not explicit about this point, he seems to hold that affirming this cosmopolitan claim means that the provision of basic goods is not a matter of choice. The wealthy gentlemen are not entitled to deny that they have any responsibility to ensure that the state is still able to provide basic goods for all its citizens.

A few other observations about Sangiovanni's discussion of Nagel are in order before we proceed. First, Sangiovanni claims that Nagel actually makes the distinction between non-voluntariness and coercion drawn above in "The Problem of Global Justice". I think this is too generous to Nagel: Nagel tends to run the two ideas together and does not address the possibility that states raise demands of justice because people

depend on the goods they provide¹²⁴. Second, having provided a clearer set of distinctions than Nagel between three different senses in which the state might be understood as being non-voluntary - it is coercively imposed; most people depend on it for basic goods; it helps ensure a provision of basic goods that is owed to everyone - Sangiovanni then abandons further discussion of the claim that the state raises demands of justice because it is not a voluntary association. Instead, he turns to a discussion of reciprocity in the provision of *basic goods* as an idea of fairness that is distinct to the state. Although I believe this is a mistake, it is not possible to set out a full response to Sangiovanni's reciprocity argument here¹²⁵. Third, having established through his thought experiment that coercion is not the *only* sense in which the state is non-voluntary, Sangiovanni then abandons any further consideration of the possibility that coercion might be connected to the specific demands of justice states raise.

Sangiovanni's argument improves on Nagel's in several important ways. It distinguishes three senses in which states can be understood as being

¹²⁴ Sangiovanni's thought experiment is directed at Michael Blake's version of an argument from coercion to distributive equality.

¹²⁵ There are three broad objections to Sangiovanni's argument. First, trying to distinguish co-operation from a full system of social rules puts Sangiovanni in a dilemma. Emphasising simple co-operation makes it hard to distinguish the kind of interaction that goes on at the level of the state from the kind of co-operation that goes on between employees of a multi-national corporation. Why does the MNC not then owe egalitarian justice to its workers? On the other hand, emphasising a full system of social rules threatens to privilege the status quo by assuming the state is the only feasible form such a system can take (for this part of the objection, see Caney, 2008, p. 496). A second objection is that Sangiovanni still does not explain why the system of rules and social norms involved in sustaining the state raise specifically *egalitarian* demands of justice. Other candidates include co-operation, interdependence and interaction, but Sangiovanni does not address these (this objection relates to a discussion between Charles Beitz and Brian Barry about whether interaction or mutually advantageous co-operation raise demands of justice. See Beitz, 1979 and Barry, 1991. See also Caney, 2004, 2008). A third objection is that I believe Sangiovanni's argument about reciprocity is more plausible as a *normative* claim about how to co-ordinate the social provision of basic goods in a fair and stable way than as a claim about how existing states actually do constitute reciprocal systems that raise demands of egalitarian justice.

non-voluntary. They impose coercive laws; most people are dependent on them for basic goods; they are an institutional way of fulfilling a moral demand that people have access to basic goods. Nevertheless, I believe Sangiovanni is mistaken in abandoning Nagel's attempt to draw a connection between the coercive role of the state and the demand for equality as a consideration of justice. In the next section, I attempt to link Sangiovanni's concern with the role of the state in the provision of basic goods with Nagel's concern with the connection between coercion and equality.

V) Dependency, the State and Democracy.

In this section, I want to argue that we can move from an argument about relationships of dependency, via an argument about the role of the state, to an argument for a specific form of equality. However, this equality is not the distributive equality that is the central concern of the theorists of statism I have looked at so far. My aim here is not to either vindicate or defeat distributive egalitarianism. Rather, my aim is to defend a specific form of political equality that I believe *can* plausibly be restricted within the boundaries of a state.

The first step in the argument is to acknowledge the basic cosmopolitan principles that Barry, Pogge and others have set out – that individuals' morally legitimate interests are of ultimate, general and equal concern. This creates a demand for institutions that are appropriately attentive to those interests.

The second step in this argument is to turn back to Sangiovanni's reciprocity argument. Sangiovanni does acknowledge that there are circumstances in which some people have better exit options from reciprocal relationships than others. His argument suggests that this is most obviously the case when some people are dependent on basic goods they need to formulate and act on a plan of life. If other participants are not dependent in the same way, they can impose significant and morally relevant costs on their fellows.

The state can do a couple of things to prevent this, though. This is the third step. On the one hand, states can redistribute resources so that the dependency relationships are more balanced. This could involve making some people more dependent on their fellows. Although this might seem odd, the basic idea underlying it is partly expressed in Rousseau's demand that "no citizen shall be rich enough to buy another and none so poor as to be forced to sell himself" (Rousseau, 1986, p. 96). Furthermore, it could be argued that increasing interdependence might strengthen social solidarity and reinforce the standing of some groups as valued members of society¹²⁶.

A second option is to impose rules on those who are wealthy enough to leave the state, either to ensure that they continue to contribute or to ensure they only leave on terms that protect the interests of those who are dependent on them. These two basic options would be designed to ensure that those who are dependent on their relationships with others for basic goods are in a more secure, reciprocal relationship.

Both of the two options just outlined would require states to concentrate and increase their coercive power. The fourth step in the argument acknowledges this worry - the possibility that states might use their coercive power in arbitrary ways. This possibility of arbitrary rule would make it difficult for citizens to formulate and act on a plan of life. A concern with the morally legitimate interests of individuals requires that states be prevented from exercising coercive power in arbitrary ways.

The fifth step in the argument claims that a conventional, competitive form of electoral democracy plays an important part in preventing arbitrary rule. It is here that we introduce broadly republican arguments about the role of democracy in preventing arbitrary rule¹²⁷. A competitive electoral system depends on a simple form of political equality: each adult citizen has a single vote that has the same weight as the votes of other citizens, and votes for one of several competing political parties. It works

¹²⁶ For an argument broadly along these lines, see Anderson (1999).

¹²⁷ These arguments are mainly drawn from Pettit (1999, 2000) and Bellamy (2008), although they are also indebted to Miller (1983) and Shapiro (2003).

to prevent arbitrary rule in two ways. First, a competitive system gives the competing parties an incentive to show that the policies of their rivals are not in the interests of any citizens. This is perhaps the most effective way to prevent their competitors from gaining power. Second, a competitive system also works to protect the interests of minorities. Pettit describes this mechanism as follows:

In elections where parties compete with each other, the fact that a policy adopted by one party is inimical to the interests of some minority - if indeed it is a fact - gives rival parties a reason to draw attention to that fact and to lessen thereby the support that the offending party receives. Those parties may persuade some supporters who do not belong to the relevant majority to change their allegiance, they may shame majority supporters into changing their allegiance, or they may shame the party itself into changing its policy (Pettit, 2000, p. 117).

Pettit himself has doubts about the effectiveness of this mechanism. However, Bellamy responds to these doubts by making two main points. First, "Within most democracies, the number of minorities incapable of allying with others to seek a degree of political influence is very small" (Bellamy, 2008, p. 183). Second, relying on measures such as judicial review to protect minorities still depends on some degree of majority support:

Only democracy can galvanize popular support around a measure by reassuring citizens of its fairness by balancing it against other considerations and indicating that a degree of reciprocity underlies measures that may be costly for them (Bellamy, 2008, p. 185).

The sixth and final step in the argument is that there are outer limits to the effectiveness of this competitive form of democracy. I will look at these arguments in more detail in the next chapter in my discussion of Held's cosmopolitan democracy. For the moment, the following concerns can be noted. First, ethnic, religious and linguistic differences can make it difficult

for democracy to operate effectively¹²⁸. Second, economic factors may undermine the effectiveness of electoral competition. Third, demographic problems may undermine the effectiveness of the mechanism Pettit describes: the larger a population, the less likely it will be that a given minority will be needed as an ally to tip the balance between particular parties. These considerations suggest that we need to be cautious at best about the possibility of an effective version of electoral competition on a global scale. In particular, there is serious cause for concern about whether the mechanisms in domestic electoral democracy that - according to Pettit and Bellamy - work to protect minorities could also work on a much larger scale.

The argument set out here moves from a requirement that all people have access to institutions that allow them to secure their morally legitimate interests to a claim about the scope of democratic institutions. It suggests that the main reason for limiting the scope of equality to the state level depends on an argument about *democratic* equality. The democratic mechanisms that serve to protect people from arbitrary rule by the state involve a specific form of political equality. However, this form of equality is only likely to be effective on a fairly limited scale. There are reasons to doubt its effectiveness at the global level¹²⁹.

In the previous three sections, I have examined several statist arguments about the scope of justice. The contemporary statist I have been examining all attempt to restrict the scope of justice to within the boundaries of the state. For most of them, the central concern is with *distributive* justice. It may seem odd, then, to focus on this literature as a source of arguments about democracy. I hope the discussion of Nagel

¹²⁸ For discussions of democracy in ethnically divided societies see, for example, Lijphart (1984) and Barry (1975). For some discussions of the problems of democracy under conditions of economic inequality see Young (2000) and Miller (2000).

¹²⁹ One further point is that, because the electoral system is itself defended in terms of its role in realising a basic cosmopolitan concern with protecting individuals' morally legitimate interests, it should not become so intrusive as to prevent people from acting on those interests at all.

and Sangiovanni shows why a *democratic* form of equality is relevant to the debates on statism, and follows from a concern about *how* states work to provide what Sangiovanni calls basic goods. Briefly, the fact that states fulfil a specific duty to provide basic goods through mechanisms that concentrate power and share burdens requires political structures to restrict the possibility of arbitrary use of political power. I argued that competitive electoral democracy provides a mechanism that does this.

There are a couple of further remarks to add to this summary. First, I have not tried to refute or defend *distributive* egalitarianism at either the global or statist level. My argument has been that the specific power of the state requires a specific form of democratic equality in order to prevent arbitrary rule. This tells against Nagel's version of the statist argument precisely because Nagel bundles together a range of different conceptions of equality:

It is only from [the state] and from our fellow members through its institutions that we can claim a right to democracy, equal citizenship, non-discrimination, equality of opportunity, and the amelioration through public policy of unfairness in the distribution of social and economic goods (Nagel, 2005, p. 127).

This only serves to confuse matters. My argument has been that we need to think more carefully about than Nagel does about which forms of equality *are* relevant to the distinct institutional relationship the state puts people into.

Second, I suggested briefly in the fifth and sixth steps of my argument above that there are outer limits to the scale of democratic institutions that can work to protect both citizens as a group and minorities. If this argument can be reinforced, we may have an indirect argument against strong forms of cosmopolitan institutionalism. The objection would not be directly against the relevance of cosmopolitan versions of distributive justice or other forms of egalitarianism, but rather an argument against cosmopolitan institutions on the ground that democracy would not work to prevent them acting in arbitrary ways. I want to return to this argument in the next chapter.

VI) Derivative Legitimacy

A second line of argument that emerges from the literature on statism can be called the derivative legitimacy argument. This line – somewhat neglected in the literature – attempts to address the problem that there is now a huge range of institutions and organizations that cut across the boundaries of states¹³⁰. These institutions pose a problem for statist, not least because some cosmopolitans argue that economic co-operation for mutual advantage is a source of claims of justice, and many international institutions are set up precisely to facilitate and encourage such co-operation. The statist response is to question the significance of these institutions in comparison with the state:

[For] the moment they lack something that according to the political conception is crucial for the application and implementation of standards of justice. They are not collectively enacted and coercively imposed in the name of all the individuals whose lives they affect. International institutions act not in the name of individuals, but in the name of the states or state instruments and agencies that have created them. Hence the responsibility of those institutions toward individuals is filtered through the states that represent and bear primary responsibility for those individuals (Nagel, 2005, p. 138)¹³¹.

¹³⁰ Nagel draws his own evidence about the extent of global political integration and interaction from Anne-Marie Slaughter's book *A New World Order* (2004). It is worth noting that Slaughter sometimes presents a prescriptive version of her account of global networks: "[A] world of government networks would be a more effective and potentially more just world order than either what we have today or a world government in which a set of global institutions perched above nation states enforced global rules" (Slaughter, 2004, p. 7). This would presumably require that networks be made more accountable to individual states than at present.

¹³¹ See also Freeman: "Global political, legal and economic arrangements are secondary institutions and practices: they are largely the product of agreements among peoples and are supervenient upon the multiplicity of basic social institutions constituting the basic structure of many different societies...Consequently the only feasible global basic structure that can exist is secondary and supervenient" (Freeman, 2006, p. 246).

On this view, associations at the supra-state level are the product of fair bargaining among representatives who are acting to promote the interests of the people they represent. Their legitimacy is derived from the fact that states set them up and maintain them through self-interested bargaining. As a result, they can be seen as voluntary and for Nagel are not bound by norms more demanding than a minimal humanitarianism that would apply even in the absence of any institutional connection. Before proceeding, I want to explain my use of the term “derivative legitimacy”. Legitimacy is a slippery concept¹³², but in this case it refers to the suggestion that private transactions can be seen as beyond the reach of state intervention as long as states provide a legal framework that ensures that those transactions are carried out on a fair basis¹³³. The transactions themselves are not the subject of considerations of justice, as long as state institutions act to provide a fair background. However, Nagel is ambiguous about whether states actually have to provide such a background domestically in order for their participation in international institutions and co-operation to apply.

The arguments in the next sections have three main purposes. First, to establish the charge that Nagel’s argument is normatively perverse. Second, to identify a version of a statist argument that is not vulnerable to that charge. Third, to demonstrate that we need further principles to deal with problems that occur in a statist order, and that Nagel does not have the resources to provide those principles.

¹³² Andrew Hurrell provides a useful analysis of five different meanings of legitimacy, distinguishing process and procedure, substantive values, effectiveness, specialist knowledge and reason giving (Hurrell, 2008, p. 80ff). The conception at work here is somewhat different from all these, in that it depends on the idea of a provision of a fair background against which other transactions are beyond the reach of intervention to promote justice.

¹³³ See, for example, Sangiovanni: “the only reason that secondary associations within states are considered voluntary is because of the background system of entitlements and protections provided by the state” (Sangiovanni, 2007, p. 12).

VII) Normative Perversity?

Abidezah argues that normatively perverse outcomes follow from Nagel's claim that coercive enforcement and collective authorisation are two necessary conditions for demands of justice to apply. In this section, I want to connect this claim to the derivative legitimacy argument set out above. Before doing so, it is worth noting a modification that needs to be made to Abidezah's basic charge. Abidezah claims that Nagel's argument is perverse because it leaves room for tyrants and authoritarians to escape the demands of justice in a very simple way: they only have to deny that their imposition of their will on their citizens *is* collectively authorised in order to remove one of the necessary conditions for demands of justice to apply. As Abidezah puts it, "This seems to suggest, for example, that colonial rule is exempt from the demands of justice precisely because it does not claim to act in the name of the colonized" (Abidezah, 2007, p. 352)¹³⁴. This is a strong charge, but I believe that even a more generous reading of Nagel's argument results in normatively perverse outcomes. As Sangiovanni notes, a more plausible reading of Nagel's collective authorisation condition is that it applies to the system of rules a state puts in place and not to the attitude of the rulers imposing the system. On this view, it is not relevant that the rulers claim to be imposing a particular system. What matters is the way the system actually works: "Speaking of the state's 'claim' to speak in our name and so on is simply shorthand for saying that the state is a norm-generative system of social rules which expects our compliance with it" (Sangiovanni, 2007, p. 16). This defuses the charge of normative perversity when it is applied to the domestic arrangements of existing states. As long as they meet some set of conditions (whatever those may be) to count as a system of norm-generative social rules, states raise demands of justice, the attitudes of their rulers notwithstanding¹³⁵.

¹³⁵ It is not clear from either Nagel or Sangiovanni's arguments precisely where the relevant threshold lies. Nagel simply refers to "a special involvement of agency or the will" (p. 128) necessary to life in a society,

Presumably, Nagel thinks all existing states meet the conditions that raise demands of justice and thus owe justice to their citizens. Nevertheless, as I shall argue, Nagel's formulation of the grounds of justice still results in normatively perverse outcomes in the case of dealings with those who are *not* bound together by collectively authorised, coercively imposed systems of rules. The perverse outcomes relate to various different relationships, such as the relationship between states and citizens of other states, and the relationship between states and stateless persons. However, for our purposes here, the main problem for Nagel's account is with dealings between international institutions and states that are either internally illegitimate or internally weak¹³⁶.

There are two possible interpretations of Nagel's derivative legitimacy argument. The first applies claims about derivative legitimacy to a world in which certain background moral demands on states *are* met. Call this strong derivative legitimacy. The second interpretation applies them to a world in which they are *not* met. Call this weak derivative legitimacy.

Strong derivative legitimacy would require that states meet certain minimum domestic requirements of fairness or justice in the treatment of

while Sangiovanni refers to the actions needed to "support and maintain the state's capacity to provide the basic goods necessary to protect us from physical attack and maintain and reproduce a stable system of property rights and entitlements" (Sangiovanni, 2007, p. 20).

¹³⁶ With regard to the relationship between colonizing states and the citizens of the states they colonize, Nagel's argument is perverse because it implies that the best way for the colonizers to avoid demands of justice is to ensure that the system they set up is *not* a legal one that requires normative compliance. The more coercive the system, the less it raises demands of justice. This argument depends on the nature of the system and not just the attitude of the rulers. With regard to the relationship between states and stateless persons, a state can deny that it owes considerations of justice to groups such as refugees simply by refusing them citizenship. This denies them full membership in the coercively enforced system of rules, membership that, if granted, would raise demands of justice. Simply coercing groups such as refugees by barring their entry or forcing them to leave does not raise demands of justice. Nagel actually seems to endorse something similar to this point when he states, "Immigration policies are simply enforced against the nationals of other states" (Nagel, 2005, pp. 128-9). However, he does have foreign nationals in mind here; he does not address the problem of stateless persons.

their own citizens *before* their participation in international institutions can be seen as legitimate. On this view, the fact citizens of state A do not owe considerations of justice to the citizens of state B is the result of the fact that the citizens of B are *already in* a relationship that, for example, provides adequately for their basic needs. This could be compatible with the weak cosmopolitan principles Sangiovanni affirms. It would also address the normative perversity problem to some extent, since states would not be able to impose just any demands on their citizens. However, the textual evidence does not suggest Nagel endorses this strong version of derivative legitimacy. Although he makes some concessions to the possibility that states might pursue domestic justice as a result of their co-operation in international institutions¹³⁷, he generally argues that the domestic arrangements of states are of little direct concern to their fellows: "liberal states are not obliged either to tolerate non-liberal states or to try to transform them, because duties of justice are essentially duties to our fellow citizens" (Nagel, 2005, p. 135)¹³⁸.

A second interpretation of Nagel's view would apply derivative legitimacy on the basis that only states owe considerations of justice to their

¹³⁷ See, for example, the following:

[State] institutions are responsible to their own citizens and may have a significant role to play in the support of social justice for those citizens...the aim of [global and regional networks] is to find ways in which the member states, or state-parts, can co-operate to better advance their separate aims, which will presumably include the advancement of domestic social justice in some form (Nagel, 2005, p. 140).

¹³⁸ Furthermore, a strong version of derivative legitimacy would impose limits on the kinds of agreements and transactions states could impose on one another. The limits on the agreements states could make would be set by whether those agreements are compatible with all states being able to sustain fair or at least minimally decent domestic institutions, yet Nagel imposes no such limits. Contracts and agreements between states are free bargains "and need not be underwritten by any kind of socioeconomic justice" (Nagel, 2005, p. 141). Compare Rawls (1999), who contrary to some of his cosmopolitan critics, *does* impose limits on the contracts peoples can make in the co-operative organizations they set up: "Should these co-operative organizations have unjustified distributive effects between peoples, these would have to be corrected" (Rawls, 1999, p. 43). However, as Wenar (2001) points out, Rawls does not address the issue of the effects of such contracts on the individual citizens of peoples.

citizens, and that it is no concern of other states or institutions whether states actually *meet* the demands those considerations impose. In this case, presumably, the mere fact that government agencies are involved in the bargaining process would be enough to secure a connection to a state and thus secure some claim to derivative legitimacy. The internal character of the state would not be relevant. As noted above, the textual evidence suggests that Nagel does endorse something like this argument. He argues both that the internal, domestic justice of states is of no direct concern to other states *and* that there are no constraints on the bargains or contracts states can make with other states. In both cases, the rationale for this is that there is no system of collectively authorised, coercively imposed rules between the states or between their citizens. Now, we can dispute the empirical truth of Nagel's claim on the basis of the existence of institutions like the UN and the EU. The deeper normative point, though, is that Nagel's claim about the absence of institutions that link people together in a relationship that raises demands of justice results in normatively perverse outcomes with regard to the way international institutions treat those affected by their policies.

VIII) Two Examples

In this section, I want to consider two cases that raise problems for Nagel's argument. These cases lead us to question the relevance of Nagel's claim that the global order and the interactions that go on within it are legitimate in virtue of the fact that states are in some way the source of the legitimacy of such interaction.

a) Undemocratic States

Nagel's argument is based on the claim that the legitimacy of trans- and supra- national political agents is derived from their connection to domestic political authorities. However, the evidence suggests that he

holds to the weak version of the derivative legitimacy thesis. On this view, the domestic justice of states is of no direct concern to other states or international institutions because justice is only owed by states to their own citizens. Democratic state A can interact with undemocratic state B because B's failure to meet this standard for internal justice is of no direct concern to A¹³⁹. This argument results in two kinds of normatively perverse outcome, which I shall illustrate using the labour standards example. First, a multi-national corporation that sets up an operation in an undemocratic country would be free to impose whatever conditions it likes on the workers it employs¹⁴⁰. This is because any claims of justice that do exist are owed by the state to its citizens: again, they are of no concern to the MNC. As long as the MNC does not impose a full set of rules and expectations comparable to those imposed by states, it does not owe its employees any considerations of justice or fairness beyond Nagel's non-institutional humanitarian minimum.

Second, similar points would apply to an international organization like the ILO. The ILO has some limited coercive powers (although it rarely if ever invokes them, and few people realise it has them at all) and makes binding rules. However, Nagel's argument again implies that as long as those rules do not meet the threshold to count as the full system of societal rules a state imposes, the ILO would not owe considerations of justice to those affected by its decisions. Rather than owing assistance to

¹³⁹ Nagel does at one point qualify this claim by arguing, "there are good reasons, not deriving from global socioeconomic justice, to be concerned about economic relations with states that are internally egregiously unjust" (Nagel, 2005, p. 143). However, he does not give any rationale for this qualification.

¹⁴⁰ Several non-democratic countries do attempt to attract foreign businesses by using Export Processing Zones (EPZs), which offer incentives such as lower taxes and - in some cases - restrictions such as limits on the right to form or join trade unions. Non-democratic countries with EPZs include Bangladesh, Pakistan, the United Arab Emirates, Malaysia, Thailand and China (Boyenge, 2006). Of course, some developing countries may have reasons to use EPZs and not all EPZs impose harsh restrictions on workers. However, the normative point is that Nagel would permit them to do so since neither they nor the MNCs that operate in them are institutional arrangements that raise demands of justice.

the members of non-democratic states, the ILO could evade any responsibility for them by ensuring that its rules fall below whatever threshold Nagel has in mind.

Before proceeding, I want to make three more points with regard to the problem of non-democratic states. First, the problem is a large one. Freedom House's *Freedom in the World* ranks countries according to their political rights and civil liberties. Its survey for 2008 classed 60 countries as Partly Free and 43 as Not Free. Perhaps more important are the numbers of people living in countries that are Partly Free (1, 185, 300, 000) or Not Free (2, 391, 400,000)¹⁴¹. Perhaps of most direct interest to our discussion here, countries with low ratings for civil liberties are often given those scores because of evidence of repression and harassment of trade unions, prevention of industrial action, and intimidation of workers who organise protests and demonstrations. The criteria Freedom House uses are not doubt controversial, but they do give us an idea of the scale of the problem.

Second, Nagel's claim that human rights are based on some sort of minimal morality that applies to non-institutional relationships limits his normative resources when it comes to these kinds of cases. The employees of an MNC in a non-democratic country or workers who depend on the ILO to take up their case do seem to be in some sort of morally significant relationship, but if it does not reach the threshold for statehood Nagel sets, it does not raise demands beyond Nagel's moral minimum.

Third, Nagel's argument about derivative legitimacy is focused on the way governments act in their dealings with international institutions: "the aim of such institutions is to find ways in which the member states, or state-parts, can co-operate to better advance their separate aims" (Nagel, 2005, p. 140). However, if these states are not domestically democratic and if they actively abuse the rights of their citizens, it is hard to see how the ILO can advance the interests of the groups it is supposed to

¹⁴¹ Data from Freedom House, *Freedom in the World* (2008).
<http://www.freedomhouse.org/template.cfm?page=130&year=2008>.
Accessed 03 June 2009.

represent - workers in particular - if it only interacts with the states' undemocratic governments. Since these people are denied freedom of association and the right to participate openly in trade unions, it is hard to see how they could influence the ILO to act in their interests via their governments alone¹⁴². These problems suggest that the ILO should - as far as possible - do more to interact directly with workers in undemocratic countries. It could have more power to gather evidence of violations of freedom of association independently of government agencies, for example. However, this only reinforces the need for principles to identify those who have urgent needs at stake in institutional relationships such as the relationship between employers and employees. Again, because Nagel's minimal humanitarian morality is not based on institutional connections, he does not have the normative resources to give an account of such principles.

b) Weak and failing states

Nagel's vision of the way states interact with international institutions involves an image of states engaging in bargaining and arriving at voluntary agreements to cooperate. I shall leave aside the rather heroic assumption that all states actually have sufficient capacities to influence such bargaining in order to best protect their interests¹⁴³. Instead, I will focus on a different point. Nagel's argument presents a rather limited and incomplete account of what international institutions actually do. In particular, he leaves the way that they interact with weak and failed states out of the picture. As Grant and Keohane point out, one of the roles of

¹⁴² Of course, the ILO does not just work with governments. It is a tripartite organization that includes representatives of unions and employers as well as governments. However, there are problems with its inclusion of unions from non-democratic countries, such as the case of the All China Federation of Trade Unions (ACFTU). For discussion of some of the issues, see Elliott and Freeman (2003, ch. 5) and Spooner (2004). Furthermore, Nagel does not address the issue of international organizations that do not deal directly with states.

¹⁴³ Amrita Narlikar discusses this point in relation to the WTO (2005).

international institutions is to step in to act as a surrogate when existing state institutions have failed:

Weak and dependent states may be subject to fiscal and supervisory accountability, often through international organizations such as the IMF and the World Bank, or in cases of state breakdown (as in parts of the former Yugoslavia), the United Nations (Grant and Keohane, 2004, p. 22).

Suffice to say that this is rather different from the image of bargaining between states interested in furthering their self-interested aims. If the institutions of the existing state have broken down, it seems appropriate to say - as, for example, Cohen and Sabel do - that the international institution that steps in has entered into a direct rule-making relationship with the state's citizens, and that this rule-making relationship raises normative demands¹⁴⁴. Now Nagel might reply that if the international institution is making *coercive* laws that apply to the (failed) state's citizens, then it is bound by the same moral demands as a state would be. He might argue that the situation is analogous with his comments on imposed or imperial regimes: they are bound to treat the people they impose on as equals. In practice this will probably mean restoring separate democratic institutions and political independence. As Cohen and Sabel point also point out, though, it does not seem right to restrict this demand to legal, coercive impositions by states. Contrary to Cohen

¹⁴⁴ Cohen and Sabel give the example of the IMF stepping in to save the economy of a country on the brink of economic chaos (Cohen and Sabel, 2006a, p. 167). They claim that the involvement of will necessary to sustain rule governed relationships raises normative demands more stringent than minimal humanitarianism, but less stringent than full justice. I am unconvinced by this for two reasons. First, I believe something more demanding than the involvement of will necessary to sustain a co-operative relationship is at play in the kinds of situation described. Second, Cohen and Sabel define the normative demands that such relationships impose in terms of giving due consideration to the "good" of those bound by the rules being made (Cohen and Sabel, 2006a, p. 173). Cohen and Sabel's use of the term "good" is too vaguely specified to be of much help in making sense of their normative demands.

and Sabel's argument, though, I am not convinced that it is just the fact that the international institution is imposing rules on the failed state's citizens that imposes the moral demands. After all, tennis clubs and knitting circles presumably have some rules, but do not raise demands of justice. The IMF or World Bank impose rules *that potentially affect the capacity of citizens of poor states to provide for their basic needs*. This factor seems important in generating more stringent normative requirements. Sangiovanni points out that an important moral function of states is to provide a background of secure basic goods, against which further interactions (from membership of tennis clubs to mutually beneficial economic transactions) can be seen as voluntary. However, when the state is weak or breaks down, the background of basic goods itself is at stake. This applies in the case of adjustment assistance programmes: one way to respond to the negative consequences of trade liberalization is to strengthen local provision of welfare support. This is quite possible in wealthy countries, as both Wolf and Baghwati point out. However, this is not the case in countries with limited resources or weak infrastructure:

Poor countries typically can ill afford adjustment programmes...So we need to think of institutional programmes of adjustment assistance that can be domestically implemented but financed externally. The obvious candidate for this task is the World Bank, which should put its money where its pro-globalization mouth is (Bhagwati, 2004, p. 235).

In this case, it is the World Bank itself that is ultimately responsible for providing for the basic needs of those adversely affected by its policies, and indeed for building the infrastructure required to provide for those needs. As a result, it is surely directly answerable to those who rely on it¹⁴⁵.

¹⁴⁵ Elliott and Freeman make a similar point in their recommendations to anti-sweatshop activists:

To reinforce the point, consider a slightly different example. Imagine a state where some natural disaster has left the government unable to provide basic goods for its citizens. NGOs intervene to provide the goods. The process of rebuilding the state's capacities is a long one. As a result, the NGOs are responsible for provision over a long period. The NGOs do not rely on coercion of the local people to generate the goods they provide. However, the people living in the country are nevertheless highly dependent on the NGOs for provision of basic (or even subsistence) goods. It is obviously absurd to suggest that the people's relationship to the NGO is voluntary - their dependence makes it different from that. The situation is a humanitarian one in the ordinary sense. However, Nagel's conception of humanitarianism seems too thin. His conception relies on the idea of duties we owe to people in the absence of any institutional relationship. However, the relationship between the people in my example and the NGO does seem to be institutional in some sense: there is an ongoing relationship of dependency between the people and the organisation. It certainly does not seem to be the same as the thin, non-institutional humanitarian relationship that imposes the duty to help someone if they fall into a pond, for example. What might Nagel say if a religiously motivated NGO in an Islamic country made its aid provision conditional on the recipients converting to Christianity?

When a state has a functioning set of internal democratic institutions and international agreements are limited in ways that preserve and protect those institutions, it might make sense to say that its participation in some international institutions can be seen as voluntary. However, this is not the only function international institutions (and NGOs) serve. They also serve to provide support when state institutions collapse. Not all such support is provided in a legally structured, coercive way. However, this raises the question of what sort of voice the citizens of failed states have in their interactions with international institutions. If the international

Activists should demand that the World Bank and regional development banks should require social audits on projects they fund, using a combination of suitably trained domestic nongovernmental organizations or trade unions, as well as accredited auditors (Elliott and Freeman, 2003, p. 132).

institution does *not* use coercive laws, Nagel would deny that it raises demands of justice. However, it seems highly unsatisfactory to claim that the relationship is a voluntary one. There is often an ongoing institutional relationship in these cases, and one that involves the provision of important basic goods. If this is so, we need a convincing account of the moral claims that the people in these relationships might make. By definition, Nagel's complex of coercion and collective authorisation cannot provide such an account.

These examples raise a problem for Nagel's account. If he wants to argue that the legitimacy of international institutions is derived from the legitimacy of states that are already internally legitimate according to the standards of strong derivative legitimacy, then his arguments are clearly empirically false, as the examples above indicate. Many states would have to move much further in the direction of internal democracy before we could claim that the requirements of strong derivative legitimacy were fulfilled. On the other hand, if he wants to argue that the demands on the internal legitimacy of other states are less stringent, then he is vulnerable to the charge that his argument is normatively perverse. The governments of undemocratic and failing states often fail to represent the interests of their citizens adequately, yet Nagel's argument gives other states room to evade responsibility for those citizens and even permits them to impose arrangements that amount to pure coercion on them. The latter arrangements are permitted because only states raise demands of justice, and the way to avoid those demands is to avoid imposing the full set of legal and social norms that are necessary conditions for demands of justice to apply. These points do not, of course, directly affect the normative validity of the strong derivative legitimacy claim. It may still be the case that the strong version of the argument provides standards for forms of global and international interaction that do not generate normatively perverse outcomes. It may also be the case that a global and international order of this kind happens to be practically feasible and allows all individuals to protect their morally legitimate interests. In this case, Nagel's strong derivative legitimacy argument would be compatible

with a weak form of cosmopolitanism. However, this suggests that citizens of weak, failing and non-democratic states have a claim to the institutional conditions for internal, domestic legitimacy as a basic requirement of morality. It also suggests that they have a claim to institutions and policies that would enable them to make a transition towards these institutions.

IX) Coercion, Dependence and Basic Goods

Up to now, I have looked at two versions of Nagel's derivative legitimacy argument, a weak one and a strong one. These arguments can be related to two more general arguments about the role of the state in promoting justice. They both make a strong claim about the role of the state. The two arguments can be formulated and related to the derivative legitimacy arguments as follows:

SS1: *Only* states raise demands of justice and these demands *only* apply between citizens of the same state.

This version of the argument relates to the weak version of derivative legitimacy, since it claims that neither the legitimacy or justice of other states nor the absence of state structures for other individuals is of concern to fellow citizens of the same state. Its weakness is that it is vulnerable to the normative perversity criticism, since states can exempt themselves from demands of justice by not getting into coercive, collectively authorised relationships with other citizens. As a result, we have a good reason to reject this formulation of Nagel's argument.

SS2: States are the *only* institutions that can effectively *promote* justice.

This relates more closely to the strong version of derivative legitimacy, since, if true, it suggests that the fair background against which other interactions are legitimate can only be secured by making all states internally capable of promoting justice. Two further points are worth stressing. First, this argument is not as obviously vulnerable to the normative perversity criticism as SS1, since it does not limit the demands of justice to states that already meet conditions of coercive enforcement

and collective authorization. It suggests instead that any attempt to promote justice will depend on the capabilities of states. It is thus compatible with the weak cosmopolitan premises Sangiovanni endorses, since it claims that states are necessary to fulfil the basic moral concern expressed in those premises. Second, this argument is a *feasibility* claim and not a direct claim about the content of principles of justice¹⁴⁶. For Nagel, the feasibility claim would be that coercive, centralised institutions imposing laws that apply to all citizens are the only really effective way to promote justice. It also suggests that the transition towards such institutions cannot itself be just, since the institutional conditions for a just transition - a coercive, collectively authorised legal system - are themselves missing.

The argument that Nagel's focus on the state as the only source of demands of justice results in normatively perverse outcomes should motivate us to reject that focus. However, rather than try to rebut Nagel completely here, I want to suggest two starting points for a response to his argument. First, the connection between basic goods and dependency drawn from the discussion of Sangiovanni above seems a good place to start in understanding what is at stake when people stand in morally significant institutional relationships. If employees of a sweat shop are largely or wholly dependent on their employer for various basic goods, we can argue that this is a morally significant institutional relationship, even if we do not go so far as to claim that it directly raises demands of egalitarian justice. There seems little point in trying to claim that this kind of relationship is voluntary in the way a citizen of a wealthy democratic state's membership of a tennis club is. However, such relationships may be necessary in cases where the state is unable or unwilling to do more to provide basic goods. The institutions and services provided by a centralised, coercive state may - for various reasons - be in some cases the best or most efficient way of providing certain basic

¹⁴⁶ Nagel himself does sometimes formulate his argument for statism in terms of feasibility. His feasibility argument is that only a coercive, centralised state can provide the necessary assurance that other people will conform to rather than undermine the patterns of conduct needed to promote justice. See Nagel, 2005, p. 116.

goods, but there may be other ways that are at least minimally acceptable. If this is so, we need to find ways of ensuring that these relationships are not abused. The possibility that people might be dependent on the relationships for basic goods seems the best place to start when trying to understand and mitigate their vulnerable status. Nagel's account of justice suggests that the principles of justice are defined solely in terms of the institutional relationship in which people stand, specifically that of fellow citizens. In contrast, this account argues that basic goods can be provided through a number of different relationships. Even if the state is the most stable and even the most just institutional way of providing these goods, the possible weakness and injustice of states indicates a need to look for alternatives, even if only as part of the transition to more stable state provision of basic goods.

Second, where states are not willing or able to do more to protect their own citizens and promote justice, the transition may require institutions that possess a degree of independence from states. One example of the reason for this can be found in the literature on labour standards:

[Countries] such as India have some of the most progressive, and expensive, legislation on the books concerning even minimum wages, but with no real intention to enforce it precisely because the cost of such mandates would be forbidding (Bhagwati, 2004, p. 174).

Perhaps this just gives us a case for separating monitoring or even enforcement from the government to some extent. One tentative suggestion might be to give trade unions a greater role in writing and even enforcing the standards, but to make them raise their own funds in order to do this. Done carefully, this might create legislation that is cheaper to enforce, more sensitive to local needs, and possibly make the unions more accountable to their members. In any case, the suggestion is intended as a response to the point that some poor states may have an incentive to create strong labour laws as a form of window dressing, with

no intention to put the laws into practice¹⁴⁷. In this case, it may make sense to shift the burden of legislation and enforcement onto more directly accountable agencies such as trade unions when the state does not itself provide the good (in this case, decent and effective labour standards) in question. There are two more general points to this example. The first is to suggest that there may be ways of providing basic goods even when states themselves are not willing or able to do so. The second is that the legitimacy of the institutions providing the goods is itself a moral concern, since the recipients of the goods are likely to be dependent on the institution.

We now have general answers to the three main aims of this discussion of derivative legitimacy and the charge of normative perversity. First, Nagel's argument leads to normatively perverse outcomes when applied to the dealings states have with non-citizens, and also to normatively perverse outcomes when applied to international institutions. Second, a modified version of the statist argument would hold that all persons are entitled to membership in a state that actually provides basic goods. This is compatible with weak cosmopolitanism. Third, Nagel's minimal humanitarian morality is not suited to addressing the moral problems that arise from institutional relationships for the provision of basic goods that are possible when states are weak or internally unjust.

X) Conclusion and Summary

This chapter looked at two separate aspects of a recent argument that attempts to confine principles of justice within the state. Nagel's argument is a strong form of statism: it denies that any considerations of justice apply outside the state. The chapter was structured by responses to two separate criticisms of the statist argument. The first was Caney's charge

¹⁴⁷ Bhagwati makes this point with regard to India: "[Countries] such as India have some of the most progressive and expensive legislation on the books concerning even minimum wages, but with no intention to enforce it because the cost of such mandates would be forbidding" (Bhagwati, 2004, p. 174).

that it is not clear why states raise demands of egalitarian justice. I argued that we can derive a demand for a form of *democratic* equality from the function of the state in providing basic goods, although this does leave open the question of why states raise demands of *distributive* equality. The second objection was Abidezah's charge of normative perversity. I modified this charge in a way that is more generous to Nagel, but suggested he is still vulnerable to the modified version of the normative perversity charge. Examining this charge of normative perversity in the context of the derivative legitimacy argument pushed us to do two things. First, to try to come up with a more normatively adequate defence of statism, and second to try to come up with more normatively adequate principles for international institutions.

The upshot of the discussion of democratic equality was that democratic processes are an appropriate way to prevent arbitrary uses of the state's coercive powers. I will turn more directly to the question of whether the same mechanism can work outside the state in the next chapter. The upshot of the discussion of normative perversity was that Nagel's argument permits states and international institutions to avoid institutionally demanding responsibilities by avoiding taking on the full set of state-like traits that would raise demands of justice. A less perverse version of the statist argument would hold that, while states may be the best institutional arrangements for providing basic goods that all individuals everywhere have a right to, we also need principles that can deal with cases where states are unwilling or unable to meet their responsibilities to provide those goods. These principles would need to be sensitive to the problems raised by different the forms of institutional relationship through which people provide for basic goods when the state is not able or willing to do so. Nagel's argument only focuses on the state as one such institutional relationship. His failure to attend to the role of basic goods in that relationship - and his failure to address the possibility of other relationships in which basic goods might be at stake - exposes the inadequacy of his statist argument.

Four. Held: Cosmopolitanism, Globalization and Democracy

Outline of the chapter

- I) Introduction
- II) Held's cosmopolitanism
- III) Moral and political cosmopolitanism
- IV) Democracy and the sovereign state
- V) Democracy beyond the state

I) Introduction

Beginning in the early 1990's, David Held has elaborated a distinctly democratic version of cosmopolitanism. Held argued that democracy has become established as the "the world's most popular form of government" (Mandelbaum, 2007). It has become the most common standard for judging the legitimacy of existing states. However, the expansion of the globalization of international law, international regimes, military institutions, culture and economics has undermined democracy within states because citizens are now subject to influences that transcend state boundaries yet are rarely subject to any direct democratic influence (Held, 1995, pp 100-30). Held argues that the appropriate response to this is to set up a cosmopolitan democratic order in which cosmopolitan law works to uphold democratic principles of accountability at different levels of decision making. My aim in this chapter is to ask how far Held's demand for strong cosmopolitan democratic institutions is justified. I start in section II by setting out some recent modifications Held has made to his basic argument. I then examine Held's description of the way democracy emerged as a principle of political legitimacy for the modern state. Following that, I ask whether a less demanding version of global order could be defended on Held's cosmopolitan grounds. Finally, I ask

whether Held's principles are relevant to pursuing this less demanding version.

II) Held's Cosmopolitanism

In recent years, two different forms of cosmopolitan political theory have evolved almost in parallel to each other. On the one hand, cosmopolitan democrats have argued for strengthening of democratic forms of participation at the global level, mainly in response to globalization¹⁴⁸. On the other, moral cosmopolitans have defended a conception of individual humans as objects of ultimate, general and equal moral concern¹⁴⁹.

In a series of recent publications (Held, 2003, 2004, 2005), Held has restated and reaffirmed the moral and political principles that form the basis for his cosmopolitan approach. Held outlines the following eight principles:

- 1: equal worth and dignity: humankind belongs to a single moral realm in which each person is equally worthy of respect and consideration.
- 2: active agency; active agency connotes the capacity of human beings to reason self-consciously, to be self-reflective and self-determining.
- 3: personal responsibility and accountability: actors have to be aware of, and accountable for, the consequences of actions, direct or indirect, intended or unintended, which may radically restrict or delimit the choices of others.
- 4: consent: interlocking lives, projects and communities require forms of public reasoning, deliberation and decision making that take account of each person's equal standing in such processes.
- 5: collective decision-making about public matters through voting procedures:

¹⁴⁸ Some of the main texts in this tradition include Held (1995), Linklater (1998), Archibugi (1998), Kuper (2004) and Gould (2004).

¹⁴⁹ Selecting from a large and growing number of works in this area, Pogge (2002), Barry (1999), Beitz (1999), Tan (2004) and Moellendorf (2004).

while a legitimate public decision is one that results from consent, this needs to be linked with voting at the decisive stage of collective decision making and with the processes and mechanisms of majority rule.

6: inclusiveness and subsidiarity: those significantly affected by public decisions, issues, or processes, should, *ceteris paribus*, have an equal opportunity, directly or indirectly through elected representatives, to influence and shape them.

7: avoidance of serious harm: if the requirements specified by the principle of avoidance of serious harm are to be met, public policy ought to be focused, in the first instance, that is, on the eradication of serious harm inflicted on people “against their will” and “without their consent” (Barry, 1998, p. 207, 231).

8: sustainability: all social and economic development must be consistent with the stewardship of the world’s core resources.

(Principles one to eight quoted from Held, 2004, p. 171ff, 2005, p. 12ff).

Held emphasises that these principles are universal in scope: “These are principles that can be universally shared, and can form the basis for the protection of each person’s equal interest in the determination of the institutions which govern their lives” (Held, 2005, p. 171). This brings Held much closer to contemporary cosmopolitans like Pogge and Barry, since he now clearly affirms something like the claim that individual human beings are of ultimate, equal and general moral concern¹⁵⁰. It also suggests that Held thinks that these fundamental principles are not themselves matters of democratic affirmation or choice: rather, they provide the rationale for democracy. In this section, I want to examine how Held’s clear affirmation of this set of principles clears some ambiguities in his account of cosmopolitanism, but how it also raises some further difficulties for his account. I emphasise that I am not claiming that Held ever endorsed the conclusions that some of his critics

¹⁵⁰ For the original formulations of these claims, see Barry (1999) and Pogge (2002). Held states the principle in the following way: “Humankind belongs to a single moral realm in which each person is equally worthy of respect and consideration” (Held, 2003, p. 470).

level at him. Rather, my point is that his eight cosmopolitan principles make clear how he would answer the criticisms.

a) In his earlier work, Held sometimes defended substantive redistribution in a way that gave the impression that political participation is the foundational or primary good that democracy should promote. For example: "The domain of welfare denotes the organization of those capacities that people require in order to ensure that they are 'competent to take part in both economic and political life'" (Held, 1995, p. 178). Held's more recent endorsement of his first four principles about the status of individuals as moral agents capable of pursuing projects and interests in a responsible manner changes this emphasis and clarifies his argument to some extent. Democracy is now seen as an expression of, or consequence of, these more basic principles about moral agency and the status of individuals as objects of moral concern.

b) One ambiguity that some of Held's critics have exploited is that he appears at some points to claim that promoting and protecting democracy is only of concern to states that already are democratic¹⁵¹.

Held does not offer normative arguments for why democracy should spread. He believes that participation in this cosmopolitan framework comes down to a decision on the part of each actor to uphold democracy and its principle of autonomy globally - either you do or you don't, since by definition, democracy has to be freely chosen (Cochran, 2002, pp. 520-1).

This interpretation suggests that Held would restrict cosmopolitan principles to those states and communities that choose to recognise the equal moral worth of individuals. Held's cosmopolitan principles would then run firmly aground when confronted with non-democratic societies. His later, stronger affirmation of universal principles of equal moral worth provides a response to this criticism, since it suggests that the normative

¹⁵¹ This ambiguity is found, for example, when Held states that cosmopolitan democratic law requires the establishment of a "community of all democratic communities" (Held, 1999, p. 106). It is not entirely clear in this context whether Held then means to restrict cosmopolitan democratic law to those communities that already accept democracy.

argument for the spread of democracy is the basic commitment to the equal moral worth and dignity of individuals.

c) Held's affirmation of universal principles of moral worth and dignity commits him to giving an account of how to realise his cosmopolitan principles in ways that are compatible with the moral worth and dignity of individuals. This follows from the universalist nature of Held's argument, since there is no morally relevant difference between those individuals who might have to work to realise a cosmopolitan democratic order and those who live under it once it is in place. A couple of points should be stressed about this argument. First, I am not trying to claim that the processes by which a cosmopolitan democratic order might be realised themselves have to meet the standards of a fully just or democratic cosmopolitan order. Rather, I am making the same claim that Abidezah makes in the following passage:

If justice can be realized to greater and lesser degrees, and if the necessary instrument for its realization is not available, all that follows is that other, second-best means must be deployed for at least a partial realization of justice (Abidezah, 2007, p. 340).

Second, I am not criticizing Held for failing to give an account of how to realise his cosmopolitan democratic order. I am only arguing that his commitment to universal principles of equal moral worth and dignity and his commitment to a principle of avoidance of serious harm do commit him to giving such an account. This is a necessary extension of Held's project¹⁵².

d) Held's endorsement of substantive principles such as equal moral worth and dignity, personal responsibility and accountability, avoidance of serious harm, and sustainability, commit him to a concern with the outcomes of democratic procedures as well as to the extension of procedures themselves. Barry stresses that this is a consequence of the affirmation of the basic cosmopolitan commitment to ultimate, equal and

¹⁵² Held does provide outlines of various short term steps towards the realization of cosmopolitan democracy or global social democracy, although he does not give a detailed explanation of how they are compatible with his guiding ethical principles. See, for example, Held (2003, pp. 475-6, 2004, p. 164).

general moral concern with individuals: “the value of any political structure (including a world state) is entirely derivative from whatever it contributes to the advancement of human rights, human well-being and the like” (Barry, 1999, p. 37). This presumably also applies to democratic decision-making procedures¹⁵³. Held at least partially concedes this commitment to a concern with substantive outcomes when he points out that his fifth principle, a commitment to decision making through voting procedures – needs some qualification:

Minorities clearly need to be protected in this process. The rights and obligations entailed by principles 4 and 5 have to be compatible with the protection of each person’s equal interest in principles 1, 2 and 3 – an interest in each person’s recognition as a being of equal moral worth, with an equal capacity to act on and account for their actions (Held, 2005, p. 27n4).

e) Although Held’s eight principles have more determinate content than Barry and Pogge’s three-part cosmopolitan principles, it can be argued that Held’s principles are nevertheless subject to a concern that emerges from the following point:

Moral cosmopolitanism, in its most general formulation, says simply that human beings are all subject to the same set of moral laws: we must treat others in accordance with those laws no matter where in the universe they live; they likewise must treat us in the same way. Political cosmopolitanism says this can be achieved only if everyone is ultimately subject to the same authority with the power to enforce those laws. The first of these positions does not entail the second, and indeed many would deny that moral cosmopolitanism has any specific political implications (Miller, 2008, p. 24).

Although Held does not make the leap to world government (and Miller concedes that few political cosmopolitans actually do), it can be argued that his eight principles do include both moral *and* political principles. The

¹⁵³ Barry appears to be making this point when he states “Nobody but a moral imbecile would really be prepared to deliver himself over body and soul to the majority principle” (Barry, 1991, p. 38).

first and the seventh principles are fairly obvious examples of moral principles, whereas the fifth and sixth are principles with implications for the scope of political institutions. They state, respectively, that majority voting is an appropriate procedure for collective decision making and that people should have an equal opportunity to shape public decisions that significantly affect them. However, if Miller's argument is correct, then Held cannot claim to have derived the political principles from the moral ones. I will return to this issue in my discussion below¹⁵⁴.

I have outlined five consequences that follow from Held's endorsement of a version of moral cosmopolitanism. First, Held accepts a set of moral principles that he formulates in a way that suggests that political participation is not the foundational good – rather, individuals are the targets of moral concern and democracy is an expression of this concern. Second, I argued that his endorsement helps settle the concern about what to do about non-democratic societies. Third, I argued that Held is more clearly committed to giving an account of how to progress towards a cosmopolitan order. Fourth, I argued that Held is committed to some sort of concern with outcomes as well as procedures. Finally, I argued that Held is vulnerable to the criticism that principles of moral cosmopolitanism do not entail any strong conclusions about the political institutions that are needed to realise cosmopolitan morality. In the next section, I want to look more closely at Held's connection between moral and political principles.

III) Moral and Political Cosmopolitanism

Although Held's eight cosmopolitan principles include universal moral principles that bring him closer to contemporary moral cosmopolitans, he stands apart from them in his affirmation of further principles that do have more direct political implications. As I have noted, his fifth and sixth

¹⁵⁴ As a further point, it is worth noting that neither Miller nor Sangiovanni deny the basic cosmopolitan principles. Sangiovanni begins his article by affirming them, while Miller says that everyone except "extreme racists" can affirm them (Miller, 2008, p. 27).

principles are the most obvious example of this. If Held is claiming that the political principles are derived from the moral principles, he is vulnerable to the following charge that David Miller directs at other contemporary cosmopolitans:

Cosmopolitanism...as its defenders present it, is a thesis about value...It says that the fate of human beings everywhere should in some sense count equally with us. Global principles of equality, on the other hand, are principles intended to govern the design of our institutions. They require that we should establish institutions that provide people everywhere with equal amounts of some good...they specify how we should behave as voters and so forth. Claims about value and claims about how agents should act are distinct, and *there can be no entailment from one to the other* (Miller, 2004, p. 66. Emphasis added)¹⁵⁵.

On this argument, Held cannot claim to have derived his political principles from his moral ones, since the claim about moral value is primarily a claim about the *scope* of our moral duties and not a claim about their *content*. As it stands, this is a rather odd argument. Miller himself seems to acknowledge that it implies that the cosmopolitan moral claim is redundant, since it provides no guidance at all for action (Miller, 2004, p. 66). However, this makes it difficult for Miller to then help himself to his own set of institutional proposals, which, he claims, are compatible with the minimal cosmopolitan commitment¹⁵⁶. I would argue that a more

¹⁵⁵ A couple of qualifications are in order here. First, Miller does at some points argue that the minimal cosmopolitan premises do rule out certain types of conduct. He argues, for example, that it rules out state A dumping hazardous nuclear waste on state B's territory simply because A declares that the interests of B's citizens are of no concern to them (Miller, 2008, p. 29). Second, Held could argue that a basic commitment to moral equality requires that all people are given some kind of participation rights, even if only as a symbolic affirmation of their equal status (for some discussions of the symbolic role of democracy in egalitarian societies, see Dworkin, 1987 and Wolff, 2000). Of course, Held clearly wants democratic participation to have more substantive content than this.

¹⁵⁶ These are as follows: "[Respect] for human rights worldwide, measures to prevent the international exploitation of political communities and smaller groups, and adequate opportunities for political self-

plausible version of this argument is that we cannot move from the minimal cosmopolitan claim about the scope of moral equality to the institutional claim *without* giving some sort of substantive account of what we actually owe to people. Indeed, this is implied in Miller's own argument. He argues that if a child from a distant town goes missing, and he has some information that can help find the child, he is under some obligation to provide the information. This suggests that his commitment to the moral worth of the child is expressed through his obligation to provide the information. Miller actually admits that what is really needed is a "substantive premise about what we owe to other human beings as such" (Miller, 2004, p. 67)¹⁵⁷.

To illustrate this point with regard to a general example from the labour standards literature, consider the following case. Discussing the possibility of a total global ban on child labour, Kaushik Basu makes the following point:

There are circumstances where even if such a total ban were feasible and costless to implement, it ought not to be implemented. To understand this, one ought to understand that there are worse things that can happen to children than having to work. In very poor regions, the alternative to work may be to suffer acute hunger or starvation (Basu, 1999, p 1111).

The point here is that in order to treat the child labourers appropriately as targets of moral concern, we need a broader account of the way child labour affects them. In particular, we need to ask which of their interests is at stake.

How does this apply to Held? Held is not very explicit about substantive content in either of his recent formulations of his eight principles, but he does at one point refer back to the idea that the boundaries of decision making are set by having significant interests at stake. In his formulation of his sixth principle, he refers to the idea that interests or needs can be

determination of all peoples. One might want to add to this the redress of historic injustice" (Miller, 2004, p. 78).

¹⁵⁷ In his most recent book, Miller provides his own account of this substantive premise by giving an account of basic needs that are owed to all people. See Miller (2008, ch 7).

used to determine who is affected by particular decisions. A brief account of his conception of needs is given in chapter 6 of *Global Covenant*. Similarly, Held's seventh principle expresses concern with substantive provision of basic welfare. Held's account is thus more detailed than the basic three part cosmopolitan moral premise, and does commit him to more substantive concerns about welfare and interests. It is not necessary to provide a detailed examination of these accounts at this point. All that is necessary is to ask whether Held has done enough to rebut Miller's challenge by providing (however implicitly or indirectly) a substantive account of what is owed to all people as a matter of moral concern. I will argue in the next section that Held has not done so. His account of needs provides the necessary substantive link from the cosmopolitan claim about the scope of morality to political principles. However, in the next section, I want to ask whether Held's commitment to moral cosmopolitanism, coupled with his substantive account of needs, is enough to justify his political claims about cosmopolitan democracy.

Before proceeding to my argument, one further point can be made. Perhaps Held is not claiming that there is any relationship of derivation between his principles. Instead of claiming that all eight principles are moral principles that are derived from each other, maybe Held has simply provided a list that includes both moral *and* political principles. Perhaps he is simply arguing that accepting the moral cosmopolitan claim and then accepting some empirical facts about the effects of globalization leads us to the political principles. In this case, the political principles are distinct from the moral principles: they are simply principles that follow if we accept the empirical claims, and the account of them serves a different purpose from the account of the moral principles. I would argue that this move still requires us to give a substantive account of the way globalization impacts on people's ability to fulfil their needs. It still requires us to establish that cosmopolitan democratic institutions are both needed and able to fulfil the substantive needs that give content to the basic moral cosmopolitan claim. If this is so, it would still be possible to challenge Held's claim about the need for strong cosmopolitan democratic institutions.

IV) Democracy and the Sovereign State

In this section, I will examine Held's argument about the emergence of democracy from the absolutist sovereign state. I will argue that Held's argument does not include an account of the role of democracy in taming potential abuses of power by the state. Once such an account is given, the limits of conventional forms of democracy can be shown. The section is divided into four. In the first part, I outline Held's description of the evolution of the sovereign state and refer to an explanation of how competitive electoral democracy works to prevent abuses of power by the state. In the second part, I explain the limits of competitive electoral democracy. In the third, I set out the implications of this argument for international and supra-national institutions. Finally, I set out the implications for Held's version of cosmopolitan democracy.

a) Held's first step is to argue that the consolidation of power by absolutist rulers in sixteenth century Europe provided a context in which state sovereignty as an organising principle for political units could emerge:

Absolutism helped set in motion a process of state-making which began to reduce the social, economic, and cultural variation *within* states and expand the *variation* among them, i.e., it helped to forge political communities with a clearer and growing sense of identity – national identity (Held, 1999, p. 87).

The increasing distinctions between different territorial communities consolidated the idea of sovereignty as a principle (if not always a practice) of international law. States have exclusive control over their own territories and accept only minimal principles of international law governing relations between states. Significantly, states have no right to intervene on behalf of citizens of other states when the rights or interests of the latter are at stake.

The establishment of an absolutist principle of sovereignty effectively meant that citizens were at the mercy of their rulers. Held sees this as one source of the struggle to establish the rule of law and accountability

over those in political power. The process of creating unified political communities provided an impetus

[To] the development of a discourse about the nature of modern political community, about the meaning of membership in it, and about proper form and limits of political power (Held, 1999, p. 89).

The outcome of these debates was the establishment of representative democracy as the main source of the moral legitimacy of sovereign states. Representative democracy established

[A] cluster of rules and institutions permitting the broadest participation of citizens in the election of representatives who alone can make political decisions, that is, decisions affecting the whole community (Held, 1999, p. 90).

It is also important to stress that the participation of citizens itself reflects the establishment of a broadly liberal democratic principle of autonomy, understood as the freedom and equality of individual citizens (Held, 1993, p. 18, 1995, p. 147). Held thus makes a close link between the idea of citizens as free and equal and the claim that people should have an equal opportunity to shape political processes and decisions that affect them in significant ways (Held, 2003, p. 470-1).

Held's arguments about the emergence of democracy as a principle of political legitimacy emphasise the importance of the idea of the sovereign state as a discrete political unit with a claim to non-interference from other states. Held argues that globalization significantly undermines the assumption that all political decisions can be taken in units of this kind:

National boundaries have traditionally demarcated the basis on which individuals are included and excluded from participation in decisions affecting their lives; but if many socio-economic processes, and the outcomes of decisions about them, stretch beyond national frontiers, then the implications of this are serious, not only for the categories of consent and legitimacy but for all the key ideas of democracy (Held, 1999, p. 105).

The basic argument here is that the emergence of a range of trans-national actors and forces makes it increasingly difficult to restrict political decisions to territorial states under the control of a single democratic

government. Globalization thus threatens the democratic institutions that, for Held, emerged to make individual autonomy possible.

There are thus three main steps in Held's argument. First comes the establishment of the sovereign state. Then comes the emergence of democracy as a procedure for accountable decision making within the boundaries of the state. Finally, globalization emerges as a challenge to both the nation state and democracy within the state.

One puzzling thing about this argument is the second step. Although Held does refer to electoral democracy in his work on globalization (Held, 1999, pp. 89, 91), his argument does not explain in any detail whether or how it works to prevent arbitrary rule. This is perhaps not so important in Held's earlier historical account, since all he needs to do there is to establish that globalization *is* eroding democracy. However, the role of democracy in preventing arbitrary rule becomes much more significant in Held's account of *moral* cosmopolitanism. This is in part because Held's moral account places much more emphasis on individual autonomy and agency (as is acknowledged in his second principle). As Held himself stresses, while the state may provide the background conditions for the exercise of individual choice and collective projects, its power also needs to be restrained:

Governments are entrusted with the capacities of the state to the extent that they uphold the rule of law. The equal treatment of all before the law, and the protection of subjects from the arbitrary use of political authority and coercive power, are *sine qua non* (Held, 1995, p. 145).

I argued in the previous chapter on Nagel that republicans *have* given an account that helps to explain how democracy works to minimise or prevent arbitrary rule (Pettit, 1999, 2000, Bellamy, 2008)¹⁵⁸. More

¹⁵⁸ Pettit distinguishes electoral from contestatory democracy, and argues that the latter is necessary to prevent arbitrary interference in the lives of individuals and minorities. His argument is thus an extension of traditional concerns about the tyranny of the majority. For Bellamy, competitive electoral processes themselves help to prevent domination of minorities. Arguably, Bellamy could be interpreted as arguing that a contestatory element is *internal* to electoral competition.

specifically, properly functioning competitive electoral democracy institutionalises a system in which competing parties have incentives both to rule out uses of power that are not in the interests of any citizens *and* to avoid abuses of power that target minorities. To restate the argument, the first part works because competing parties have a strong interest in showing that their rivals' proposals are not in fact in the interests of any citizens¹⁵⁹. The second part works because competing parties in a majoritarian system will need to find support from specific minorities in order to build a winning majority, as Bellamy argues:

Because an electoral majority is built from minorities and is prone to cycling conditions, a ruling group will do well not to rely on a minimal winning coalition and to exclude other groups completely - thereby reducing the possibility of such cycles. In this respect, majority rule protects minorities. Either a currently excluded minority has a good chance of being part of a future winning coalition, or - for that very reason - is likely not to be excluded by any winning coalition keen to retain its long term power (Bellamy, 2008, p. 182)¹⁶⁰.

These arguments give us a clearer idea about how competitive electoral democracy based on a simple form of political equality – one person, one vote, with universal franchise for adult citizens – works to restrain the arbitrary use of power by states¹⁶¹. In the next part, I will argue that these

¹⁵⁹ A version of this argument can be found in Amartya Sen's explanation of how democracy works to prevent famines:

The open and oppositional politics of a democratic country tends to force any government in office to take timely and effective steps to prevent famines, in a way that did not happen in the case of famines under non-democratic arrangements (Sen, 1999, p. 188).

¹⁶⁰ Bellamy also cites McGann (2004) as further support for this argument about how majority rule in a competitive system works to protect minorities.

¹⁶¹ The argument could be reinforced by arguing that electoral democracy also gives expression to the equal status of citizens by granting them an equal vote, or by arguing that electoral democracy contributes to citizens' sense of civic pride and responsibility. For arguments to this effect, see Bellamy (2008), Dworkin (1987) and Wolff (1998).

arguments also limit the applicability of electoral competition beyond the state¹⁶².

b) Held's own arguments about autonomy and the capacity to pursue projects commit him to some sort of substantive concern with outcomes. Held also commits himself to the view that majority voting should not result in arbitrary rule over minorities (Held, 2004, p. 172n3). Democracy is valued if it can be shown to protect or advance these substantive values. However, there are practical problems with possible global or trans-national forms of majority competition that make it less likely that they will work to protect different interests in the same way as democracy at the state level. I have two basic worries about relying on majority competition as a way to protect minorities at the global level. The first is a concern about scale. The second is a concern about the effectiveness of minorities in forming alliances. I will look at the worry about scale first. Bellamy makes a basic argument for the effectiveness of majoritarian competition in protecting minorities. His claim is that the instability of coalitions means that minorities always have some chance of being in a position to tip the balance for particular coalition, allowing it to form a

¹⁶² Held does discuss competitive and pluralist models of democracy in his important and wide ranging work *Models of Democracy* (2006, 3rd edition). However, I have two main concerns about the discussion there. First, his approach focuses on Schumpeter's competitive elitism and on pluralism as different mechanisms through which competition might secure protection of individual and group rights and interests. However, his discussion of Schumpeter does not address in detail the possibility of a more normative, electorally based version of Schumpeter's competitive model (although Held does refer to Miller's 1983 article which does outline such a model). Bellamy and Pettit's discussions of electoral democratic processes might be seen as normative defences of competition. Similarly, Held identifies classical and neo-pluralism as approaches that focus on competition between active interest groups rather than electoral competition as the most important mechanism for protecting diverse interests (see Held, 2006, p. 170). My second main concern is that, although Held emphasises the importance of electoral competition in his normative model of *domestic* democracy (2006, p. 282), he does not connect domestic competitive electoral mechanisms to his proposals for cosmopolitan democracy (see, for example, 2006, p. 308-9). The argument in this chapter claims both that the republican arguments identified in Bellamy and Pettit help to explain how electoral competition works to protect minority interests and attempts to make a link between domestic and cosmopolitan forms of democracy.

winning majority. This gives parties an incentive not to exclude particular minorities. However, my worry about this is that the larger the scale of the voting system, the less likely it will be that small minorities in particular will actually be in a position to tip the balance¹⁶³.

My second concern expresses a worry that it will be much harder for minorities to form alliances and coalitions under conditions of linguistic diversity. It will presumably be much harder for different groups to communicate their different interests and reconcile them in the interests of achieving an effective majority. This point is partly expressed in Kymlicka's response to Held (although Kymlicka is not focusing explicitly on electoral competition here): "Put simply, democratic politics is politics in the vernacular. The average citizen only feels comfortable debating political issues in their own tongue" (Kymlicka, 1999, p. 121)¹⁶⁴. Under conditions of linguistic diversity, it becomes harder for minorities to form coalitions and thus the mechanisms of electoral democracy that protect minorities from majority domination are weaker. These two arguments suggest that – if we want a form of democracy that actually works to protect minority interests – we need to be cautious about extending electoral competition across linguistic boundaries or expanding the scale of electoral competition¹⁶⁵.

¹⁶³ For a more general discussion about the scale of effective democratic institutions see Diamond (1999), chapter 4. Diamond observes that in 1998, 75 per cent of states with populations of less than one million were democratic, compared to 60 per cent of states with larger populations. Furthermore, two-thirds of states with populations of less than one million were rated as "free" according to Freedom House's more demanding criteria, compared to one-third of larger states (Diamond, 1999, p. 117).

¹⁶⁴ The problems of linguistic diversity as an obstacle to democracy are widely debated. See, for example, Mansour (1993), Van Parijs (2007) and Carothers (2007).

¹⁶⁵ There is a further, closely related objection to democratic institutions that cut across *national* boundaries. This is the claim that a sense of national identity is itself necessary for democracy and institutions of social justice to function at all. David Miller has developed this argument in detail (1995, 2000). Brian Barry accepts that this is a plausible claim about effective liberal institutions (including democracy) but argues that this is nevertheless compatible with cosmopolitanism: "It is quite true that fellow nationals...have obligations to each other that they do not have to people in the rest of the world. But this in no way contradicts the

This argument thus holds that there are limits to the scale of democratic institutions that can effectively work to protect the substantive interests that Held himself endorses in his list of eight principles. Electoral competition of the type specified here is a democratic mechanism that protects minority interests, but its scale is restricted by concerns about the effectiveness of coalition forming in large scale or linguistically diverse societies.

c) The argument above has two implications for the design of institutions. First, the concerns about scale and linguistic diversity do not necessarily rule out federal electoral systems *within* large diverse states. Diamond, for example, emphasises the importance (but also the limitations) of federal democracy for large states (see Diamond, 1999, p. 149ff).

More importantly for our argument here, though, is the point that if democracy *is* strengthened and institutionalised at local levels, this creates similar incentives for representatives to pursue the interests of those they represent at the trans- and supra-national levels. This point is made in Pettit's article on national and international democracy, with reference to international institutions:

The fact that national governments have to sign up to these institutions, and that they have every reason to explore the good that can thereby be achieved, means that the search for mutually beneficial ventures can flourish without the benefit of competition for office...national governments have an interest in establishing the terms of reference under which the body operates, and in maintaining the maximum level of scrutability to ensure compliance with those terms (Pettit, 2005 pp. 16-17)¹⁶⁶.

universalistic tenets of cosmopolitanism...universal morality consists largely in general prescriptions that, in the actual circumstances of everyday life, generate specific obligations" (Barry, 1999, p. 59).

¹⁶⁶ For similar arguments, see Kymlicka and Slaughter. Kymlicka states:

It seems to me that there is no necessary reason why international institutions should be directly accountable (or accessible to) individual citizens. To be sure, if international institutions are increasingly powerful, they must be held accountable. But why can we not hold them accountable indirectly, by debating at the

It is important to note that Pettit's argument here assumes that the national governments themselves are democratic in some sense. For this reason, it cannot be taken simply as a defence of the status quo. Nevertheless, Pettit's argument suggests that if national governments are constituted in such a way that they are forced to track the interests of their own citizens, this will carry over into their interactions with international institutions. Furthermore, if we assume that all governments are constituted in this way, each government will work to protect the interests of its own citizens¹⁶⁷. On this argument, although there are limits to the scale of domestic democratic institutions, once those institutions are in place, the elected representatives themselves have incentives to protect the interests of those they represent, both domestically and at the international and supra-national level.

Two further remarks need to be added here, though. First, one response is that this argument neglects the differences in bargaining power and influence among states. The fact that poorer democratic states are often unable to afford well-informed and effective delegations to international institutions is well documented¹⁶⁸. This suggests that they will often be unable to protect the interests of those whose interests they represent, even if they have some electoral incentive to do so. While this is a compelling argument, I do not see why it directly undermines the

national level how we want our national governments to act in intergovernmental contexts? (Kymlicka, 1999, p. 123).

Slaughter argues for the central role of networks that are accountable to governments: "government networks can provide the spine of...broader networks in ways that make it easier to distinguish *politically accountable actors* from 'experts and enthusiasts'" (Slaughter, 2004, p. 240, emphasis added).

¹⁶⁷ For an argument that makes the opposite assumption to Pettit, see Caney. Caney argues,

Democratic states may show *some* consideration to foreigners, but it is difficult to accept that this statist institutional structure is the most likely to deliver cosmopolitan outcomes. Consider the incentives facing democratically elected officials in a world of states. Their incentive is to win elections and to do so to cater for the wishes and beliefs of their own citizens (Caney, 2004, p. 169).

This assumes that the representatives of other states are not doing the same, and that they cannot exercise similar influence.

¹⁶⁸ See, for example, Held (2004, chapter 6) and Narlikar (2005).

importance of delegates being accountable to domestic constituencies. The argument suggests instead that we might need to find ways to strengthen the influence of representatives or delegates from poorer democratic states.

Second, it is questionable whether the outcomes that result from interaction among separate, *internally* democratic states should themselves be called democratic, not least since they are not the direct product of electoral competition based on universal franchise¹⁶⁹. Dahl, for example, argues that international organizations should be referred to as *bureaucratic bargaining systems* (Dahl, 1999, p. 33). This does not undermine the point that these systems might be shown to be the most effective plausible way to protect people's interests, though. Indeed, Held's commitment to substantive values such as autonomy and protection of minorities suggests that these systems would be judged against their ability to protect those values, rather than just against their democratic credentials.

d) Held includes a demand for strengthened inter- and supra-state institutions in his outline of cosmopolitan democracy. This demand has been a consistent part of his advocacy of cosmopolitan democracy (compare Held, 1993, 1995, 2003, 2004, 2005). The arguments set out here suggest that we have reason to question the extent of these demands. I argued that there are worries about the effectiveness of conventional democratic competition in protecting the interests and rights of citizens at the inter- and supra- state level. Furthermore, I argued (following Pettit and others) that reinforced domestic democracy can itself serve to protect the interests of individuals in inter- and supra-national institutions. The difficulties involved in directly democratising international institutions, and the availability of feasible alternatives, suggests that we should recast Held's demand for stronger, ultimately democratic cosmopolitan institutions. This argument thus leads us to question the

¹⁶⁹ This is in opposition to Pettit, who claims that because international institutions give expression to the second, contestatory dimension of his two-dimensional model, they can properly be called democratic. See Pettit, 2005.

way Held moves from his moral arguments about individuals having equal status as targets of moral concern to his more obviously political demands for strong cosmopolitan democratic institutions.

One further point can be added here. It was particularly central to Held's earlier arguments about globalization and democracy that the various forms of globalization were acting to undermine the ability of democratic states to determine their own fates¹⁷⁰. While Held has maintained versions of this argument in his more recent work (see 2006, p. 296-7, for example), there has also been a growing literature that emphasises the importance of strong and effective state structures in *benefiting from* and *protecting the interests of citizens from* the effects of globalization. For example, Martin Wolf argues, "the ability of a society to take advantage of the opportunities offered by international economic integration depends on the quality of public goods such as protection of property rights, personal security, a non-corrupt civil service, and education" (Wolf, 2004, p. 276)¹⁷¹. However, these arguments suggest that the most appropriate response to the problems Held identifies with globalization will often be to strengthen the capacities of weaker and poorer states both in terms of democracy and in terms of their ability to cope with globalization. The argument that - while democracy is a way to control the power that states concentrate in order to provide their citizens with basic goods - it has limited effective scope, reinforces this argument. This is because states remain the institutions most likely to carry out the provision of such goods without resorting to the use of arbitrary power.

¹⁷⁰ See, for example, his 1999 essay: "the autonomy of democratically elected governments has been, and is increasingly, constrained by sources of unelected and unrepresentative economic power" (Held, 1999, p. 98).

¹⁷¹ Other advocates of the view that states are needed to ensure citizens can benefit from globalization include Evans (1997), Rodrik (2000) and Weiss (1997). Some opponents of specifically neo-liberal globalization suggest that states have adopted policies of state intervention and protectionism in some areas in order to develop (see especially Wade, 2003). For arguments that states present obstacles to cosmopolitan democracy, see Wendt (1999) and Shapiro (2003). Young argues that there has been some convergence on the view that states are important in the protection of workers' rights in the literature on sweatshops and labour standards (Young, 2006, p. 129).

These arguments suggest that we need to recast Held's own argument about cosmopolitan democracy. Held does not always distinguish clearly enough between problems that are the result of lack of domestic democracy and problems that are the result of a lack of cosmopolitan democratic institutions. If the main cause for concern is lack of effective, democratic domestic state institutions in some states, we need to think about ways of strengthening those institutions. This is different from focusing on the construction of a strong set of cosmopolitan institutions that might subsequently be democratised. However, what the citizens of such states lack is precisely the domestic democratic structures that allow for provision of basic goods while minimising the risk of arbitrary power. Put another way, the citizens of these states are especially vulnerable in comparison to citizens of effective, democratic states. I would argue that Held's focus on avoidance of serious harm (his seventh principle) takes on a particularly important role here. This is because constructing democratic state institutions in non-democratic societies is likely to impact heavily on people who have limited abilities to protect themselves from arbitrary uses of power in constructing those institutions. I develop this argument in the next section of this chapter.

I had two main aims in this section. The first was to question the way Held moves from his endorsement of the cosmopolitan moral claim about individuals as ultimate, general and equal objects of moral concern, to his political and institutional claims about cosmopolitan democracy. I argued that the move from the moral arguments to the political and institutional ones required a further commitment to substantive principles about what is owed to individuals. Although Held does make some commitment to such substantive principles, I suggested that once in place, these principles undermine Held's case for strong cosmopolitan institutions. The substantive principles require that democratic institutions actually be effective in doing things like protecting minorities from arbitrary rule, as a matter of moral concern. I argued that domestically democratic states can do this, and that they can also protect the interests of their citizens at the trans- and supra-national level without requiring strong cosmopolitan

institutions. This is not to deny that inter- and supra-national institutions are necessary or to deny that they are in need of reform. It is to argue that the best way to pursue that reform is through domestic democratization.

My second aim was to question Held's cosmopolitan democracy as a long term aim. Again, the main argument is that domestic democratization is an effective way of protecting individual interests, and thus meets the requirements of cosmopolitan morality. Furthermore, the moral and political issue is weak and non-democratic states that fail to promote and protect domestic democracy. This requires greater attention to the specific interests of the citizens of those states, and in particular attention to Held's seventh principle, which demands avoidance of serious harm. I develop this point further in what follows.

V) Democracy Beyond the State

The previous argument suggested that the institutions of electoral, competitive democracy found at the level of the state are not necessarily likely to be appropriate or effective at the global level. Held might respond that this only requires greater imagination in the design and implementation of democratic principles beyond the state. In particular, it may require greater attention to the forms of political participation that are found in civil society. In Held's earlier work, this point was expressed in terms of "double democratization",

[The] interdependent transformation of both state and civil society...if democratic life involves no more than a periodic vote, citizens' activities will be largely confined to the 'private' realm of civil society and the scope of their actions will depend largely on the resources they can command (Held, 1993, p. 25).

More recently, Held has focused on non-state actors in the context of global citizenship. Held does acknowledge some of the problems with reliance on civil society and NGOs as democratic institutions under conditions of inequality:

[To] avoid citizens of developed countries being unfairly represented twice in global politics (once through their governments and once through their NGOs) special attention and support needs to be given to enhance the role of NGOs from developing countries (Held, 2004, p. 112).

This point about the importance of developing country NGOs seems exactly right to me. However, I would argue that the point can be deepened by considering more carefully the difference between non-state actors against a background where state institutions are effective and democratic, and non-state actors against a background where state institutions do not meet such standards. This gives a clearer rationale for Held's own distinction between NGOs and other organizations in developed and developing countries. I draw out this distinction by drawing one analogy and one dis-analogy between developed and developing country organizations. I then look at the implications for Held's own approach to participation.

a) A Domestic Analogy

At the domestic level, there is a number of broad similarities between non-governmental organizations in democratic and non-democratic countries. These similarities can be illustrated by looking at the example of trade unions¹⁷². The first similarity is the importance of organizations that have a degree of independence from the state. As various commentators have noted,

In the countries of the former Soviet Union [state controlled unions] collapsed with the regime, but they continue to thrive in surviving

¹⁷² Admittedly, trade unions are a borderline case when it comes to examining NGOs. On the one hand they are usually non-governmental (unless strongly controlled by the state). On the other, they are often internally democratic in ways that many NGOs are not. See Spooner (2004) for a discussion of the distinction between unions and NGOs. The problems of interaction between NGOs and trade unions have been quite widely discussed. See, for example, Brown and Gearhart (2004), Lipschutz (2004), Compa (2004) and O'Rourke (2003).

one-party communist states, for instance the All-China Federation of Trade Unions (ACTFU) in China. Other examples can be found in Vietnam, Laos, Cuba and North Korea. In other countries that may not be communist but display certain authoritarian tendencies, such as Indonesia, Syria, Iraq and Iran, union federations are tightly controlled by the state as well (Spooner, 2004, p. 24).

As Elliott and Freeman point out, the Chinese case demonstrates some of the basic problems with state controlled unions. China has a wide range of labour problems including unpaid back wages and violations of basic labour standards (Elliott and Freeman, 2003, pp. 78-9). The existence of the government controlled ACFTU, which is “an old-fashioned ‘transmission belt’ union movement, which follows the dictates of party leaders and local officials...ACFTU cadres and officials are generally sympathetic to workers’ concerns, but they side with management and the state whenever workers have a serious problem” (Elliott and Freeman, 2003, p. 79). The Chinese government also opposes the formation of worker controlled unions, and has intervened to prevent the expansion of some of these organizations. As Elliott and Freeman note, “Because the most effective way to deal with low labour standards is to give workers the ability to defend their own interests, China has put itself in a box on this issue” (Elliott and Freeman, 2003, p. 79)¹⁷³.

It is also possible to argue for a greater degree of independence from government influence over unions even in democratic developing countries, though. Bhagwati makes a series of somewhat cynical-sounding comments on labour regulation in India. He suggests that generous sounding labour laws are put in place to please the labour lobby, but with little or no intention to put them into practice:

[Countries] such as India have some of the most progressive, and expensive, legislation on the books concerning even minimum

¹⁷³ A parallel worry is the more recent concern with company funded and supported sweatshop monitoring. O’Rourke notes that “Some critics warn that companies are controlling these processes, co-opting NGOs by changing them from watchdogs to ‘partners’” (O’Rourke, 2003, p. 22).

wages, but with no real intention to enforce it precisely because the cost of such mandates would be forbidding (Bhagwati, 2004, p. 174).

Bhagwati uses cases like this to argue against strong domestic laws. However, the example seems to suggest that what is needed is independent authorities capable of assessing whether and how to apply laws in particular cases. Independent, worker-controlled unions seem like good candidates in this case, not least because their members are likely to have the most relevant knowledge of the effects of violations of the law¹⁷⁴.

Independence from the state is not enough, though¹⁷⁵. As various sources indicate, the effectiveness of unions also often depends on the effectiveness of state institutions. This point holds across the divide between developing and developed countries. As Elliott and Freeman point out, the problem in China is not so much lack of labour laws as such, but lack of enforcement:

Chinese labour laws are comparable to those in advanced countries, save for the country's treatment of freedom of association. If enforced, the laws would guarantee decent working conditions for most workers. But private sector employers,

¹⁷⁴ A further case for independent unions in democratic developing countries could be made on the basis of use of export processing zones (EPZs) in many developing countries, including democratic ones. EPZs are areas of countries in which normal legislative standards are lowered in order to attract foreign investment and business. This includes lower taxation but it also often includes lower labour standards as well. The fact that developing country governments have an incentive to offer lower standards in these zones can be used to make a case for independent assessment of standards in EPZs, possibly by trade unions with a degree of independence from the state.

¹⁷⁵ Diamond makes a similar, more general point about civil society: "the single most important factor in the consolidation of democracy is not civil society but institutionalization...[civil society] must be reinforced by a political system that works to deliver the political goods of democracy and, eventually, the economic and social goods people expect as well" (Diamond, 1999, p. 259). See also Evans (1998).

including foreign investors, regularly flout labour laws (Elliott and Freeman, 2003, p. 79)¹⁷⁶.

To some extent, a similar argument can be made with respect to the United States. The decline in union membership – to a level where less than 8 per cent of the private workforce is unionized – is partly attributed to labour laws that impede organization, but also partly due to failures to enforce the labour code by the federal government¹⁷⁷.

A further point about NGOs, including trade unions, is the increasing acknowledgement of the demand to include them in decision making processes at the global level. Elliott and Freeman make this point with regard to anti-sweatshop activists, making the following recommendation:

Activists should demand that the World Bank and regional development banks should require social audits on projects they fund, using a combination of suitably trained *domestic nongovernmental organizations or trade unions*, as well as accredited auditors (Elliott and Freeman, 2003, p. 132, emphasis added)¹⁷⁸.

Despite some misgivings about the nature of many NGOs, and about the often overwhelming influence of wealthy, Western countries over their

¹⁷⁶ One reason for the lack of effectiveness is corruption. Elliott and Freeman point out “The businesses that violate labour rights range from foreign owned firms to Chinese private enterprises. Many have links to local or national party or government leaders and most pay taxes to local government” (Elliott and Freeman, 2003, p. 80).

¹⁷⁷ These points are drawn from Freedom House’s 2008 *Freedom in the World Survey*:
<http://www.freedomhouse.org/template.cfm?page=22&year=2008&country=7515> (accessed April 21, 2009).

¹⁷⁸ The more general point appears in Held’s work. He includes INGOs in his proposals for a global assembly. Andrew Hurrell makes a similar demand:

If rich states and international institutions are to develop effective policies on economic development, environmental protection, human rights or the fight against drugs, then they need to engage with a wide range of states and to interact, not just with central governments, but with a much wider range of domestic political, economic and social actors (Hurrell, 2001, p. 52).

funding and operations, there is increasing acceptance of the demand to include them in trans- and supra-national decision making¹⁷⁹.

The three points outlined here indicate some similarities between NGOs in democratic and non-democratic and developed and developing countries. There are reasons for ensuring that they have a degree of independence from states. There are also reasons to think many NGOs rely on effective state institutions to ensure they can realise their demands. Finally, there are demands to include NGOs in institutions and procedures of global governance. Given these similarities, on what basis does Held draw his distinction between developed and developing country NGOs?

b) A Disanalogy

Held argues that it would be potentially unfair for developed country NGOs to be represented in authoritative global political institutions without some sort of attention to the role of developing country NGOs. In part this is due to the possibility of developed countries being represented twice, through both their governments and their NGOs while developing countries may lack any NGO representation at all. In this section, I want to question Held's own criteria for inclusion and participation. Held's sixth principle, the principle of inclusiveness and subsidiarity, is stated as follows:

[Those] significantly affected by public decisions, issues, or processes, should, *ceteris paribus*, have an equal opportunity, directly or indirectly through their representatives, to influence and shape them (Held, 2004, p. 174).

¹⁷⁹ For an example of data on the level of Western influence over NGOs, see Hurrell:

Around 87 per cent of the 738 NGOs that were accredited at the [WTO] Seattle Ministerial were based in the industrialized countries. In the case of human rights, Hopgood noted the picture of Amnesty's membership and activism: in 2005, there were 1,157,939 members in North America and Western Europe, compared to 56,195 in Asia-Pacific and 4,201 in Africa.

My concern is about the formulation of this principle. As stated, Held's principle implies that all those affected should be equally able to influence the outcomes of procedures. However, it is possible to provide examples of cases where providing equal opportunity to influence decisions is not the most obviously appropriate response. This involves drawing a dis-analogy between developed and developing countries.

The dis-analogy is that in developed countries, NGO activity goes on against a background in which, for most people, basic needs are usually securely provided. Most developed countries have at least some welfare provision and social security. Wolf points out that the opening of markets in rich Western countries to foreign trade has been particularly hard on unskilled Western workers:

[To] put this point more brutally, the working people of the high income countries have historically benefited from the monopoly of their countries in manufacturing. Now, however, they are in competition with the unskilled of the world, with potentially devastating results (Wolf, 2004, p. 170).

Consider two versions of this case. In one, the workers involved are all citizens of the same, developed country. The developed country provides decent welfare and retraining for unemployed people. Now, imagine that a factory plans to relocate from region A to region B within the country. Because the workers' basic needs are protected, it seems fairly appropriate in this case to treat them as having some sort of claim to equal influence over the decision about relocation, perhaps via their trade unions in this case.

Compare this with a case in which a company plans to relocate from developed country A to developing country B. Allow that A is able to provide for its workers, and that the new jobs created in B would lift a significant number of people above some basic level of welfare¹⁸⁰.

¹⁸⁰ It is worth noting here that Wolf also argues that globalization has not significantly limited the ability of developed countries to pursue domestic policies of taxation and redistribution of wealth. See Wolf, 2004, ch12. See also Banting, who emphasises the differences in social policies among developed countries as a sign that domestic policy making is still relevant: "the global economy does not dictate the ways in which

Because the workers in B have a basic level of welfare at stake in this case, whereas the workers in A do not, it seems inappropriate to treat the two cases equally. Indeed, as Wolf argues, if the workers in B have urgent interests at stake, it is arguable that allowing the factory to relocate – while providing assistance to A’s own workers - would be one way to fulfil a moral responsibility to them:

The right response is to help those adversely affected by low-wage imports, through retraining, improved education, generalized wage subsidies for low-wage labour and, if all else fails, simple transfers of income. It would be immoral for rich countries to deprive the poor of the world of so large an opportunity for betterment merely because they are unable to handle sensibly and justly the distribution of the internal costs of a change certain to be highly beneficial overall (Wolf, 2004, p. 170).

The point here is that, even though the different workers in the two countries have significant interests at stake, it is not necessarily appropriate to include them equally in the sense of giving them equal opportunities to influence the outcome of the decision, yet that is what Held’s formulation of his sixth principle seems to require¹⁸¹.

The problem here is that Held again seems to move from his first moral principle about individuals as equal targets of moral concern to his various later (political) principles that argue for equal inclusion or influence over decisions. However, the case just outlined indicates that even though the workers in both countries are equal targets of moral concern, in this case it is not clear whether giving them equal *influence* over this particular decision is appropriate. This is because the workers in country B have very urgent interests at stake. As Ian Shapiro puts this point,

governments respond, and different nations are responding in distinctive ways that reflect their domestic politics and culture” (Banting, 1997, p. 286).

¹⁸¹ This point could also be extended as a question about how Held might explain how to get from “here” to “there”. In this case, the challenge is as follows: even if we accept cosmopolitan democracy as a long term aim, its principle of equal inclusion is not particularly helpful if we are starting from a position of great inequality.

Allowing an equal say in a decision to people with greatly differing stakes in the outcome generates pathologies similar to those involving large differences in capacities for exit (Shapiro, 1999, p. 235).

In the case outlined, we could argue that equal *moral* concern for the developed country workers is shown to them through the provision of welfare, retraining and other goods¹⁸².

With regard to NGOs, the relevant distinction here is between the different situations the workers face. For the workers in country A, a decision to relocate the factory to country B could be mitigated through the various measures Wolf refers to, and their union would presumably be in a position to press for the use of such measures. The workers in country B may not have a state capable of providing such measures, and in this case a union that might represent them (for example in lobbying for the relocation of the factory) is more directly and urgently responsible for their basic needs. To put this point another way, the relevant disanalogy is between a case in which an NGO represents people against a background in which those represented have secure provision of basic goods and a case in which at least some of those represented do not have such secure provision. The problem is of course compounded in the case of non-democratic countries, which have an even more limited claim that their delegates at international institutions are genuinely representative of the interests of those they represent¹⁸³. This gives us a rationale for distinguishing between developed country and developing

¹⁸² Equal moral concern is also expressed if these goods are provided through a state that is itself subject to effective democratic control through electoral competition that extends suffrage to all adult citizens.

¹⁸³ Consider the ILO in this context. The ILOs members include states like Saudi Arabia, Kuwait, the Lebanon and the United Arab Emirates. Freedom House has classified all these states as “not free” or “partially free”. The states have also been accused of serious violations of basic labour rights (see Human Rights Watch, 2007). The ILO provides technical assistance to these governments in writing and enacting labour legislation, but it is hard to see how this will help if the ILO only interacts with their undemocratic governments. Since their citizens are denied freedom of association, it is hard to see how they could influence their own governments.

country NGOs: the latter are often responsible for people who lack a state capable of protecting even their most basic interests when a decision goes against them. In some cases, they may also be the only direct representation people in non-democratic countries have at all.

c) Inclusiveness and Subsidiarity or Avoidance of Serious Harm?

One move Held might make in response to the argument above is to stress that cases like these are simply not best dealt with by the principle of inclusiveness and subsidiarity. Because the situation of the workers in country B is comparatively more urgent than those in country A, it is more appropriate to invoke the seventh principle, the principle of avoidance of harm and the remedying of urgent need. Held states,

[This] is a principle for allocating priority to the most vital cases of need and, where possible, trumping other, less urgent public priorities until such a time as all human beings, de facto and de jure, are covered by the first six principles, that is until they enjoy the status of equal moral value and active agency and have the means to participate in their respective political communities and in the overlapping communities of fate which shape their needs and welfare (Held, 2004, p. 175).

Held's formulation of this seventh principle raises a puzzle about its relation to the other six principles, though. The claim that fulfilment of urgent needs and the avoidance of serious harm should take priority *until* the other six conditions are fulfilled indicates that there are some circumstances under which the previous six conditions, including those relating to participation and inclusion, might be suspended. Admittedly, there are urgent emergency cases where this might be appropriate. However, Held's own endorsement of *universal* principle regarding individuals as units of moral concern and of connected principles about agency, influence and participation indicates that there is a need for caution in suspending those principles in the name of some seemingly

more basic concern. I simply do not know what Held might say here¹⁸⁴. I assume that he would not want to deny some sort of moral agency – and thus participation - to people even in many situations of serious harm or urgent need, but he does not provide us with a clear guide to the relationship of priority between the principles. As I argued above, a principle of equal influence does not seem appropriate. Nevertheless, it is possible to show that some forms of participation may be appropriate even if background conditions for full equality are missing. I will again illustrate using the example of labour standards.

One of the basic claims many of the commentators in the literature on labour standards make is that workers are often the most effective monitors of labour standards:

Workers themselves have the strongest interest in combating sweatshop conditions...According to some researchers, employer-sponsored monitoring systems that aim to reform sweatshop conditions but fail to involve workers in a meaningful way are often ineffective or actually harm workers (Young, 2006, p. 125)¹⁸⁵.

Two further points should be added. First, monitoring and participation here does not necessarily require that workers meet a high threshold of substantive equality to participate. They may not even need to be literate. Despite the fact they have very urgent interests at stake, and may be

¹⁸⁴ My own view is that participation in political decisions – including decisions about provision of basic goods - is one of the ways in which to give expression to the cosmopolitan claim about the moral equality of individuals. However, participation itself often imposes costs on individuals, particularly in an unequal world. Two concerns follow from this. First, we ought to be concerned with ensuring that the costs of participation do not themselves undermine individuals' capacity for moral agency. Second, a universal, general and equal concern with such moral agency indicates that we ought to prefer institutions and procedures that provide some opportunities for such agency over those that offer none.

¹⁸⁵ Elliott and Freeman draw a similar conclusion, and add that participatory forms of monitoring may even be in the interests of firms as well:

[Participatory monitoring efforts] reflect a belief that workers themselves are the most effective and efficient monitors of working conditions. Using workers rather than outside firms to monitor conditions should also be less expensive than hiring expensive auditors (Elliott and Freeman, 2004, p. 72).

subject to serious potential harm, they nevertheless have a participatory contribution to make in monitoring standards and even suggesting solutions to specific problems. Second, the vulnerable situation of many workers requires that participatory processes be carefully designed in order to enable workers to participate in ways that do not threaten their other interests. For example, where it is obviously the case that a particular worker has raised a complaint, there is clearly a risk that she may face reprisals for doing so. Dara O'Rourke stresses this point: "Workers may also be punished for complaining to auditors, as these systems often have limited protections for those who complain" (O'Rourke, 2003, p. 23)¹⁸⁶. One important strategy in designing participatory forms of workplace monitoring is to try to reduce the costs of engagement for the parties involved, as Archon Fung notes (Fung, 2003, p. 66). In fact, in this case the remedies may be fairly simple: they may involve interviewing workers away from factories, providing anonymous surveys, or setting up telephone or e-mail services so workers can raise complaints about working conditions without facing intimidation or threats of dismissal. The point of these examples is to suggest that even when some people are near or even below the threshold for serious harm, it is still possible to include them in certain kinds of participatory process. This is consistent with seeing them as targets of equal moral concern.

I want to stress three points about the argument that has been made in this sub-section. First, I am not trying to argue that the participatory processes outlined here are somehow preferable to or an acceptable substitute for a more fully realised cosmopolitan order. Rather, my aim has been to try to make more room than Held does for different forms of participation even under conditions in which people have very urgent interests at stake. My aim is thus to try to avoid overriding a cosmopolitan concern with individual moral agency in the name of seemingly more

¹⁸⁶ As a result of this, O'Rourke emphasises the importance of auditors conducting interviews away from factory sites and generally taking steps to ensure anonymity for complainants. The steps O'Rourke describes seem to be relatively simple and undemanding ways of reducing the "participation costs" of sweatshop employees.

urgent needs. This will not always be possible, but a commitment to universal cosmopolitan concern gives us reason to try.

Second, I am not claiming that the type of participation outlined here is necessarily democratic in any strong sense. Rather, it expresses a more basic concern with the ultimate, general and equal moral status of the individuals involved.

Third, I want to avoid the impression that I am claiming that individuals should only participate because they already meet some standard that makes it more likely that their participation will advance their interests. Rather, my argument is that cosmopolitan respect for the moral status of individuals requires us to try to find ways of including people that do justice to their status as moral agents. Again, this has two consequences. First, we ought to look for forms of participation that are compatible with the moral agency of individuals¹⁸⁷. This rules out forms of participation that are incompatible with such moral agency. Second, if choosing between alternative solutions, we ought where possible to prefer forms of participation that are compatible with such moral agency over solutions that deny any participation, even in situations where urgent needs or serious harm are at stake.

I have developed a pair of analogies and dis-analogies in this section to question Held's focus on *equal* opportunities for influence over decision making in cosmopolitan institutions. Civil society actors play an important role in democratic societies and often need both independence from the state and an effective functioning state in order to fulfil that role. However, the role of civil society actors and NGOs (including trade unions) at the global level is different. Because they sometimes directly represent people with urgent interests at stake, it is inappropriate simply to provide

¹⁸⁷ This view is indebted to Shapiro, who advocates seeing democracy as a subordinate good:

[We] should resist every suggestion that just because democracy is a foundational good, it is the only good for human beings, it is the highest human good, or it should dominate the activities we engage in. Democracy operates best when it facilitates our activities, not when it displaces them (Shapiro, 1999, p. 21).

them with equal opportunity to influence decisions. The question about Held's move from a cosmopolitan principle of moral equality to principles of political equality returns here. Held's commitment to moral equality and agency does not necessarily entail that equal opportunity for influence is the most appropriate principle. I also asked whether Held could instead move to his seventh principle, about urgent needs and avoidance of serious harm. Although this seems appropriate in many of the most serious cases, I argued that Held is not clear about whether this would still involve *participation*. His argument can be read as implying that suspending participation would be justified in cases of urgent need and serious harm. I would defend a reading in which the importance of the universal commitment to equal moral worth implies that we ought – as far as possible – to find ways to include people in ways that are compatible with their moral agency across different areas of their lives. Again, this is derived from a commitment to concern with individuals as moral agents¹⁸⁸. The argument is thus not a direct criticism of Held. Rather, the aim is to push him to think through more clearly the way participation fits in with a more general concern with individuals as moral agents. In particular, it pushes in the direction of trying to find forms of participation that are attentive to the possibility that participation often has serious costs for the worst off, but that there may be ways to mitigate those costs even when people are not substantively equal.

VI) Conclusion and Summary

¹⁸⁸ Shapiro's conception of democracy as a subordinate foundational good is again relevant to this point. We might argue that democracy (or participation more generally) is the means for people to protect their interests that is most compatible with seeing them as independent moral agents. However, this does not mean that democracy and political participation themselves should be so demanding as to make it impossible for people to pursue their interests in other areas. The institutional challenge is to find forms of political participation that do not undermine people's capacity to pursue their interests in other areas.

In the three main critical sections of this chapter, I have raised a number of concerns about Held's most recent formulations of his cosmopolitan principles and their relationship to his political and institutional proposals. Miller's criticism of cosmopolitanism in general is applicable to Held. Like other cosmopolitans, Held needs to give a substantive account of how to move from his basic commitment to general, universal and equal moral concern with the moral status of individuals to his political and institutional proposals. Although Held's discussion of interests and avoidance of serious harm provide him with some resources to do this, he needs to do more to show how to make this move.

As I argued in section three, when we work out how democratic equality functions in electoral competition within democratic societies, it becomes possible to argue that competitive democracy does meet the requirements Held sets out. Electoral competition works to prevent arbitrary rule that would conflict with people's status as moral agents. Arguably, the fact that people also have equal votes provides at least some acknowledgement of their status as moral agents. It is worth noting that there is little reference to electoral competition in Held's account of cosmopolitan democracy. Furthermore, although there are limits to the effectiveness of electoral competition in large scale, linguistically diverse societies, the pressures on elected representatives serve to provide indirect forms of control over international institutions. This leads us to recast Held's own argument about cosmopolitan institutions. One of the main cosmopolitan priorities would be to ensure that states are internally democratic. This still requires concern with cosmopolitan institutions, in part because the process of moving towards domestic democracy can itself impose unequal burdens, particularly on citizens of non-democratic states.

I also looked at Held's account of the role of civil society and NGOs. I argued that although there are similarities between the functions of NGOs at the domestic and global levels, it is also important to notice significant differences between them. Most obviously, NGOs working in poorer and non-democratic states are often more directly responsible for the interests of those they (claim to) represent. Whereas developed, democratic

countries are often able to respond if their citizens lose out in a particular decision (through provision of welfare, compensation and so on), developing countries are less likely to be in a position to do this. This provides a clearer rationale for Held's distinction between developed country and developing country NGOs.

Finally, I argued that Held's invocation of a principle of serious harm or urgent need raises concerns about how to reconcile that principle with his other principles about moral equality. I argued that a basic and universal concern with individual moral agency requires us to try to find ways of enabling people to participate, even in many situations that involve urgent needs and potential serious harm. This does not always require *equal* participation, but on Held's formulation, it is not clear whether it requires participation at all. I argued that participation in these cases may be possible, but it needs to take account of the fact that participation itself often has significant costs for the individuals involved.

Five. Cohen and Sabel: Global Democracy in the Absence of a State?

Outline of the chapter

- I) Introduction
- II) Substitute deliberation
- III) Incentives for inclusion
- IV) Absence of states
- V) Conclusion and Summary

I) Introduction

In their 2006 paper, “Global Democracy”, Cohen and Sabel borrow a model of accountable decision making from theoretical discussion about the EU. Their distinctive claim is their argument that this model can be used to generate legitimate policy decisions even in the absence of electoral democratic accountability for decision makers. They claim that this would work by requiring decision makers to engage in comparative deliberation about their decisions with comparable actors in similar situations. This works by requiring similar actors to give accounts to each other of why they have chosen to act in particular ways. It is this process of mutual reason giving that makes deliberative polyarchy deliberative. Although Cohen and Sabel are not explicit, I think the fact that the model is not based on electoral accountability is the source of its polyarchy component¹⁸⁹. Cohen and Sabel thus answer the question of who should be included in decisions in the following way: “The people best placed to evaluate the validity of reasons for particular choices by decision-makers are other decision makers who are addressing comparable problems”. I want to look at three major objections to deliberative polyarchy in this

¹⁸⁹ Cohen and Sabel appear to borrow the term polyarchy from Robert Dahl, who uses it to refer to states that have basic electoral institutions and rights that are necessary but not sufficient for them to claim to be democracies. It is interesting to note, though, that for Dahl, these include elections (see Dahl, 1989, p. 218ff).

chapter. The first is that it is form of substitute deliberation: it substitutes (supposedly) rational procedures for actual participation by people with affected interests in decisions that affect them. I elaborate on this by comparing deliberative polyarchy with functionalism. The second objection is that it fails to provide incentives to decision makers to include those people most seriously and directly affected by their decisions. Finally, it rests on an unclear claim about what it means for a state to be absent and the normative or moral demands that apply when states are absent.

1) Substitute deliberation

In his critical discussion of the possibility of using the E.U. as a model for global politics, the legal scholar Martin Shapiro identifies a distinctive problem with the way deliberative democracy as an ideal has been applied in practice. Shapiro argues that the E.U. has been characterised by attempts “to recruit technocratic legitimacy for government regulation as a substitute for democratic legitimacy” (Shapiro, 2005, p. 345). He suggests that deliberation shades into technocracy, because the participants in the process are experts who purport to share a desire to promote the common good:

The whole paraphernalia of deliberation is employed as a cover for technocratic government. Indeed, a kind of super-deliberation is imagined in which very knowledgeable people, devoid of any interests except the interest in truth, talk together (Shapiro, 2005, p. 351).

What is the source of this distortion of the supposedly democratic credentials of deliberative democracy? I suspect that the problem arises because of the central role that hypothetical devices play in two of the most widely known approaches to deliberative democracy. Rawls uses the device of the original position to explain why citizens of a democratic

society would affirm a set of primary goods including personal and political liberties. Habermas originally used the ideal speech situation as a guiding principle for genuinely democratic communication. The basic worry about these seemingly counterfactual constructions is that they conflict with the more radical democratic claim: that morally binding decisions can only emerge from a genuinely participatory process. They seem to open the possibility that we can second-guess democratic processes by independently establishing what the outcome should be. Or, as Cohen himself puts it:

The real concern about the subordination of democracy is that [hypothetical devices] understand actual democratic politics, and the debate surrounding it, to be guided and restricted by substantive principles that we arrive at through reasoning that can be conducted independently of open public argument between and among citizens (Cohen, 2003, p. 112).

It is important to stress that deliberative democrats would see this as a serious misreading: democratic participation is required in order to show due respect to persons as free and equal¹⁹⁰. The move from claims about the value of hypothetical or rational procedures for arriving at conceptions of justice to the claim that groups of experts can take the place of citizens is fundamentally at odds with a democratic commitment to the idea that people are free and equal.

Given this fairly obvious misunderstanding and misapplication of deliberative democracy, is it appropriate to accuse Cohen and Sabel of

¹⁹⁰ For Rawls, the political liberties, including rights to democratic participation, follow from a background conception of persons as free and equal. The political liberties “depend on a moral conception of the person that embodies a certain ideal...Primary goods are what persons need in their status as free and equal citizens” (Rawls, 1971, p. xiii). Similarly, Habermas argues, “private and public autonomy mutually presuppose each other in such a way that neither human rights nor popular sovereignty can claim primacy over its counterparts” (Habermas, 1998, p. 259). There is already a significant difference between Rawls’s primary goods and Habermas’s emphasis on the personal liberties as *human rights*.

advocating substitute deliberation as a way of arriving at supposedly legitimate decisions? There is room to make this accusation because of the way Cohen in particular makes use of Rawls's claim that *A Theory of Justice* is an attempt to make explicit a conception of justice that is implicit in the political opinions and attitudes of citizens of *democratic* societies. More specifically, it is an attempt to defend principles of justice for "a society whose members are understood *in the political culture* as free and equal" (Cohen, 2003, p. 87, emphasis added)¹⁹¹. This emphasis on political culture is crucial to the distinctions that Cohen and Sabel draw between different societies. For Cohen, not all societies share a political culture in which all members are (in principle) free and equal. On this view, it is unreasonable and intolerant to expect societies that do not share a democratic political culture to accept democratic political institutions. As Cohen puts it, "The question is whether a system with unequal political rights should be tolerated – on the assumption that it ensures collective self-determination and protects a reasonably wide range of other human rights" (Cohen, 2006, p. 246)¹⁹². Cohen answers the question positively: such a system *should* be tolerated. This distinction between different political cultures leads Cohen and Sabel to affirm a much weaker moral demand that applies to all political associations. They describe this demand using rather vague terms like "membership" and "inclusion", which they distinguish from equality. On

¹⁹¹ Cohen also argues that human rights are specifically institutional demands that apply when people are joined together in a political society. However, he suggests that democracy is *not* among the human rights that "are owed by all political societies in light of basic human interests and the characteristic threats and opportunities that political societies present to those interests" (Cohen, 2006, p. 232 n. 10). My argument is that a limited form of democracy does play a part *whenever* people are joined together by the distinctive institutions of the state.

¹⁹² The concern with toleration suggests that Cohen is following something like Rawls's line in *The Law of Peoples*:

The effect of extending a liberal conception of justice to the Society of Peoples, which encompasses many more religious and other comprehensive doctrines than any single people, makes it inevitable that, if member peoples employ public reason in their dealings with one another, toleration must follow (Rawls, 1999, p. 19).

this view, “membership is a normative idea, and a person is treated as a member if, and only if, the person’s good is given due consideration in law and policy” (Cohen and Sabel, 2006a, p. 173). There is no emphasis at all on *participation* in this conception of inclusion, though. The rights to a full set of political liberties – which includes democratic rights to participation – only hold in democratic societies, where they are demanded by the background conception of citizens as free and equal. This argument carries over into their discussion of deliberative polyarchy, which they present as a description of less demanding moral standards that apply outside the state:

[Interdependence] and organized cooperation in the absence of a state trigger normative demands that are greater than humanitarianism even if they fall short of the full measure of equal respect and concern that underpins arguments for domestic distributive justice (Cohen and Sabel, 2006b, p. 771).

The existence of a state in a democratic society generates a demand for equal respect and concern: this includes a demand for some form of participation. However, it appears that Cohen and Sabel believe that the absence of a state and of a democratic political culture mean that there is no demand for political participation. The steps in the argument are somewhat unclear, but I can only emphasise that this is because Cohen and Sabel are not clear about exactly what role political participation plays in their account. What they *do* say is that the lines of accountability in deliberative polyarchy run primarily between different decision makers and *not* between decision makers and ordinary citizens:

At the limit, then, principal-agent accountability gives way to peer-review, in which decision makers learn from and correct each other even as they set goals and establish provisional rules for the organization (Cohen and Sabel, 2006b, p. 778).

This emphasis on peer review between decision makers is the main original claim in Cohen and Sabel's account of deliberative polyarchy. They emphasise that this is part of a more general normative demand for accountability, but the account is in the first instance owed to other decision makers.

The emphasis on democratic culture suggests that demands for participation only hold in societies where a democratic culture is established. This gives Cohen and Sabel room to suggest that a procedure in which ordinary people do not participate can be seen as legitimate outside a democratic society, as long as it has a chance of approximating to some sort of ideal outcome. They suggest that a process of adjustment and correction between peers can provide a chance of such approximation. Thus, there is room for a conception of substitute deliberation in Cohen and Sabel's account of deliberative polyarchy.

A broad definition of substitute deliberation might run as follows: "decisions are made on behalf of persons A with very urgent interests at stake by persons B who do not have the same interests at stake. Persons A do not have the opportunity to influence or take part in the decision making process". At the formal or institutional level, worries about the inclusion of a social clause in WTO legislation do express a concern about the possibility of something like substitute deliberation. A WTO social clause would include labour standards legislation. However, there are two major reasons why we might see the design and implementation of labour standards legislation at the WTO level as a case of substitute deliberation. First, as many commentators point out, the WTO is heavily influenced by nations that have the power and incentive to use the legislation for protectionist purposes:

[Despite] the stated good intentions of the non-trade agenda, it is difficult in practice to ensure that these noble standards will not be used as non-tariff barriers against imports from the developing

countries and deprive them of whatever competitive advantage they enjoy (Narlikar, 2005, p. 131)¹⁹³.

In this case, those likely to be able to influence the design and interpretation of legislation have different interests at stake from workers in poor countries. Second, the nature and structure of the WTO makes it ill-suited to the interpretation of broadly defined labour standards. The interpretation of labour standards in domestically democratic countries is open to influence from a broad range of agencies in comparison to the WTO. As Bhagwati puts it,

To believe that the WTO can be endowed with undefined rights....and then its members should be subject to sanctions depending on how these undefined obligations are interpreted in regard to specific practices by an unelected body of judges is startling to say the least (Bhagwati, 2004, p. 248).

The WTO operates through a combination of bureaucracy and power-politics. It is inappropriate to charge it with setting or governing the application of moral standards on issues such as human rights, the environment or labour relations. In this case, substitute deliberation involves the wrong institution making the wrong kinds of decision.

Cohen and Sabel might reply that all this misses the point. They would reject the claim that an institution like the WTO should be seen as a centralised authority giving orders to subordinates lower down the hierarchy. On the hierarchical model, lower agents owe accountability to higher principals. In deliberative polyarchy, agents owe accountability to one another:

At the limit, then, principal-agent accountability gives way to peer review, in which decision makers learn from and correct each other

¹⁹³ See also Bhagwati, 2004, p. 245ff and Basu, 2001, p. 61.

even as they set goals and establish provisional rules for the organization (Cohen and Sabel, 2006b, p. 778).

However, this description gives no criteria at all for identifying who has a claim to be an agent. As a speculative suggestion, one way to fill this out might be to refer to their normative demand for *inclusion* from their discussion of Nagel. They never say so, but perhaps peers in their peer accountability model would be bound by some sort of demand for inclusion, in the sense of giving due weight to the good of those bound by the agents' rules and decisions. Note once again, though, that inclusion is not the same as participation: even this speculative answer to the normative question does not commit Cohen and Sabel to demand participation by those bound by the decision or their representatives.

To illustrate, imagine the WTO adopts a social clause that includes a ban on child labour. It is very unclear to me what demands would fall on the peers who pursue the project of actually putting an end to the practice of using child labour. On a strong reading - taking only the definition used in the "Global Democracy?" paper - peers might only include those who want to put a stop to child labour, perhaps at all costs. On a weak reading - which would include the normative demands from the criticisms of Nagel - the demands might include some consideration of the good of the children involved and the good of other people affected by the external effects of the ban. Even in the latter case, though, there seems to be no demand that the people affected actually participate in the process. If so, the peers might be seen as doing a form of substitute deliberation. They would be trying to work out who is affected by the ban on child labour. However, they would not be under any commitment to actually allow those affected to participate in deciding whether or how to make the ban effective.

I have argued that there is room for a form of substitute deliberation in Cohen and Sabel's account of deliberative polyarchy. Why is this so troubling, though? In the following sections, I will look at some reasons why we might worry about deliberative polyarchy and its use of substitute deliberation.

One way to begin a critical account of deliberative polyarchy is to look at an approach to international integration and interdependence that bears some resemblance to Cohen and Sabel's model. Functionalism was a model for international political integration that emerged in the early to mid-twentieth century, partly in response to the promise and failure of early forms of international organisation like the League of Nations¹⁹⁴. I will look at two aspects of functionalism and ask if the criticisms that can be levelled at them can also be levelled at deliberative polyarchy. The first aspect is the functionalist claim that institutions that are defined in terms of specific functions will gradually undermine sovereign states. The second is that there is a clear separation between culture and the more technical tasks of providing public goods. Sovereign states might traditionally have claimed to draw territorial boundaries and confine the provision of co-operative and public goods to within those boundaries. For Mitrany, the appearance of organisations that specialise in the provision of particular goods across state boundaries will gradually undermine sovereignty. This is partly because individuals will be more loyal to institutions that are functionally defined, and thus able to provide specific goods in a more efficient way. It is also suggested that many of the institutions will perform functions that are not restricted to a specific geographical location, undermining the territorial basis of the state.

The most powerful criticism of this approach is that it ignores the problem that many seemingly technical solutions also involve political issues. The process of actually applying technical solutions will involve distribution of burdens and benefits to different people. So, for example, imposing high labour standards across the entire globe may (unwittingly) favour rich countries that already have the legislation and institutions to enforce high

¹⁹⁴ Molly Cochran suggests that a pragmatist version of cosmopolitan democracy might define democratic publics along functional lines, and that cosmopolitan theory generally has something to learn from functionalism. A pragmatist model of cosmopolitan democracy would understand democratic "responsibilities to be defined as those between persons who share in common problematic situations and recognise a need for social cooperation in seeing to their solution" (Cochran, 2002, p. 536).

standards in place. It may force factories to move away from poorer countries, leaving the workers worse off¹⁹⁵. Poorer countries might have to divert resources from other areas to pay for legislation and the capacity to enforce it. This is before we even consider the possibility that states may actively abuse high labour standards as a form of covert protectionism, as many commentators complain. Finally, higher production costs may make previously cheap goods unaffordable for many people¹⁹⁶.

Can the same charge of a-political tendencies be levelled at Cohen and Sabel's deliberative polyarchy? I think they can avoid the strongest version of the charge, but they can only do so at very substantial cost to the distinctiveness of their claims about deliberative polyarchy as a source of legitimacy. Cohen and Sabel do explicitly acknowledge the political dimension of problem solving:

[All] complex practical problems...are political in the sense that they implicate a range of distinct values, that reasonable people disagree about the precise content of and weights to be assigned to those values, that some form of collective decision is needed despite those disagreements, and that a normatively desirable way to make such a collective decision is by a process in which participants offer reasons that others can be expected to acknowledge, even as they disagree about how the variety of relevant reasons add up (Cohen and Sabel, 2006b, p. 780).

¹⁹⁵ As Basu puts it, "Joan Robinson, the eminent British radical economist once noted, in some situations what is worse for a worker than being exploited is not being exploited" (Basu, 2001, p. 62).

¹⁹⁶ Cochran notes this classic criticism of functionalism, but does not seem to suggest how or why the criticism needs to be accommodated. Commenting on the historical fate of functionalism, she states that

[Functionalist] writing was criticized for the absence of power and politics in its analysis, its progressivist orientation, and its normative proclivities...However, the balance could shift again; it could be that a resurgence of interest in a theory of international institutions which is grounded in democratic concerns could emerge from critiques of regime theory (Cochran, 2002, p. 542).

The upshot of all this is that acknowledgement of the political dimensions of problems should emerge from the process of reason giving among peers. The major objection to these claims is that there is reason to doubt that reason giving among peers is likely to do full justice to the political nature of the problems at stake. In the labour standards area, many commentators stress the point that workers themselves are best placed to know what it is they need, even if they do not have the precise technical knowledge required to come up with solutions. Elliott and Freeman point out that workers are best placed to assess a range of possible improvements in their conditions: "Workers are the best judges of improved working conditions and of the wage that they can gain through bargaining – a wage that improves their living standard without risking loss of employment" (Elliott and Freeman, 2003, p. 71). By contrast, there is a worry that other possible agents might lack the incentives to address their solutions to those most directly affected by them. For example, using private monitoring firms such as Global Social Compliance to inspect factories is considered highly suspect because the firms are often paid directly by the factories being inspected (O'Rourke, 2003, p. 16). They are thus vulnerable to various forms of manipulation. A further response from Cohen and Sabel on the point about the apparently a-political nature of their proposal is that there are contexts where rights to greater involvement by a range of actors are protected by legislation. They point to the EU as a case where legislation requires governments to justify their decisions in a more public context, and that this demand for public justification itself opens up a space for more lively and active deliberation:

The requirement that each national administration justify its choice of rules publicly...allows traditional political actors, new ones emerging from civil society and coalitions among these to contest official proposals against the backdrop of much richer information about the range of arguably feasible choices (Cohen and Sabel, 2006b, p. 784).

However, they later add that there are further protections for non-state actors as well: “Civil society actors as well as governments can increasingly rely on a body of EU administrative law to protect certain rights to participate in, or at least be informed of...deliberations” (Cohen and Sabel, 2006b, p. 786). This suggests that there is some scope for greater *political* debate and even direct involvement in some EU policy areas. However, if rights to participate are protected by legislation, this raises the question of whether legitimacy comes from the deliberative polyarchy side of the process, or whether ordinary citizens perceive these processes as legitimate to the extent that they believe they actually have a legally protected right to participate in and contest them. While deliberative polyarchy may provide a richer set of subject matter for public discussions, it does not seem to be doing a lot of work in generating democratic legitimacy for the policy making processes: legislation to allow affected people to participate in and contest decisions seems more important here. In summary, Cohen and Sabel do seem able to avoid the strongest version of the charge that functionalism is a-political. They acknowledge that there are political issues – such as the distribution of benefits and burdens – at stake in seemingly technical decisions, and that decision makers and experts have to take account of those issues. However, their claims about how this might work are not convincing. On the one hand, substitute deliberation may miss the real issues that are at stake for people affected by a decision, as when a decision about labour standards in a factory is made on the basis of dubious reports by private monitoring firms. On the other, the demand that decisions take account of a wider range of opinions and interests is partly protected by legislation in the EU. This raises the question of the principles that underlie the legislation: who is it designed to protect, and does it succeed in doing so? Cohen and Sabel do not address these questions.

A second criticism of functionalism tells directly against Cohen and Sabel’s deliberative polyarchy. Mitrany argues that it might be possible to distinguish between technical and cultural activities and devolve cultural powers to local communities:

[Human] progress might be served best by a combination of the two lines of political organization which have hitherto been applied rather in opposition to each other. A functional integration of technical services on the largest possible international scale would seem to be as indispensable, as a more liberal devolution of cultural activities, which should free the individual genius of each regional or national group, would seem to be desirable as a more rational approach to the ideal ends of political society (Mitrany, 1933, p. 102).

This approach suggests that it is possible to separate out technical and cultural services and provide them independently of one another. However, it is often difficult to actually make such a clear separation in practice.

For example, in the child labour case, it is often pointed out that outright bans on child labour can leave children worse off. As Basu puts it,

[There] are worse things that can happen to children than having to work. In very poor regions, the alternative to work may be to suffer acute hunger or starvation (Basu, 1999, p. 1115).

In these cases, the imposition of a ban by more powerful countries or international institutions can seem like an insensitive application of a cultural or moral dislike for child labour that is not shared in poorer countries. At its worst, it can seem that cultural disapproval towards child labour in rich countries is given priority over the more urgent interests of poor children. In this type of situation, the problem is that a seemingly well-intentioned attempt to put an end to child labour can in fact seem like an imposition of an outside cultural standard.

A slightly different problem is that cultural norms may be relevant to the success or failure of particular policies. So, again, "Albert Hirschman has rightly argued that the decision to send a child to work is partly a matter of social norm" (Basu, 1999, p. 1103). The presence or absence of social and cultural norms against child labour may determine whether it is

necessary to impose legal bans in a particular society: if no stigma against child labour exists, it is possible that parents in some societies might continue to send children to work even if they can afford not to. It is also important to distinguish carefully between culturally accepted practices and practices that are universally unacceptable, as Bhagwati notes.

Few children grow up even in the US without working as babysitters or delivering newspapers; many are even paid for housework in the home. The pertinent social question...is rather whether children at work are protected from hazardous and oppressive working conditions (Bhagwati, 1995, p. 755).

The point here is that it is harder than Mitrany acknowledges to draw a sharp line between the technical provision of services and more local cultural activities. Often, culture is entangled with working practices and may partly be a response to working conditions. It is also worth noting that it may in some circumstances be more effective to try to identify and work with local cultural norms that push against unacceptable practices than to impose legal bans on them.

Do Cohen and Sabel make the same mistake of trying to draw a sharp line between technical services and cultural practices? Again, it is rather hard to tell because their definition of the relevant decision making agents is very broad and flexible. They suggest that decision makers are those who are in a position to make administrative rules that determine or influence the behaviour of "individuals, firms and states" (Cohen and Sabel, 2006b, p. 772). This focus on administrators may explain the tendency to worry that Cohen and Sabel's proposals are a form of bureaucracy or technocracy, where an elite that claims to have some sort of privileged knowledge makes the rules. When Cohen and Sabel answer this charge, they do seem to acknowledge that technical issues and policy making are often entangled with local cultural standards. For example, they state, "diversity implies that decision making in each needs to be friendly to local experimentation in the policy area in question,

drawing on local knowledge and values” (Cohen and Sabel, 2006b, p. 781). This suggests that local policy- and decision- makers themselves have enough knowledge about local values and standards to tailor broader policy proposals to local conditions. However, it is not always clear that this is the case. It may be necessary for decision makers to work with those who do not have specialised knowledge of the particular policy area in order to adapt their proposals. So, for example, an organisation might be working to end child labour in a society with very strong religious commitments. In this case, it would be necessary for the decision makers to work with those who know about the religion in order to assess whether the religious doctrines held in the society condone or condemn unacceptable forms of child labour. However, this proposal broadens the scope of possible participants far beyond those with technical knowledge of the specific policy area in question¹⁹⁷.

The problem with Mitrany’s account of culture and technical services is that it almost seems to view the issue as if these different things were separate horizontal layers of a cake. The different layers can exist in relative isolation. A more realistic view is that we often need to make a vertical slice through the layers, looking at how they fit together and depend on one another. Cohen and Sabel do acknowledge at least some connection between the vertical layers. However, their focus on policy- and decision- makers seems to suggest that it is possible to take account

¹⁹⁷ David Miller points out in his discussion of the basis for human rights doctrine that it is important to separate political and moral reasons for participation by adherents of non-Western traditions in justifying human rights:

Much effort in recent years has gone into showing how human rights can be grounded in [religious] traditions...By searching for an overlapping consensus, we show our respect for these non-Western traditions, and make it easier for those who embrace them to accept human rights doctrine (Miller, 2008, p. 174).

However, this is a *political* process, and is concerned with defending a list of human rights that is already quite clearly defined and not open to change. The political process involves convincing people to accept the pre-defined list.

A more obviously moral concern could be put in terms of the communitarian claim be that people’s religious and cultural beliefs are themselves an important requirement for autonomy or personal agency, and cannot simply be overridden without justification.

of the cultural and religious dimensions from *within* the perspective of the technical layer. I would argue that it is often necessary to bring in people who are not experts in the particular policy area, precisely because it is often necessary to explain and justify policies to affected people in terms they can understand. So, returning to the child labour issue, it may be necessary to work with those who know the religious background of a particular society in order to show that preventing child labour is consistent with the moral demands of their religious doctrine.

The basic criticism of functionalism is that it is a-political. It fails to account for the problem that technical solutions also involve sharing burdens and benefits, and that technicians or bureaucrats are not always well placed to assess whether these burdens and benefits are shared fairly. Similarly, it fails to acknowledge that technical solutions often get tangled up and clash with local cultures. In these cases, cultural as well as technical knowledge is important if solutions are to be democratically legitimate and effective.

Cohen and Sabel can escape these criticisms to some extent by reference to things like EU laws that guarantee some rights to protest and even participation. It is not clear from their account if these laws are adequate as they stand, or how they work to protect people affected by these decisions. It is more immediately obvious that these laws do not yet exist at the global level. Furthermore, focusing on these laws comes at a high price for their claims about deliberative polyarchy as a source of democratic legitimacy. If these laws actually *do* allow people to protest or even contest decisions, surely this must be doing some work in making the decisions fairer or more democratically legitimate. This leads us to question their emphasis on deliberation among decision-, policy- or rule-makers as the main source of legitimacy in deliberative polyarchy. With regard to the cultural issue, Cohen and Sabel again acknowledge that it is not possible to isolate sets of issues that are entirely politically or culturally neutral. However, it is not clear that decision- or policy- makers are always best placed to deal with these issues. It may be the case that it is necessary to involve non-experts. In both cases, it is important to give an explanation of why those who claim to participate have an interest at

stake in a particular decision. Cohen and Sabel do not give any clear account of this.

II) Incentives for inclusion

I stressed in my critical discussion of Held that a competitive electoral democracy can protect minorities to some extent, because opposing parties have incentives to seek out minorities who may make the difference between electoral success and failure. Furthermore, as Sen points out, active opposition parties have an incentive to expose incompetence and corruption on the part of governments. Governments themselves may have an incentive to provide social programmes, if only to diminish the appeal of political opponents¹⁹⁸. Cohen and Sabel explicitly reject any focus on elections¹⁹⁹: deliberative polyarchy is aimed at creating “many global public spheres, loosely linked by elements of global public reason and global politics more generally” (Cohen and Sabel, 2006b, p. 796). My worry about all this is that the absence of competition results in an absence of incentives to address binding rules and decisions to the people who ultimately have to uphold those rules and decisions.

Cohen and Sabel stress that the aim of deliberative polyarchy is to compel decision makers to provide good explanations for their decisions, by requiring them to compare and justify those decisions to others who are responsible for taking similar decisions. They thus aim to increase the accountability of decision making by non-state rule makers at the global

¹⁹⁸ It is important to note that Sen does not think these effects always follow automatically from the existence of a set of democratic institutions: “while we must acknowledge the importance of democratic institutions, they cannot be viewed as mechanical devices for development. Their use is conditioned by our values and priorities” (Sen, 1999, p. 158).

¹⁹⁹ They state that deliberative polyarchy aims to democratise global administration by creating a public sphere and “*not* by creating institutions of electoral accountability for a global government” (Cohen and Sabel, 2006b, p. 766). Similarly, they suggest that deliberative polyarchy “could not be defined around a competitive process for control of [an] authoritative centre” (Cohen and Sabel, 2006b, p. 796).

level. However, it is important to note that accountability – like legitimacy – has both normative and sociological dimensions. Despite their apparent appeal to normative demands that might apply to global governance, Cohen and Sabel’s definition of accountability does not draw a clear distinction between these two dimensions. They state, “[Accountability] generically understood means presenting an account of one’s choices that is owed to others in comparable situations” (Cohen and Sabel, 2006b, p. 779). This definition makes room for some rather unattractive sociological versions of accountability, though. For example, it may include a member of one criminal gang explaining his choice to move from drug smuggling to people trafficking to other connected gangs. This contrasts with their argument in their paper “Extra Rempublicam, Nulla Justitia”, in which they argue that *inclusion* can be used to describe the normative demands on all political institutions (presumably including both states that lack a liberal democratic political culture *and* international institutions). As they put it, “membership is a normative idea, and a person is treated as a member if and only if the person’s good is given due consideration in law and policy” (Cohen and Sabel, 2006a, p. 173). Here again, though, it is not clear why institutions that are not subject to some form of democratic, electoral accountability are under any incentive or pressure to ensure that this normative demand for membership is met. At the level of states, there is not a lot of evidence to show that non-democratic states protect even the more minimal set of rights that Cohen appeals to in his discussion of democracy and human rights²⁰⁰. The question is somewhat more difficult in relation to non-state institutions. Interestingly, a suggestion that a combination of competition and comparison between non-state institutions might serve to protect and improve labour standards can be found in Sabel’s collaborative work on labour standards. In a paper with Fung and O’Rourke, he argues that

²⁰⁰ Shapiro makes this point with regard to Tocqueville’s fears about majority tyranny: “Robert Dahl has recently reminded us that in the century and a half since Tocqueville articulated his fears, the individual rights and freedoms that he prized have turned out to be substantially better respected in democracies than in non-democracies” (Shapiro, 2003, p. 19).

competition can be combined with something like the comparative deliberation advocated in deliberative polyarchy. On this model, the possibility that many consumers do now view sweatshop labour as morally unacceptable gives companies a commercial incentive to improve standards: “High-profile companies currently compete informally to protect and build their reputations as socially responsible actors” (Fung, O’Rourke and Sabel, 2001, p. 21). There are a couple of large questions about this approach, though. Firstly, Fung, O’Rourke and Sabel suggest that it is necessary to distinguish different levels of economic development. Their aim is to try to secure

[The] most ambitious and feasible labour standards for workers given their economic development context. Standards emerge by comparing similarly situated facilities. The labour practice of a facility in Vietnam might be compared to one in Indonesia, but not initially to a European or North American facility (Fung, O’Rourke and Sabel, 2001, p. 6).

It is tempting to ask why this distinction should be drawn, though. Many authors in the literature on sweatshops would agree that developing countries are justified in having lower labour standards than their rich counterparts. However, the fact that poor states lack the infrastructure to enforce better standards does not seem like the best argument: this would seem like an argument for strengthening the infrastructure where possible. A better argument might be that imposing very demanding standards on poorer countries would endanger their comparative advantage and ultimately the jobs of poorer workers. However, this is not Sabel’s argument. Similarly, Cohen and Sabel give little guidance as to how to decide which decision-making units are similar enough to warrant comparison with each other.

A second concern about the informal approach is that it is not clear that the kind of competitive comparison Fung, O’Rourke and Sabel describe actually would succeed in improving labour standards for all workers in poor countries. The distinctive claim in their proposal is that firms with a

commercial incentive to protect their reputation for social responsibility will compete to attract the most credible monitors. Monitoring would generate information on the performance of firms, and

[This] knowledge could be used by an array of actors to generate complementary competitive pressures on firms. Hundreds of millions of socially sensitive consumers would utilize these data in their purchasing decisions. Journalists, activists and investors would use the information to shame poorly performing companies (Fung, O'Rourke and Sabel, 2001, p. 27).

The question we need to ask here is whether all this actually serves to protect labour standards for the poorest and most vulnerable workers. Critics of the use of social sanctions and consumer action often point out that the effect of such informal action is to push poorer workers into less visible areas such as agriculture or the manufacture of raw materials, where labour conditions may be even worse than in factories run by large companies.

This does not mean that we should reject competition as a way of securing improvements in the situation of the worst off. A competitive electoral democratic system has the advantage of shifting some of the burden of participation and deliberation from voters onto the competing parties. It gives parties an incentive to address citizens in an accessible way. However, the problem of insular minorities suggests that it may be necessary to restructure competition in some circumstances, so that it does more to serve the interests of excluded or vulnerable groups²⁰¹. Trade unions or other NGOs that are funded by workers themselves to carry out monitoring could be defended in terms of restructuring

²⁰¹ Phippe Van Parijs discusses a relevant example of competition that was restructured in order to serve the interests of a disadvantaged group. The Poona Pact in India granted a number of reserved parliamentary seats to members of the "untouchable" caste (the term *dalits* is now considered more appropriate). However, these seats were not in dalit majority areas: the outcome was that more moderate *dalits* tended to be elected. See Van Parijs (1995).

competition in this way. Unions that are funded by workers to carry out monitoring have an incentive to show that they are using the workers' money in an effective and efficient way. They also have an incentive to discourage states from making legislation that is expensive and difficult to put into practice. They are more likely to be independent of corporations than private monitoring firms that are paid for by the corporations themselves. Of course, there are limits to this approach, particularly in authoritarian countries that prevent the formation of unions. However, the point of the example is to emphasise that it is possible to use and to structure competition in different ways. Competition is not inherently benign or beneficial for the worst off; it will not always create incentives to take account of their interests. However, the absence of incentives makes it less likely that those with decision making power and rule making authority will address the concerns of those adversely affected by their decisions. Cohen and Sabel do not provide any description of the possible incentives that might encourage decision makers to show that the rules and decisions they make meet the normative conditions for membership that they set out elsewhere.

III) Absence of states

The final objection I want to raise targets Cohen and Sabel's discussion of the state. There are two problems with this discussion. First, it is not clear what normative status the state has in their account. Second, although they repeatedly refer to "global public administration" or to "global public administrative law" as spaces in which the state is absent, this claim about the absence of a state is highly ambiguous.

Cohen and Sabel's definitions of a state in their paper "Global Justice?" are very brief. For example, they describe it at one point as a

[Central] authority giving directives to formally subordinate agents [with a] clearly defined public in whose name the authority is exercised (Cohen and Sabel, 2006b, p. 773).

This description is normatively very thin. There is some allusion to normative or moral standards that might apply to the state in the reference to the claim that the state's authority is exercised "in the name of" the public. However, that is about as far as the normative discussion of the state goes in this context. We might turn to Cohen and Sabel's discussion of Nagel to try to find a more detailed account of their position. However, as I stressed in the chapter on Nagel above, the account of demands for inclusion there relies heavily on the "involvement of will" thesis. I argued that the involvement of will thesis is unconvincing because it is possible to come up with cases where people are asked to uphold rules – so their will is involved – but the rules are morally rather trivial. A further problem with the involvement of will thesis is that it does not allow us to draw a very sharp line between the state and other rule making bodies. It does not allow us to say what is distinctively morally important – and potentially morally troubling – about state power.

With regard to the second point, Cohen and Sabel frequently refer to the "absence of the state" in the space of global administration and administrative law. However, the idea that the state is "absent" is very vague indeed. We can distinguish at least four senses in which a state might be absent:

- i) The state might securely provide for all of its citizens' most basic needs. Against this background, there would be a space in which other interactions between citizens might be seen as being free or voluntary. Sangiovanni alludes to this idea when he argues that "the only reason that secondary associations within the state are considered voluntary is precisely the existence of the background system of entitlements and protections provided by the state" (Sangiovanni, 2007, p. 12)²⁰².

²⁰² The reference to a space outside the state's influence may remind the reader of the classical liberal distinction between the public and the private sphere. This distinction has been widely criticised, most notably

- ii) The state might fail to or refuse to protect some of its citizens' basic needs. In this case, secondary or civil society associations might emerge to take up these tasks.
- iii) Combining the first and second possibilities, it might be felt that it is unwise to allow the state to be the only provider of basic needs. If so, some allowance might be made for secondary or civil society associations as *alternative* sources of provision of those needs.
- iv) Finally, the state might be absent in the sense of breaking down altogether. This might happen to individual states for various reasons. It might also happen globally, according to some of the more extreme accounts of the direction in which globalisation is going.

Cohen and Sabel do not seem to acknowledge these possible distinctions, beyond pointing out that “states remain essential players” (Cohen and Sabel, 2006b, p. 764).

The upshot of these two points is that it is not entirely clear whether Cohen and Sabel see the absence of the state as a cause for regret or concern, or as an opportunity to expand the reach of their deliberative polyarchy model. It is slightly clearer that they think it *could* be expanded into a range of areas. They refer to examples including health and safety standards, labour standards, forestry, pollution and even human rights²⁰³. However, acknowledging the distinction between different possible senses of the idea of the absence of the state raises the question of whether deliberative polyarchy is really appropriate in the different

by feminists. It is worth noting, though, that providing background of resources and entitlements probably requires a more robust state than the classical liberals acknowledge. See Okin (1989), Rawls (1999b) and Miller (2003) for discussion of some of the very large issues here.

²⁰³ One problem with using the EU as a model for deliberative polyarchy is that its domain of action is quite strictly limited. Andrew Moravcsik defends the EU against accusations of a democratic deficit by pointing out that the policy areas it covers – such as monetary policy – are not subject to democratic determination or influence even within member states (Moravcsik, 2002).

situations outlined above. It should be fairly clear that something like deliberative polyarchy might be appropriate or acceptable in the first case. *If* states really were always able to provide a secure background of basic goods, any further interactions and associations between people might properly be seen as voluntary. Since the parties to any association would not have any urgent interests at stake, it might be appropriate to decide which policies to pursue or which rules to apply using some sort of deliberative comparison with comparable situations. The parties could then take or leave the outcome of the deliberation, on the assumption that they have no urgent needs that are fulfilled by taking part in the association. This is suggested in Bhagwati's reference to a rather rosy sounding account of conditions in a Chinese sweatshop. Bhagwati suggests that the "young women who work long hours are often doing so voluntarily. Why? Because many want to earn as quickly as possible the money they planned to earn and then return to their homes" (Bhagwati, 2004, p. 175). A very optimistic reading of the situation would be that the women's basic needs are already provided for at home and that they are merely working to provide extra income for themselves or their families. If so, and if their employers decided to start demanding even longer hours or a pay cut, or less attractive working conditions, it might be appropriate to say that they could take or leave the job they have. The state would be "absent" in this case because the decision to carry on working at the factory would be based only on whether the extra income was worth the less attractive conditions.

This would contrast quite sharply with a situation in which the women relied largely or entirely on the income from their job to provide for much more basic needs, perhaps even for subsistence needs. If the Chinese state were unwilling or unable to provide for these needs, the workers would be much more vulnerable to reductions in pay or working conditions because they would not be in a position to take or leave what is offered by their employers. The absence of a state has a very different meaning here, in that the employer is in a more direct relationship of

moral responsibility to the workers because the state does not provide a background of protection for them²⁰⁴.

The third situation is much more complicated. The basic idea is that the state should not have a monopoly on the provision of basic goods. The assumption here is that such monopolies leave people vulnerable: I will leave a full account of this until later. For the moment, I want to stress that this division between state- and non-state provision requires a range of possible agencies that have a degree of independence from the state. In the area of labour standards, this would include employers, trade unions, and possibly other forms of non-state monitors. However, as I stressed in my discussion of Nagel, if these monitors are (relatively) independent of the state, we have to ask what moral standards we should apply to them²⁰⁵.

This brief discussion of three of the senses in which a state might be absent is intended to emphasise a general concern about Cohen and Sabel's general approach to inclusion and participation. In both their article on deliberative polyarchy and their critical discussion of Nagel, they refer to the idea that there are normative demands that apply to associations and institutions outside the state. In both cases, they suggest that these norms would be *less* demanding than the standards of justice that apply to state institutions:

Whatever the more precise content of inclusion (and the content varies across co-operative relations), the norm of inclusion (the requirement of treating people as members, whose good counts

²⁰⁴ Bhagwati makes a similar point with regard to oil companies in Nigeria: "If the Nigerian government had no environmental policies, and if the oil companies then proceeded to pollute freely and knowingly, the local population certainly had an economic and moral case against the oil companies" (Bhagwati, 2004, p. 170). In this case, the absence of a state does not in any sense relieve the moral burden on the oil company: the fact the state did not legislate in this area does not mean the company can do just what it likes.

²⁰⁵ I have not examined the fourth case – the complete breakdown of state authority. This is partly because Cohen and Sabel do seem to apply their deliberative polyarchy model against a background of some kind of state authority.

for something) requires more than humanitarianism but need not be egalitarian (Cohen and Sabel, 2006a, p. 155)²⁰⁶.

However, there are different ways in which states can be absent in relation to cooperative relations between people. Furthermore, in some cases, it seems that the “absence” can raise demands that are at least as demanding as the norms of justice that apply to state institutions, if not more so. For example, in the second case, an employer might be the sole source of the income a worker needs to provide for the most basic needs. This would be because the state is absent in the sense of failing to provide even a basic minimum of welfare in cases of unemployment. The employer is in a position of much greater responsibility with regard to the workers than if they were merely working to generate extra income. In these cases, it may even be appropriate to treat workers as having a more than equal claim against the interests of their employers, given their situation of vulnerability.

As a further point regarding Cohen and Sabel’s claims about the absence of a state, it is worth re-emphasising the tension between their claims about deliberative polyarchy as an independent source of legitimacy and the role of legal protections for participation and contestation. They stress that the existence of a range of supra-state administrative and rule making institutions is the starting point for the formation of a global public sphere. Discussions about rules and standards attract the attention of civil-society groups and provide the starting point for debate about the nature and relevance of such standards. The discussion about whether the WTO should include a social clause that covers areas such as labour legislation, human rights and environmental standards is an example of this. As I stressed above it is not clear that the discussions between decision-, rule- and policy- makers such as WTO bureaucrats is really doing much work in terms of promoting the legitimacy of these

²⁰⁶ See also the “Global Democracy?” paper: “interdependence and organised co-operation in the absence of a state trigger normative demands that are greater than humanitarianism even if they fall short of the full measure of equal respect and concern that underpins arguments for domestic distributive justice” (Cohen and Sabel, 2006b, p. 771).

organisations. The rules for public inclusion and participation in EU deliberations may be much more significant, to the extent that they actually work. However, many of these rules are *already* in place within the legislation of separate democratic states. In order to function as competitive multi-party democracies, these states have to provide for freedom of speech and association and provide some protection in areas such as property rights and individual freedom. The point here is that the state is not *absent* in these cases. Rather, it serves to provide some of the very conditions that allow for at least the minimal opportunity to become informed of and to protest about decisions taken by bodies such as Cohen and Sabel's institutions of global public administration and administrative law. If this is the case, it generates an argument for strengthening and protecting domestic, state-level protections of these rights²⁰⁷. To some extent, a great emphasis on bodies like the EU as protectors of rights such as free speech and free association is a bit redundant if these rights are already protected domestically.

A more morally urgent and compelling problem is that not all states do protect these rights. It is one thing to argue that citizens of a country like the UK have a reasonable opportunity to protest if their government proposes to lower labour standards in line with WTO demands to prevent protectionism. It is quite another to try to claim that citizens of a country like China – which does not guarantee freedom of speech and association – have had the same opportunity. This simply underscores the point that deliberative polyarchy on its own is not enough. The fact that officials from the UK and China might have deliberated about the decision is not enough to show that those Chinese citizens whose most urgent interests might be at stake have had an adequate opportunity to protect their interests. As Bhagwati points out, there is a relevant

²⁰⁷ Cohen and Sabel do refer to the possibility that deliberative polyarchy in a space of global public administration might re-invigorate domestic democratic politics, but they do not put this in terms of reinforcing domestic democratic rights and freedoms. Rather, they suggest that global administration will provide more information for domestic debate, for example by making alternative policy proposals from other countries more accessible to rival political parties (see Cohen and Sabel, 2006b, p. 766).

difference between poor democratic and poor non-democratic countries here. He notes that Indian unions have not generally supported the Social Clause at the WTO, in contrast to other countries:

Many other unions from other poor countries support the AFL-CIO efforts because they want solidarity from the organised unions in the United States in their struggle to win civil and political rights, including the right to organise. The economic aspects that threaten their jobs are far less important to them than the fight for their rights. But the Indian unions already enjoy these civil and political rights; for them...the economic implications are far more important (Bhagwati, 2004, p. 246).

It is not entirely unrealistic to assume that Union representatives from a democratic country like India can be trusted to represent the interests of their members to at least some extent. It is much less realistic to assume that workers themselves from non-democratic poorer countries might have any indirect influence over decisions that affect them. The challenge is to try to find ways to identify and include such people in the short term, when their states do not protect freedom of speech and association.

Cohen and Sabel's argument for deliberative polyarchy suggests that a global public sphere might form around decision- and rule-making institutions that exist at a global level. The democratic legitimacy of decisions made at this level would be secured by some combination of deliberation among different actors addressing comparable problems and pressure from ordinary citizens. I have developed three main arguments from my concerns about this claim. First, I think Cohen and Sabel can be criticised for advocating a form of substitute deliberation – that is, for claiming that legitimate outcomes are possible even in the absence of actual participation by those people most directly affected by particular decisions. This is partly because they seem to be committed to the idea that actual participation is mainly valued by citizens of states with a democratic political culture. Citizens of other states are not so directly

concerned about being able to take part in decisions. My main criticism of substitute deliberation is that it ignores or sidelines the possibility of political opposition to solutions arrived at by deliberation among decision-makers. Cohen and Sabel answer that there is a range of possible legal tools that can be used to protect more direct participation. However, this undermines the distinctiveness of their claim about deliberation. It also raises the question of the criteria upon which non-experts or non-decision makers might be included. Cohen and Sabel do not address this question.

Second, Cohen and Sabel offer no account of why decision makers have an incentive to address their decisions to those most directly affected. Competition may create some pressure to address decisions to a wider audience, but it is not always the case that the audience will consist of the people most directly affected. As we have seen, competition to improve labour standards may be directed to consumers in rich countries, leaving workers themselves neglected and even worse off in some cases.

Third, Cohen and Sabel are vague about what they mean when they say deliberative polyarchy operates in the absence of a state. It may be an acceptable form of decision making against a background in which citizens' basic welfare is provided for – as in the case of most citizens of the EU. It is much less attractive when basic welfare is not secured, though. In this case, the people affected by a decision may have very urgent interests at stake, as when workers in a sweatshop rely on their income as the only means by which they can provide for their basic needs. Furthermore, the claim that basic political freedoms are protected in the absence of a state is unconvincing. Many of the freedoms to participate and associate that Cohen and Sabel see as a background to deliberative polyarchy are protected *because* they help ensure that democratic states have functioning multi-party competition. This does not mean these freedoms cannot also be used to protest against or even contest decisions by international institutions, for example through indirect pressure by the public. However, it does emphasise that these protests *depend on* the state protecting these freedoms: the state is not “absent” here.

I want to conclude this chapter by looking at how an apparent attempt to apply something like the deliberative polyarchy model to the labour standards issue has fared. Fung, O'Rourke and Sabel proposed a model they call "Ratcheting Labour Standards" in their 2001 book on sweatshops. The model shares many features with deliberative polyarchy. Perhaps most importantly, it combines social sanctions with comparative monitoring of practices by non-state agencies. The aim is that public disclosure of bad practices by sweatshop manufacturers will lead to social pressure to improve working conditions. As Fung, O'Rourke and Sabel put it,

RLS would do two things. First, it would use monitoring and public disclosure of working conditions to create official, social and financial incentives for firms to monitor and improve their own factories and those of their suppliers. Second, it would create an easily accessible pool of information with which the best practices of leading firms could be publicly identified, compared and diffused to others in comparable settings (Fung, O'Rourke and Sabel, 2001, p. 4-5).

I think the fate of this proposal in the face of criticism is instructive for the deliberative polyarchy model. One of the most common criticisms of the RLS proposal was that unofficial sanctions and comparison between monitors was not enough by itself. Commentators from different backgrounds argued that the priority should be to strengthen labour standards legislation and enforcement *within* individual nations, and to protect the role of unions in monitoring, enforcement and negotiation (see Basu, 2001, and Moberg, 2001). The conclusions reached in other discussions of the issue are similar: given the contextual differences between states, it is better to find ways to encourage them to raise their labour standards domestically (see Compa, 2004, Young, 2006 and Bhagwati, 2004). O'Rourke appears to concede this point in a later paper on the subject when he notes that non-governmental regulation and

monitoring systems “harbour the peril of privatizing regulation, effectively closing off democratic forms of regulation and bypassing local governance” (O’Rourke, 2003, p, 23). The general conclusion seems to be that these semi-official, semi-formal systems of monitoring are at best a supplement to official monitoring, or a way of pushing states to adopt their own standards.

Archon Fung’s response to this criticism is expressed in a separate paper on the labour standards issue. Fung rejects the exclusive focus on social sanctions and consumer action, and suggests that the focus should be directed towards using deliberative democracy to secure more robust and enforceable labour standards:

[Decentralised] participatory deliberation around labour standards should, in principle, be articulated to formal, centralised and muscular mechanisms that enforce basic labour standards at the firm, local, national, and trans-national levels (Fung, 2003, p. 56).

The aim of participatory deliberation here is to produce a “substantive consensus” on labour standards that can be used to generate rules that can be enforced with public power at a range of different levels. Fung emphasises that this should be a bottom-up approach, based on deliberation among activists, workers and consumers rather than inter-governmental organizations. Fung thus contrasts his approach with a senatorial approach to deliberation; in this case, this would involve governmental and inter-governmental organizations coming to their own consensus. This also draws a helpful contrast with Cohen and Sabel’s approach. Cohen and Sabel advocate deliberation among decision making units, but with less emphasis on any use of public power to enforce or monitor standards²⁰⁸. Cohen and Sabel thus seem to uphold

²⁰⁸ With regard to prevention of torture, they suggest that signing up to documents such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment may help victims seek redress:

Whether it does or not may depend less on the explicit enforcement powers of the regime in question than on the capacity

the central focus on semi-official and semi-formal processes that was found in the proposal for Ratcheting Labour Standards, despite the criticisms levelled at the original proposal.

Fung's focus on grass-roots and bottom-up deliberation is somewhat more attractive than the deliberative polyarchy model, at least in that it seems to avoid the lurking suspicions of technocracy that haunt Cohen and Sabel's focus on decision-making units. Fung is also quite open in acknowledging the problem of substantive inequality between the different stakeholders in deliberation about labour standards. For one thing, "Relations between employers and their workers are frequently characterised by corrosive inequalities" (Fung, 2003, p. 63). For another, "The domination of voices from developed nations can twist labour-standards deliberation to the detriment of those in developing ones" (Fung, 2003, p. 64). Although he acknowledges these problems, Fung does not offer any clear concrete solutions to them. As a result, there is a worry that his proposals might be hostage to the following objection: In the absence of strong substantive equality, there may be a tendency to exclude or ignore the voices of those who have the most urgent stakes in decisions, precisely because their lack of resources is seen as an obstacle to meaningful participation.

Neither Cohen and Sabel nor Fung thus provide any rationale for including people who have an urgent stake in decisions about issues such as labour standards when they do not meet the standards of substantive equality that deliberative democracy is often understood to require. As Fung, O'Rourke and Sabel acknowledge,

It is crucial that the voices of workers in developing countries be present in this debate. Though international labour standards are pursued in their name, they are too seldom heard in discussions about standards and enforcement (Fung, O'Rourke and Sabel, 2001, p. 28).

of local civil society actors to transmit their grievances to trans-national actors (Cohen and Sabel, 2006b, p. 790).

However, there is still a large gap between these aspirations to include developing country workers and the practical proposals the authors offer. This can be seen when we contrast the aspiration to include developing workers with the actual practical proposals Fung, O'Rourke and Sabel offer in regard to promoting competition between firms to raise standards: "Firms would vie to show consumers and regulators that they are better than their competitors" (Fung, O'Rourke and Sabel, 2001, p. 27). Where are the workers here?

A more obvious common point between these different applications of deliberative democracy to the trans-national level is that they all argue that institutions can serve to focus moral attention. As Fung points out, his bottom-up deliberative model aims

[To] push the labour standards issue into the global public sphere. It would seek to create broad public discussion about labour standards that would include not only firms and regulators, but also consumers, non-governmental organizations, journalists and others (Fung, 2003, p. 51).

This fits broadly with Cohen and Sabel's claim that a global public sphere might emerge from public debates about the rules and decisions made by the institutions of global public administration. More broadly still, it fits with Andrew Hurrell's claim that "international institutions are important platforms for moral debate" (Hurrell, 2001, p. 52). However, it is not necessarily the case that the most appropriate outcome for moral debate should be to try to directly influence the institution in question. To make this rather cryptic point a bit clearer, consider Bhagwati's comments on the Social Clause in the WTO. Bhagwati points out that the WTO is not necessarily the most appropriate institution to address the labour standards issue. The ILO has more experience in this area, and Bhagwati notes that

[The] conventions or codes on specific practices that suitable agencies such as the ILO evolve are also likely today to translate

in democratic countries into domestic legislation that domestic NGOs can help to monitor and enforce. And in an interesting development that has gone unnoticed in the media in rich countries, judicial activism has begun to translate these norms and conventions into effective domestic law (Bhagwati, 2004, p. 251).

The point here is that, while moral debate about issues like labour standards is no doubt valuable and useful, there needs to be more careful reflection on where the institutional pressures that should result are to be directed. In this case, as Bhagwati notes, the pressure does seem to have gone in the right direction. The ILO ultimately directed its assistance through the governments of democratic states.

Conclusion and Summary

There are two basic problems with Cohen and Sabel's deliberative polyarchy model. The first is that it does not give any account of the principles that should guide inclusion in particular decisions. Cosmopolitan democracy, by contrast, is at least clear on this point: those with significantly affected interests should have an equal right to influence decisions. Because of the lack of principles for inclusion, it is not clear how important laws guaranteeing rights to participate or protest actually are: this may explain why the model has been accused of being technocratic. The second problem is that Cohen and Sabel seem to want to expand a model based on the experience of the EU to the global level. However, the discussion of the ambiguity of the phrase "absence of a state" should bring home some of the problems with this. In particular, it *might* be plausible to argue that deliberative polyarchy is appropriate in the EU because the EU works against a background of democratic states that provide at least some sort of welfare provision for their citizens. It is much less appropriate to apply the model when states do not provide this background, yet Cohen and Sabel seem to want to do just that. There has been a huge amount of discussion surrounding the issue of the

democratic legitimacy of the EU, but it seems to me that the more morally urgent issue is to try to look at the problem of participation in decisions by people in situations where the state is absent in the sense of either failing to provide basic goods or having broken down altogether.

I suggested that the involvement of will argument is not a convincing *moral* criterion for rights to participate in decisions. As a final point, I want to note Cohen and Sabel *do* allude to a more obviously moral problem, namely that many international institutions do have something like coercive powers, even if they are not the same legally authorised, centralised coercive powers that are usually wielded by states:

[Rule-making and rule-applying] bodies guide conduct by providing incentives and permitting the imposition of sanctions, even when they lack independent coercive powers. Moreover, as membership in these bodies often confers substantial benefits, the threat of exclusion is itself often tantamount to a sanction (Cohen and Sabel, 2006b, p. 764).

This point seems to me to be absolutely central to the moral problems surrounding various types of international and transnational agents, but it receives barely any attention in Cohen and Sabel's account. Combined with the problem of what Cohen and Sabel mean by the absence of a state, this gives us the main question I want to take from this discussion: what are the criteria that define demands for inclusion or participation by affected people in decisions when the state is not able or willing to provide a background of protected basic goods?

Summary of Chapters Two to Five

The previous four chapters looked at different arguments about the role of democracy and political participation in preventing domination at the level of global politics. In this summary, I want to try to identify the main tasks for the constructive parts of the thesis that will follow. The discussion of Dryzek focused on the issue of the responsible pursuit of political objectives by actors in global civil society. One of the important dis-analogies between the domestic and the global level is that, at the domestic level, a range of measures such as social security and welfare are available to protect and compensate those who lose out in particular political decisions. Equivalent institutional structures are often missing at the global level. Developing countries may not be able to afford to compensate their workers if a boycott of sweatshops leads to poor workers losing their livelihoods. This places more direct moral responsibility onto civil society actors, and raises the question of what principles apply to them in the pursuit of their political objectives.

I also set out four concerns about the moral agency of the state during the discussion of Dryzek's work. These were as follows. 1) a cosmopolitan concern with individuals requires some concern with the provision of resources necessary to live a decent life. 2) The state is a moral agent in that it is charged with providing such resources, at least for its own citizens. 3) The state's capacity to provide such resources involves concentration of power that is itself a potential threat to its citizens. 4) Democracy is often seen as an appropriate way to constrain the state's power. In the subsequent chapters, I developed aspects of these concerns further.

The discussion of Nagel addressed these concerns in further detail, partly by looking at the statist argument about the role of coercion. I argued that the coercive power of the state is necessary to ensure that people dependent on the state for the provision of basic goods have secure access to those goods, and are not vulnerable to those who are less directly dependent. However, that coercive power itself poses a threat to

citizens if it used arbitrarily. Competitive democratic processes prevent the arbitrary use of coercive power because competing parties have incentives not to impose unfair policies on minorities on whom they may depend for electoral support.

The discussion of Nagel also raised the issue of relationships upon which people depend for the provision of basic goods. The state is one such relationship, but I suggested that other, similar relationships are also possible. These are of particular moral significance when people depend directly on them for the provision of basic goods.

The chapter on Held added further depth to the discussion of the role of competitive democracy in preventing domination by the state. It set out the mechanisms by which electoral competition works to prevent domination, but argued that these mechanisms are less likely to be effective on a large scale, or in linguistically diverse communities. However, it was also argued that domestic democratisation could work to prevent arbitrary uses of power by global and trans-national political institutions. This argument is compatible with the moral cosmopolitanism that forms the basis for Held's most recent formulations of his cosmopolitan democracy.

This chapter argued that Held is vulnerable to a criticism that Miller levels at other cosmopolitans: Held needs to give a more substantive account of what it means to treat individuals as moral equals. This is necessary in order for him to move from his moral to his political cosmopolitan principles.

The discussion of Held also returned to the issue of the difference between NGO activity in developed and developing countries. It was pointed out that NGOs in both cases need a degree of independence from the state, but also that they need effective state institutions to back up many of their functions. There are also increasing demands to include NGOs from developed and developing countries in decision making at the global level. However, Held distinguishes between developed and developing country NGOs. I argued that the best rationale for Held's distinction is that developing country NGOs are often more directly responsible for those they represent. This raised a problem with Held's

move from his principle of equal moral concern with individuals to his political principle demanding equal inclusion or opportunity to influence decisions: there are cases in which appropriate cosmopolitan moral concern with individuals is not best expressed through equal opportunities to influence decisions.

Finally, the discussion of Held raised the issue of whether it is acceptable to override concerns with participation in particularly urgent cases. I argued that participation may be both possible and valuable in such cases, but it needs to be carried out in ways that are sensitive to the fact that participation itself has significant costs for vulnerable people.

The chapter on Cohen and Sabel looked at the issues of inclusion, incentives and competition and the idea of the absence of the state at the global level. Although Cohen and Sabel focus on the EU as a practical example of their deliberative polyarchy model, their discussion also revealed that EU law plays a more political role in ensuring that different affected groups have at least some right to participate in or influence decisions that affect them. Deliberative polyarchy does not provide appropriate principles for deciding which groups are affected by decisions, though. I also emphasised that, although deliberative polyarchy makes some room for competition, it does not provide incentives to ensure that competition serves the interests of the worst off or most badly affected. Again, principles to identify these groups and practical proposals to promote their inclusion are missing from Cohen and Sabel's account. Finally, the last section of the chapter returned to a different form of a theme that first emerged in the chapter on Dryzek. This is the question of appropriate moral principles that apply when states are absent. Cohen and Sabel fail to distinguish adequately between different senses in which states can be absent. This makes it difficult to carry over their proposals from the EU to the global level, precisely because at the global level, states are absent in the sense of not being willing or able to protect their citizens' basic interests.

There are four major issues that have emerged from this summary of the discussion so far. First is the question of how to move from a cosmopolitan affirmation of the moral status of individuals to a set of more

practical, political proposals. As Miller stresses in his criticisms of cosmopolitanism, this requires a more substantive account of the interests that are at stake in treating individuals as targets of equal moral concern. This point mainly emerged from the discussions of Nagel and Held. Second is the question of whether different institutional relationships that raise moral demands are possible outside the state. This issue mainly emerged from the discussion of dependency for the provision of basic goods in the chapter on Nagel. Third is the question of how to structure participation in ways that ensure that severely affected people have an appropriate opportunity to influence decisions that affect them. This issue emerged from the discussion of NGOs in relation to Held, and from the discussion of competition and incentives in the discussion of Cohen and Sabel. The fourth main issue is the question of moral responsibilities in the absence of the state. This issue appeared in various forms throughout the different chapters. The basic concern here is that there is an important difference between the domestic level, at which various procedures and institutions exist to compensate those made significantly worse off by particular decisions, and the global level, at which such institutions are often absent.

These four issues will inform and structure the discussion in the next three chapters. The basic aims are as follows: to provide an appropriate account of the kinds of human interests that are at stake in decisions at the global level; to explain the significance of institutional relationships in terms of the way those relationships generate dependencies that can result in domination; to describe some of the moral responsibilities that apply when people are in relationships in which some of the parties are at risk of domination; and to look at the possibility of institutional and practical proposals that might reduce the risk of domination occurring.

Six. Domination and Basic Interests

Outline of the Chapter

- I) Introduction
- II) Defining Domination
 - i) Basic Interests
 - ii) Arbitrariness
 - iii) Exit Options
- III) Domination in Practice
- IV) Preventing Domination
 - i) Exit, Resources and Redistribution
 - ii) Voice

Introduction

My aim over the next few chapters is to defend the claim that, although people are subject to various forms of domination that occur when states fail to sustain basic welfare, this domination can be mitigated by participatory forms of deliberation. Put another way, the claim is that people who are at risk of domination have a strong claim to priority when deciding who should participate in decision and policy making processes by institutions. Since I have a specific conception of domination in mind, I shall set it out as clearly as possible in this sub chapter, before looking at arguments for participation in the next chapter. The theory of domination I outline here should stand independently of the arguments I make about participation. Regardless of the outcome of those arguments, the claims here should constitute a rebuttal of Nagel's sceptical claim that there is no justice outside the state: I aim to show that there are morally significant relationships that appear when states fail to provide basic forms of welfare. Of course, I also believe that providing a clear account of these

relationships should provide us with some basis for a better institutional response to the problems as well, but that is a separate task.

The basic definition of domination I want to elaborate runs as follows:

D) Domination occurs when agent A's lack of resources leads to a lack of exit options that allow agent B to impose arbitrary reductions in agent A's capacity to fulfil his basic interests.

This definition owes a lot to Ian Shapiro's discussion of these issues²⁰⁹. In particular, the focus on lack of exit options and on basic interests is drawn from his discussion²¹⁰. However, I want to make a couple of modifications to Shapiro's basic argument, and to extend it in a direction that he does not (as far as I can tell) take²¹¹.

1) Defining Domination

²⁰⁹ Other valuable discussions of the issue include Lovett (2001), Barry (2001) and Miller (1999). Lovett places emphasis on power imbalances, dependency and absence of rules as sources of domination. To some extent, power imbalances and dependency correspond to my concern with basic interests and lack of exit options. Barry refers to the role of exit costs in determining whether associations between people are truly free and thus morally unproblematic from a liberal perspective. Miller discusses issues relating to international political economy under the heading of "exploitation" in one of his early articles on global justice. Interestingly, Miller suggests that the best way to proceed is to focus on specific examples that seem intuitively unjust and work out what leads us to respond in this way. Oddly, this interest in exploitation falls out of the picture in his more recent work (2002, 2004, 2008).

²¹⁰ See Shapiro, 2003, p. 43-5.

²¹¹ The use of the term *domination* evokes connections with republican thought and with the work of Philip Pettit in particular. The central place of *arbitrariness* in the definition suggests a link with Pettit's concern with arbitrary interferences in agents' freedom. However, Pettit does not make a concern with resources or basic interests a central focus of his theory. It could also be argued that he is not concerned with drawing a clear or sharp distinction between domination practised by states and domination practised by other agents (Pettit, 1997, 2007).

The three key components of my definition are basic interests, arbitrariness and exit options. I will look at each of these separately before showing how they fit together.

i) Basic Interests

As Shapiro points out, basic interests can be understood in terms of resources and the way control of such resources can be used to dominate people. He makes the point neatly and with obvious relevance to our concern with labour standards:

Anyone in a position to threaten a person's basic interests evidently has great power over him. An employer who can fire an employee in a world where there is no unemployment compensation has power of this kind (Shapiro, 2003, p. 45).

This approach implies a *resourcist* and *sufficientist* approach to basic interests. Sufficientists hold that it is morally troubling when people lack sufficient resources to do certain things, usually defined in terms of the capacity to live a decent, worthwhile, flourishing or successful human life²¹². Sufficientism is usually invoked in criticisms of egalitarianism. For example, it is argued that inequalities of wealth themselves are not morally objectionable as long as all people have enough to live a successful life (Raz, 1995). In this context, sufficientism will make some reference to people's capacity to prevent or avoid domination. The classic problem for sufficientism is the question of the boundary or threshold at which sufficiency is reached. This raises a couple of problems for Shapiro that I want to try to address here.

Shapiro defines basic interests as follows:

We can think of people's basic interests by reference to the obvious essentials that they need to develop into and survive as

²¹² Examples of sufficientist views include Frankfurt (1987), Raz (1986, 1995), Anderson (1999), Tasioulas (2005) and Miller (2008).

independent moral agents in the world as it is likely to exist for their lifetimes (Shapiro, 2003, p. 45).

There are two major charges that can be levelled at this definition. The first is an accusation of conservatism: doesn't this definition in terms of the world as it is likely to be for the foreseeable future privilege the status quo? Doesn't it trap people in conditions that they find intolerable and would not endorse if they had greater capacity to change them? The second is an accusation of insufficiency. As we have noted, sufficientists often tend to talk in terms of resources required for successful, flourishing or fully functioning human lives. Shapiro's argument makes no reference to these more demanding requirements, which might be taken as a sign that he is not concerned about them, and is setting the bar too low. This is not quite right: in the different context of child care, he does distinguish between *basic* and *best* interests:

If basic interests are conceived as emerging out of the minimum conditions for satisfactory interaction, best interests have to do with the full development of human potential (Shapiro, 1999, p. 90-1).

However, I think the way he distinguishes between basic and best interests is problematic, as I shall show below.

With regard to the charge of conservatism, it is important to note that Shapiro does not claim that people living under particular conditions necessarily have to *endorse* those conditions as fair or just. There are two ways to elaborate on this response. First, if I work for a factory that pays minimum wage and my employer decides to lower my wages to below that level, my protest at this decision does not have to rest on a belief that the minimum wage level is the fairest or most just wage. It can rest on the more urgent need for a wage that provides for my needs, or on the principle that minimum wages prevent this kind of arbitrary behaviour. Secondly, as Shapiro points out, any claims for reform or change will have to begin from the institutions and practices that actually prevail in a given society: a knowledge of those institutions is itself a

requirement for meaningful attempts to change them, if this is required²¹³. As he puts it, people redesign institutions more often than building them from scratch, but “Doing this well requires the insider’s wisdom necessary for intelligent redesign, and teaching people to function adequately in the existing system is in turn required to develop the relevant insider’s wisdom” (Shapiro, 1999, p. 87).

The second charge, that Shapiro’s definition of resources is too limited in scope and ambition, is somewhat harder to answer. Shapiro defends this limited view in terms of a concern about maintaining a plurality of different conceptions of what best interests are. This might in part be intended as a response to the charge that a more ambitious conception of basic interests runs the risk of paternalism or cultural bias that is often levelled at sufficientists and similar theorists²¹⁴. The counter-response is that setting the bar too low can leave people without the resources needed to achieve more ambitious conceptions of best interests. In relation to our particular example, it leaves employers with too much room to disclaim or evade responsibility for the broader well being of their workers. In cases of countries such as Colombia which (according to ILO reports) lack properly functioning welfare provision, this is particularly problematic because workers depend more directly on their employers for resources that they might need to achieve whatever conception of well being is possible in their society. Nevertheless, two better arguments for Shapiro’s rather minimal conception of basic interests can be given.

First, a conception of independent moral agency can be defended in terms of a person’s capacity to revise or reformulate an initial conception of a successful life in the face of changing circumstances. This does not mean that I want to commit myself to the controversial idea that people’s conceptions of their own successful lives are entirely objects of individual

²¹³ The point is turned into an attack on contemporary political philosophy: Democratic justice is intended to militate against the *tabula rasa* re-evaluation of all social institutions, characteristic of much political philosophy at least since Rawls, from the perspective of every individual who is on the hypothetical threshold of entering them (Shapiro, 1999, p. 87).

²¹⁴ See, for example, Fabre, 2008, p. 14.

choice. Rather, it reflects two distinct but related possibilities. First, a person's pursuit of their conception of a successful life may be circumscribed by changes in circumstance that require them to revise that conception. If someone unexpectedly becomes pregnant, this will require them to reconsider some of their priorities and projects, and a capacity for some sort of independent moral agency will be needed to do this. I do not think employers should be able to hinder such an attempt to reorder priorities on the basis that they are only responsible for a more minimal set of basic interests. Having a child should not put a person in a situation in which they have to work long hours to provide for the basic interests of their family. Second, most thriving or healthy cultures allow for a range of ways for people to express their commitment to that culture. Again, this is helpful if circumstances make it difficult for a person to pursue their conception of a successful life in one specific way. A culture that offers a person a range of different ways of expressing their commitment may be better placed to survive changes of circumstance. Again, a degree of independent moral agency seems necessary, both so that people can collectively sustain this range and to evaluate the different possibilities it offers. Furthermore, this point emphasises that Shapiro may be exaggerating the worry that pursuit of a more demanding conception of well being will necessarily lead to a dismal, paternalistic set of state sponsored initiatives. The division does not need to be as sharp as that. Perhaps states and even employers could sponsor a range of initiatives that have some connection to promoting the pursuit of conceptions of a successful life. Perhaps people could have room to co-operate among themselves to nurture the social institutions needed. In general, Shapiro's worry about paternalism seems exaggerated and threatens to set the bar of sufficiency too low as a result. My conception of basic interests (including a conception of independent moral agency) as requirements for the pursuit of well being or a successful life aims to avoid this problem.

As a second point, it is worth considering the idea of a threshold between two levels of interests that is included in Shapiro's distinction between basic and best interests. Again, the general idea of such a threshold is defensible, but not on quite the terms Shapiro uses. For Shapiro, the

failure to pursue or protect basic interests triggers legitimate state intervention. States should provide basic interests or intervene to ensure others provide them. Families that do not feed their children are legitimate targets of state intervention; likewise firms that do not protect their employees' health and safety. This is not the case for best interests. Shapiro again draws the distinction based on worries about paternalism:

Given the corrigibility of human knowledge in general and the Orwellian dangers of permitting partisans of one view to impose what they take their knowledge to be, it is better to opt for a system that permits considerable latitude in developing one's best potential (Shapiro, 1999, p. 91).

As I pointed out above, I think this worry about Orwellian dangers is exaggerated and can be addressed. Nevertheless, I think there is a better reason to distinguish levels of interests.

We can distinguish two rough levels of interests. First, there are cases where clashes between basic interests are possible. Second, there are cases where clashes between different non-basic interests are possible. While some sort of fair procedure may be needed to adjudicate both of these, it seems important to keep them separate. To illustrate: in one situation, it may be necessary to decide which of a group of workers who depend on their wages to provide for their basic interests will have to lose his job. This is, of course, a painful decision to have to make. On the other hand, the decision may be between workers for whom loss of wages means loss of the ability to pay for a foreign holiday or a new car. Again, it would seem very unfair to the first group to include members of the second group in the decision on the same footing. This is an attempt to defend more careful consideration of whose interests are at stake in particular decisions, but it rests on a different distinction than Shapiro's distinction between basic and best interests.

The upshot of this is that my definition of basic interests modifies Shapiro's in the following way: basic interests can be defined in terms of the essentials people need in order to pursue a reasonably successful life in the world as it is likely to exist in their lifetimes. The main reason for this is to avoid the situation where those who control access to these

resources or essentials can disclaim responsibility for anything above providing a bare minimum. It should also be stressed that the definition includes some conception of independent moral agency, again for the reasons relating to the capacity to make adjustments to a person's capacity to formulate a conception of a successful life that were outlined above. Finally, this conception of basic interests remains very limited in terms of its actual content. In contrast to the extensive lists of capacities and functions set out by people like Sen, or the list of requirements for autonomous participation set out by Held, it does not specify much in the way of actual concrete goods. There are good reasons for this that I shall return to later. For the moment, I want to look at the other two dimensions of my definition of domination.

ii) Arbitrariness

The use of the term arbitrary in the definition signals the need to distinguish between more and less justifiable arguments for interfering with people's basic interests. It is worth considering some of the formulations of the idea of domination in Pettit's work in this context. Pettit provides two different versions of his definition of domination. The first, earlier, one seems somewhat self-regarding:

One person is dominated by another, so I shall assume, to the extent that the other person has the capacity to interfere in their affairs, in particular the capacity to interfere in their affairs on an arbitrary basis. The capacity to interfere on an arbitrary basis is the sort of capacity that a master has in relation to a slave or subject. It is the capacity to interfere in a person's life without regard to their perceived interests (Pettit, 1999, p. 165).

On this view, the only relevant consideration when identifying domination between A and B is whether A is acting without regard to B's interests. This definition seems far too narrow. In a subsequent article, Pettit refers

to a different conception of interests under the heading of common interests: “A certain good will represent a common interest of a population, I say, just so far as cooperatively avowable considerations support its collective provision” (Pettit, 2000, p. 108). Although Pettit takes this discussion in a rather different direction than the one being developed here²¹⁵, the reference to cooperation is what I take to be central. The case of labour standards is an area in which the provision of basic interests is carried out through a cooperative practice, and claims against interests thus have to be made in the context of sustaining that practice. Claims against employers have to be made in a context in which other people have similar claims based on the fact that their work is the main source of resources through which they vindicate their basic interests. Pettit’s first definition seems to imply that the only consideration for arbitrariness is the interests of each person taken individually in their relationship to a potential dominator; this just seems wrong when we consider that other people are likely to be similarly dependent²¹⁶. So again, the upshot is that arbitrariness should be other-regarding. A reduction in someone’s ability to fulfil their interests is arbitrary if it is done without regard to basic interests that may be at stake – both their own interests and the interests of others.

iii) Exit Options

The third dimension of the definition of domination aims to capture the point that people can have significant interests at stake in decisions, but

²¹⁵ Pettit elaborates on this definition by claiming that common interests are “those considerations to which no participant in a collective scheme could deny weight or relevance under ordinary standards of conversational practice” (Pettit, 2000, p. 108). He adds that this approach is “broadly contractualist in spirit” (Pettit, 2000, p. 108).

²¹⁶ As Shapiro puts it, “the idea of responsible pursuit of interests is other-regarding; it has to do with the expectations that others may reasonably entertain about the ways in which others pursue their interests” (Shapiro, 1999, p. 86).

that some of them can also have easily available alternative means of vindicating those interests. Loss of a job will generally have some impact on different people's ability to vindicate their interests, since they usually depend on the income they receive to purchase many of the goods they need to do so. However, in a society with a reasonably well-functioning welfare state, this loss will not be as devastating as in a society where no such protection is provided. Similarly, in a society with an open and functioning labour market, loss of employment will not be devastating because people will have other employment opportunities. I assume that countries that have to attract outside investment and development by offering concessions to potential investors are likely to lack such an open market.

There are three points to be added here: I draw two of these from Brian Barry's discussion of exit costs and their relationship to free association.

First,

Barry notes that it is possible to distinguish different types of exit costs and to worry about what can be done to provide some of them. I do not want to get caught up in the details of Barry's argument, but he notes on the one hand that there are some costs that the state cannot do much about. This can be because they are intrinsically impossible to alleviate through normal state action. Alternatively, they might result from people acting in legitimate ways. On the other hand, there are areas where the state can take action to alleviate the problem. Suffice to say that most of the issues that arise in the area of labour standards seem to fit the second set of cases. The most obvious connection between work and basic interests is through money: people work to earn the money they need to provide for basic interests. The state can usually intervene by providing welfare, by protecting minimum wages, by ensuring conditions in which alternative jobs are available and so on. Even less obvious cases seem open to some sort of state intervention. For example, the fact that parents need time to spend with their children could be dealt with by providing flexible working hours or child care facilities.

Second, as Barry points out, it does not make much moral sense to define exit costs purely in terms of comparison with available alternatives.

My choice might be between my present life as a well-paid supermodel on the one hand and life as a manager of a shop on the other. Although the loss in terms of earnings and glamorous opportunities is large, it is hard to argue that the latter job condemns one to a situation in which no reasonable conception of a successful life is possible²¹⁷. This point serves to reinforce the emphasis on a sufficientist approach to the definition of basic interests. Comparisons between my present situation and the available alternatives are less important than awareness that the alternatives provide sufficient resources to vindicate my basic interests.

Third, it is also important to be careful when comparing in other regarding ways. As Shapiro points out, a wealthy employer may stand to lose more in purely financial terms from a particular decision than her employee, but this is beside the point, morally speaking. Rather, the important point is that the employee has basic interests at stake whereas the employer does not.

The point of including exit options in the criteria for domination is to avoid the kinds of problem with over-inclusiveness that were seen above in the discussion of the difference between basic and best interests. There, it was pointed out that it is inappropriate to play certain types of interests off against one another. The same is true in the case of exit options²¹⁸. People with a wider range of exit options stand in a better bargaining position than those with limited options, and this is relevant when basic interests are at stake. Bargaining strength should not be used to arbitrarily reduce the weaker group's access to the means to vindicate its basic interests.

This is not to say that we can entirely avoid situations where the decision is a question of basic interests among a group, all of whom have limited exit options. It may be the case that the only employer in a region that

²¹⁷ This conclusion is perhaps reinforced if we note the importance of the range of viable alternatives that a flourishing culture should be able to sustain that was discussed above.

²¹⁸ I draw this general point from Shapiro: "Allowing an equal say in a decision to people with greatly differing stakes in the outcome generates pathologies similar to those involving large differences in capacities for exit" (Shapiro, 1999, p. 235).

pays enough for its employees to vindicate their basic interests has to lay off some workers in order to avoid shutting down altogether. In this grim situation, all might be said to have basic interests at stake and limited exit options. The only point to be added is that none of the workers is in a position to dominate any of the others, since they all have similar interests at stake²¹⁹. It is worth noting that the grimness of this particular example should prompt us to sound a note of caution about equality. Since it was pointed out that the workers in this case are not in a position to dominate one another (by virtue of the fact that they have roughly the same interests at stake), it may be tempting to suggest that a strong version of equality is the best way to prevent domination. However, this particular example suggests that we need to be a bit more careful in thinking about the role of equality. The fact that some people are likely to be pushed below the threshold of sufficiency in this case emphasises the need to weigh equality against other considerations.

II) Domination in Practice

Having outlined the main components of my definition of domination, I now want to give a couple of brief illustrations of how domination might actually occur in practice. I borrow these general examples from Basu. The first case relates to child labour. In very poor societies, children may be sent to work because the alternative is starvation for them or their families. This obviously creates a situation that employers are able to exploit, by offering children low wages. However, it also deprives children of the opportunity to go to school. It is hardly implausible to suggest that some basic level of education is necessary for children to live a

²¹⁹ This point is again drawn from Shapiro: "So long as all have equally strong interests at stake...then no one has power over anyone else by virtue of the decision making procedure, and there is no reason for outsiders to second guess it" (Shapiro, 2003, p. 44).

successful life in the world as it is likely to exist for the foreseeable future. For example, at the very least, some basic degree of literacy and numeracy seems necessary for employees to check they have not been underpaid. By being made to work, the child is being deprived of access to resources necessary to vindicate basic interests – education, in this case²²⁰. Assuming the employer himself does not also have similar basic interests at stake, we can argue that this is an example of domination. Interestingly, Basu stresses that it is possible that employers might reconcile work with education in very poor countries. There is no need to see the two as mutually exclusive, or indeed to see child labour as inherently wrong, since it is considered acceptable in Western societies for children to have paper rounds, work as babysitters and so on (see Basu, 1999, p. 1115). From the perspective of the theory of domination outlined here, this is interesting because it suggests that employers cannot in this case get themselves off the hook by arguing that there is a simple and irreconcilable clash between two basic interests. They cannot claim that they are providing one basic interest that is just incompatible with another in this context. It is not inevitably the case that child labourers are faced with a choice between the subsistence provided by their wages and the need for education.

A second case is based on Basu's discussion of sexual harassment. Basu notes the morally troubling point that freedom of contract implies that workers should be able to enter into contracts that allow for sexual harassment of workers by their superiors. If this were so, workers who were willing to put up with sexual harassment could gain competitive advantage over their fellows. Basu argues that this is unjustifiable because it imposes unfair costs on those who are not willing to enter such contracts: it makes those who are opposed to such harassment bear the costs of their opposition. He points out that this kind of burden shifting is unfair in cases where fundamental preferences are at stake, but admits

²²⁰ Basu also quotes Alfred Marshall and John Stuart Mill, both of whom point out that lack of education also has impacts on society in general. Mill argues that the community as a whole is "liable to suffer seriously from the consequences of ignorance and want of education" (Mill, quoted in Basu, 1999, p. 1095).

that he does not have a clear definition of what fundamental preferences are. The definition of basic interests above can be used here. The threat of sexual harassment at work is sufficiently at odds with the idea of independent moral agency included in the definition of basic interests above to suggest that people should not have to bear the costs of upholding that interest. People who are subject to sexual harassment are not in a position to act as independent moral agents. This contrasts with Basu's other example, which is the case of a person who is reluctant to go to work because he wants to watch a cricket match. In this case, he will obviously lose out to those eccentrics for whom cricket holds no interest. However, it is hard to see how this has any direct impact on the person's ability to be an independent moral agent. Two further points. First, it is worth stressing that competition for employment leads to this type of situation: where jobs are scarce, employers are in a stronger position to lower wages and conditions. Second, the example obviously extends to other areas such as health and safety. Some workers may be willing to take greater risks, but employers should not use this as a source of advantage. Again, where workers need the wages offered to provide their most basic subsistence needs, they may be faced with a grim trade off between the wages they need and decent working conditions.

The above two examples are intended to illustrate how control of one resource needed to vindicate a complex set of basic interests can be used to impose arbitrary reductions in access to other resources needed to vindicate those interests. In the first case, work conflicts with the need for education. In the second, it conflicts with the demand for a working relationship free from sexual harassment, which is itself connected to the demand for some form of independent moral agency.

Of more direct relevance to our concern with participation and democracy, it is important to stress that domination of this kind can also be applied to the kinds of participatory structures and institutions that workers use to protect their other basic interests. We might argue in semi-circular fashion that people have a basic interest in institutions or structures that enable them to protect their basic interests. However,

domination can be used to limit people's access to those institutions or structures. To illustrate, O'Rourke provides two examples of ways in which workers can be prevented from participating in non-governmental and non-union based monitoring programmes. First, workers can be directly discouraged from participation: "Workers may...be punished after complaining to auditors, as these systems often have limited protections for workers" (O'Rourke, 2003, p. 23). This is particularly evident in the practices of Global Social Compliance (formerly Pricewaterhouse Coopers). GSC conducts interviews inside factories under conditions in which management can identify which workers have been interviewed (O'Rourke, 2003, p. 23). This issue fits the model of domination outlined above because workers who have limited sources of income are particularly vulnerable to the threat of dismissal from work. As a result, their lack of resources in one area (income, in this case), is used to reduce their capacity in another area (in this case, their capacity to report on violations of labour standards). A less direct version of the same effect can also occur: "Monitoring reports can lead firms to cut contracts with poor performing factories, leading to job losses" (O'Rourke, 2003, p. 23). Again, vulnerable workers may be discouraged from participating in monitoring if the outcome threatens their jobs.

A similar point can also be applied to migrant workers in wealthy countries. In this case, lack of basic citizenship rights leads to a form of domination. The point is a simple one: illegal migrant workers face the threat of deportation by the authorities of the state in which they work. This means they cannot report violations of labour standards to official agencies, since this is also likely to result in their deportation. This is a point that both Legrain (2007, p. 36-7) and Bhagwati (2004, p. 128) make²²¹.

²²¹ Bhagwati adds that until quite recently, trades unions and religious groups in the US tended to encourage strong enforcement of border controls and removals of illegal immigrants. This has changed as these groups have realised that many immigrants are working class Christians – the natural membership constituency of both these groups (Bhagwati, 2004, p. 128n9).

One common point that these examples share is that they seem to point in a somewhat contextualist direction when it comes to judging whether domination has occurred in practice. The details of the different cases show how lack of access to one good or resource can be used to reduce access to another good or resource, but that this can occur in a number of ways. So, for example, lack of income can be used to reduce children's access to education and to reduce women's right to work in an environment free of sexual harassment. There are a couple of remarks that are worth adding to this conclusion, though. First, the three-part framework for assessing domination is intended to provide a more robust set of criteria than more obviously contextualist approaches. For example, David Miller denies that there is a simple general theory of international exploitation, suggesting, "the exact mechanism will vary from case to case" (Miller, 1999, p. 207). I have argued that people who meet the three criteria outlined above are especially vulnerable to domination and should thus be given priority consideration. Second, lack of material and financial resources does seem to be a fairly common factor. In the cases discussed, the lack of a welfare state or realistic alternative employment makes people vulnerable because loss of income threatens their basic interests. Nevertheless, the example of migrant workers in the US suggests that lack of financial resources is not the only problem.

I have used a modified version of Shapiro's basic framework for analysis domination. The antidote or means of mitigating domination that I want to outline here also borrows from Shapiro's basic argument²²². In his 2003 book *The State of Democratic Theory*, Shapiro focuses on the problem of people with limited exit options in given situations, arguing that these people should be given a more effective voice in decisions that affect them. This basic point in fact suggests that there are two strategies for mitigating domination: either provide the people involved with more effective means of exiting a particular relationship or provide them with a more effective voice in deciding the terms of the relationship. I will explore these two alternatives in turn.

²²² Shapiro's argument itself is borrowed from Albert Hirschman's theory of different responses to the decline of institutions (1970).

III) Preventing Domination

i) Exit, resources and redistribution

In this section, I want to provide a brief outline for a distinctive rationale for redistribution. This focuses on the specific features of the kind of domination that is possible in relationships between workers and employers in countries with weak welfare provision and limited job markets. The basic argument is that redistribution of resources is justified as a way of preventing domination because it provides the recipients with alternative ways of accessing the resources they need to vindicate their basic interests. Recall that, according to the theory of domination outlined above, people are at risk of domination if they are reliant on a single source for these resources. Control of one resource can be used to impose arbitrary reductions in the capacity to access other resources, as was illustrated by the examples of sexual harassment, child labour, and migrant labour above. In the case of work and labour standards, the most obvious potential source of domination is workers' reliance on their income as a general means of vindicating basic interests. Reducing workers' exclusive reliance on their employers as a source of this income provides a basic rationale for redistribution in the form of welfare provision. Providing exit options in this form may also mitigate other forms of domination, most notably low health and safety standards. Where workers have greater capacity to exit from particular work relationships, they will presumably have greater capacity to demand more favourable terms, which could include better provision of safe, decent working conditions.

There are a couple of points about this basic argument that I want to emphasise by contrasting them with the rationale Held gives in some of his earlier work for redistribution of wealth. In *Democracy and the Global Order*, Held argues for substantial (and substantive) redistribution on the democratic grounds of providing the preconditions for equal and

autonomous participation in political decision making (see especially Held, 1995, chapters 7 and 8, and also Held, 1999).

The first point to note is that Held here advocates a common structure of political action that would take the form of a cosmopolitan *rechtstaat* capable of providing the cluster of rights and obligations that allow citizens to participate on a basis of equality and autonomy (Held, 1999, p. 105). These rights include substantive goods as well as civil and political rights. My concern about this approach is that it threatens to centralise exclusive power to determine the distribution of these goods in the hands of the cosmopolitan institutions Held advocates. The worry is that this kind of exclusive control creates the danger of domination precisely because the institutions Held advocates would become the main or only source of the resources people need to vindicate their basic interests. As I have stressed, this type of exclusive control makes it possible for institutions to impose arbitrary reductions in people's access to different kinds of resources.

In general, Held's argument is symptomatic of a broader institutional cosmopolitan failure to distinguish between two understandings of why a plurality of institutions might be necessary²²³. The first claim is a broadly functional one: some purposes may be better served by large scale institutions with global reach, while others may be better served by local institutions. Some forms of environmental protection fit the former, while cultural activities dependent on local languages are an obvious case of the latter. This rather functional understanding of the proper role of different institutions is one rationale for the multi-level system of governance that institutional cosmopolitans like Held and (in a rather different context) Simon Caney advocate. The second sense in which a

²²³ I use the label institutional cosmopolitan to distinguish Held and Caney from moral cosmopolitans who advocate global principles of moral and distributive equality but are less willing to describe the kinds of political institutions required to promote those principles. David Miller points out that contemporary cosmopolitans such as Charles Beitz, Brian Barry and Thomas Pogge can be understood to be moral cosmopolitans since they "are at pains to insist that moral cosmopolitanism does not entail political cosmopolitanism understood as a theory of world government" (Miller, 2004, p. 65).

plurality of institutions can be understood relates to the possibility of exit from a given relationship. Providing a plurality of different ways of vindicating basic interests means people have a better chance of exiting relationships. As I have already stressed, this possibility of exit is one way to mitigate domination. I do not think Held or Caney draw any clear distinction between these two senses²²⁴. However, if we are serious about ensuring that robust global or cosmopolitan institutions do not result in the kind of domination I have been describing, it seems more important than either Held or Caney acknowledge to recognise the distinction. It is also worth acknowledging that the two senses of institutional pluralism can conflict. If we take the functional understanding seriously, it is possible that such institutions would neglect alternative ways of providing resources to people with basic interests at stake.

The approach I have outlined focuses on the importance of institutional arrangements in which a range of ways of providing resources that can be used to vindicate basic interests *is* possible. It expresses a worry about a cosmopolitan institutional structure that claims to offer people the resources to participate on an equal footing, yet at the same time seems to aspire to be the only source of those resources. Held's argument neglects the possibility that strong cosmopolitan institutions might themselves be a source of domination.

It is also worth noting that none of the other approaches to the problem of participation express this concern about resources and domination. Dryzek perhaps comes closest when he invokes Hayek to illustrate the potentially worrying outcome of centrally planned, top down, multilateral institutions. However Dryzek does not make his point in terms of the way control of resources might be used to dominate people. Rather, his concern is that constitutionalism will lack the flexibility and spontaneity to deal with problems in a truly rational way (Dryzek, 2006, p. 142). Nagel's

²²⁴ At one point, Held does advocate short term promotion of "experimentation with different democratic organizational forms in the economy" with a view to a long term creation of "pluralization of patterns of ownership and possession" (Held, 1995, p. 280). However, he does not defend this proposal in terms of preventing domination or providing viable exit options.

view of institutions is too static and state bound: he does not seem to appreciate that non-state institutions stand in a much more direct relationship with citizens when state institutions are weak²²⁵. Cohen and Sabel do acknowledge that there are significant decision making agencies outside the state, but seem to place too much emphasis on the belief that peer-level deliberation alone can generate recognition of the moral demands that might fall on such decision makers.

A second contrast relates to the central place Held gives to participation in *Democracy and the Global Order*. In that work, Held argues that the substantive goods that institutions should provide are justified in terms of their contribution to people's capacity to participate as autonomous equals in decision making. However, it is not clear that people will be very likely to be motivated to participate in such decision making if a wide range of their substantive needs are already fulfilled as preconditions for participation. Put another way, fulfilling Held's wide range of substantive needs may leave little for people to argue about in participatory forums. More importantly, deliberation and participation can themselves impose costs on the participants. In some cases, these may be costs that interfere with their legitimate pursuit of other goods. In these cases, redistribution to provide potential participants with exit options might be justified in terms of *not* requiring them to participate. Taking one of the examples above, we might face a choice between two alternatives. On the one hand, women might be given exit options that mean they do not have to take jobs that involve sexual harassment in order to access basic resources. On the other, the women might be required to negotiate the terms of what actually counts as harassment for them in each case. I think it is only if we place a high intrinsic value on participation – as Held seems to – that we are necessarily pushed towards the latter position.

²²⁵ Onora O'Neill *does* argue that non-state institutions can have responsibilities of justice, but her argument is not based on the possibility of domination. Rather, her claim seems to be that non-state institutions such as trans-national corporations are able to accumulate the resources and knowledge to act as agents of justice, and that this imposes responsibilities on them (O'Neill, 2001).

This second point suggests that the availability of exit options is likely to be used as a way of deciding who should be excluded from decisions, and that redistribution to provide people with exit options could be used as a principled way to exclude yet more people. Again, I do not think this is necessarily troubling if we do not place a high intrinsic value on participation. Nevertheless, the burden of proof should lie with those who claim that particular groups should be excluded.

In summary, the differences between the approach taken here and Held's approach to redistribution of resources can be understood in terms of differences in both the how and the why of redistribution. In terms of the how, an approach focused on domination emphasises the need for exit options in the means available to people when vindicating their basic interests. This suggests a need for a plurality of different institutions. In the case of labour relations, it emphasises the need for a combination of welfare provision and an open job market. In terms of the why, redistribution may provide goods in a way that diminishes people's motivation to participate political decisions, but this is only troubling if the outcome is that they are also subject to domination.

ii) Voice

Barry's analysis of different kinds of exit costs indicates that there are many situations in which exit is simply not a viable option for people²²⁶. In

²²⁶ Barry distinguishes between intrinsic, associative and external costs (Barry, 2001, p. 150-1). Intrinsic costs are costs the state can do little to alleviate, and might include the emotional effects of leaving a long term relationship, or the threat of excommunication imposed by some churches. Associative costs are costs the state might be able to alleviate but which come about through people's pursuit of legitimate decisions. This might include an employer's decision not to hire a candidate based on the belief that the candidate is not competent to do the job. External costs are costs the state can and should alleviate, and might include the costs of leaving a job that fall on competent employees in poor societies. As I noted above, the labour relations issue seems mostly to bring in questions relating to associative and external costs, in part because people mainly rely on their work for financial resources which could

these situations, voice becomes more important as a way to mitigate domination: people should have a right to participation in decisions when their exit costs are very high. This raises two questions. First, how to decide who is included? How should they be included? The crude answers are: first, people subject to domination. Second, they should be included in a way that enables them to ensure their basic interests are protected.

With regard to the first point, the definition of domination I have outlined is intended to provide a more robust way of deciding who has significant interests at stake in a particular decision. However, this leaves open the more obviously practical issue of *who* is to make the more detailed decisions in particular cases.

It is possible to put the answers that the different thinkers I have examined might give to this question on a continuum based on how democratic their approach is. At one extreme, we might take a very proceduralist interpretation of Held as claiming that the decision itself should be made democratically, possibly by referendum. At the other extreme, we might take existing authorities as the baseline. This is a strong interpretation of Nagel's claim that principles of justice only apply within the sovereign state, even if the boundaries of such states are determined arbitrarily and perhaps by historical accident (Nagel, 2005, p. 121)²²⁷. The obvious criticism of the first view is simply that it is wildly impractical. If there really is *no* non-procedural standard to which the initial decision about who should be included can be held, then perhaps

generally be provided by other means such as welfare payments or alternative jobs.

²²⁷ These different extremes are caricatures of the different positions in question. Miller (2000, p. 95) claims Held does believe that constituencies can be decided by referendum. However, Held's own emphasis on significantly affected interests suggests that he thinks there *are* independent standards to which decisions about jurisdictions can be held. My own criticism of Held is that his standards are too weak and vague to be of much use. At the other extreme, Nagel does not think states have sovereignty just in virtue of the fact they happen to be states. He does think there are moral standards to which states can be held, but denies that these same standards can be meaningfully applied to non-state institutions. Again, my aim is to elaborate standards that can be applied to non-state institutions.

the only thing to do is to hold referenda with global scope on each and every issue. At the other extreme, a strong interpretation of Nagel's view of states seems too static and rigid. As I have stressed repeatedly, when states are weak or incapable, other agencies may be in a position to make decisions that have severe impacts on the people affected. Employers have the right to decide whom they employ, but this decision is clearly much more morally significant in situations where the job at stake is the only source of the most basic resources for the candidate.

Dryzek's voluntarist approach to participation lies closer to Held's. It is perhaps less obviously democratic, since the decision about participation is itself taken by the participants and *not* by a democratic process. However attractive a more bottom up approach may be, the obvious problem is that we cannot always take actual participation as a sign that urgent interests are at stake, in the manner of revealed preferences. As the outline of domination above shows, it is possible that people do not participate because they have other interests at stake that would be threatened by such participation. So, to repeat, sweatshop workers are unlikely to complain to auditors if they know their managers will be aware who has made particular complaints.

Finally, Cohen and Sabel's approach is closer to Nagel's in that it seems to accept that decision making authorities may appear as a result of various historical and practical contingencies²²⁸. I find this approach attractive partly because it is pragmatic. Like Nagel's political approach to the state, it avoids attaching ultimate value to the associations or relationships in which people find themselves, and instead asks what kind of standards can be used to assess those relationships. In contrast to Nagel, though, it extends that question to non-state relationships. Of course, as we have seen, I do not find Cohen and Sabel's deliberative polyarchy model very convincing as an account of the content of the standards. However, the point I want to emphasise here is that they take

²²⁸ Cohen and Sabel claim that there is an increasing number of rule-making bodies at the global level and that these bodies make rules that are consequential for individuals, associations and states. However, these claims are starting points for their discussion: they do not aim to discuss the origins of the rule-making bodies.

a more pragmatic approach to the question of where particular decision making authorities come from, but also focus on the possibility that those authorities themselves might be held to more demanding procedural and substantive standards.

To illustrate briefly: employers are not democratically elected, but it is generally accepted that they have – and in practice need – some authority to make decisions about who to employ and when to dismiss workers. This is not to say that they should be given the power to make such decisions in an entirely arbitrary way, though. When an employer announces an intention to dismiss a particular worker, the worker has a claim to be shown that this decision is not merely arbitrary, but takes account of the possibility that she may be highly dependent on the income her job generates.

With regard to the question of how to include people in decision making processes, I would advocate a form of contestation in which people who are subject to domination have a right to take part in a process designed to provide solutions that take their basic interests into account²²⁹. The actual content of this process might be described as substantive minimalism. This approach is based on a claim that contestation by people subject to domination should require those in a position to dominate to show that their actions do in fact take the basic interests of those affected by their decisions into account. However, it aims to avoid specifying the content of those basic interests beyond the outline provided above. The view is thus substantive because it requires participants to justify their claims with regard to a general substantive conception of basic interests, but is minimalist in the sense that it avoids specifying what those basic interests actually are in any given case. I have four main arguments to make in defence of this approach. The first

²²⁹ The approach I advocate might usefully be contrasted with Rainer Forst's proposal for a qualified veto right for the worst off (see Forst, 2001). Although it has some appeal, Forst's proposal has two major shortcomings. First, he does not provide any clear criteria for identifying who the worst off actually are. Second, a standard objection to veto rights is that they favour the status quo and make it more difficult for states to act to alleviate injustices (see Van Parijs, 1999, for a version of this objection).

two attempt to respond to the claim that substantive approaches effectively second guess democratic procedures. The third responds to a criticism of a veto-based version of contestation. The fourth makes a strategic point about the costs of deliberative processes.

First, it is often argued that substantive approaches hand decision making power to courts and similar authorities. It is likely that some sort of authoritative site of appeal will be needed in the kinds of cases discussed here: institutions like the WTO and the ILO do provide some forms of dispute settlement. However, as Shapiro stresses, it is far from clear that judges and other officials are always best placed to make detailed decisions on the best solutions²³⁰. As many of the authors in the sweatshop literature point out, workers are likely to be well placed to know about the dangerous working conditions they may face, the effects of inadequate wages, or the problems that result from having to work excessively long hours. As a result, there is a case to be made for participation that can then be judged according to whether it continues to involve obvious forms of domination.

Second, even if authorities do apply substantive standards in a case, the risk that they will do so without genuine attention to the interests at stake is sufficient to justify the demand that they actually explain why they have taken particular decisions. Keeping the substantive content of the standards they apply to a minimum is one way to ensure that this actually happens. For example, if an authority were to decide against an employee who demands prayer facilities at work, the court might be required to show why that employee's religion does not demand that people pray during working hours.

²³⁰ “[Even] when basic interests are threatened, it is far from self-evident that governments are well placed to do much about it. This is one reason to press for deliberative solutions when they can be successful” (Shapiro, 2003, p. 46). Compare also Barry, who argues that even if courts cannot always determine the content of particular conflicting interests, they might still insist that disputes about those interests be settled according to minimal procedural standards. In the case of excommunication, it could be required that “courts be prepared to adjudicate challenges to the church’s procedures or its fidelity to them in the case at hand” (Barry, 2001, p. 154).

Third, it can be argued that veto rights are particularly problematic when people are involved in reciprocal relationships, such as the relationship between fellow employees. A veto right against an employer who has to dismiss employees in order to save an ailing company has potential to cause major problems. The right to veto any individual dismissal is not helpful if it results in the entire company collapsing. A more open-ended, contestatory approach may be preferable if it compels the employer to show how different interests were taken into account.

Finally, contestation can often have significant costs for those involved. To some extent, this might be useful if it provides an incentive for authorities to get their decisions broadly right the first time round. An employer who faces the potential threat of contestation when deciding who to dismiss may be compelled to find better ways of making the savings. It is worth adding that employees will also face costs in such processes: taking part in an arbitration procedure is doubtless time-consuming and expensive. However, the effect of encouraging decision makers to get their decisions right in the first place might be strengthened if they have to bear the costs of the weaker party's participation. In practice, this might mean for example that employers would have to continue to pay employees who contested a particular decision until the process was resolved. This is more likely to be viable if limits are placed on employees' rights to contest a given decision: domination as defined above can be used to provide the criteria for this kind of decision.

In conclusion to this chapter, I have provided an account of domination that is intended for use as a way of deciding who has genuinely significant interests at stake in a particular decision. I argued that lack of exit options leaves people vulnerable to arbitrary reductions in their capacity to vindicate their basic interests. I do not think any of the previous views I looked at provided a compelling account of these kinds of interests. Dryzek tended to celebrate the supposed lack of constraints on global civil society actors without acknowledging that their actions and campaigns can have severe effects on people. I would argue that if a civil society group campaigning against child labour succeeds in getting a blanket ban on child labour in a given country, but only at the expense of

the welfare of the children, it is guilty of a form of domination. Nagel's approach ignores the possibility that domination might occur outside the state. The state is one form of association through which people can secure the goods they need to vindicate their basic interests. The state's capacity to control those goods means it also has the potential to dominate people. However, this does not mean that other agents cannot be in a similar position, particularly when the state itself is weak. This point is absent from Nagel's argument. Held's account focuses on substantive equality as a precondition for democracy. A case could be made that substantive equality is also a way of preventing domination: if all have the same resources, none is in a position to dominate the others. Providing for such equality is likely to require strong redistributive institutions, as Held acknowledges. Yet this is something we obviously lack at the global level. My approach is intended to show that it may be possible to alleviate domination even in the absence of strong substantive equality, but that this requires careful attention to the way domination can occur in different contexts. Furthermore, alleviating domination may work against the participation that forms the centre of Held's cosmopolitan democracy. Finally, Cohen and Sabel take a more pragmatic approach to the existence of decision making authorities that I suggested may have some appeal. However, it only does so in the presence of strong moral criteria by which to judge the decisions of those institutions. I argued that a clearer understanding of domination is a better source of such criteria than deliberative polyarchy.

As a final point, Elliott and Freeman provide an example that can be used to provide a useful illustration of the general approach I advocate. They refer to a campaign against child labour in Bangladesh:

Whatever the motivation of the activists, globalization enthusiasts point to the firing of children by Bangladeshi garment manufacturers in the early 1990s as evidence of how campaigns can have unintended consequences. But this was not the intent of the activists, and their critics either do not know or ignore the part of the story in which the activists kept the pressure on until the

manufacturers agreed to work with the International Labour Organisation (ILO) and UNICEF to build schools and rehabilitate the children...Indeed [other campaigns] have resulted in similar multistakeholder initiatives (Elliott and Freeman, 2003, p. 128).

How does this illustrate the points made in this chapter? First, the activists involved in this particular case came to recognise the need to provide exit options for the children: they continued their campaign until the children had access to welfare and education²³¹. They could thus be said to have avoided the charge of domination outlined above. Second, the activists were not democratically appointed but nevertheless were in a position of influence over the workers and their employers. However, they were nevertheless able to recognise the moral significance of their actions and adapt their campaign as a result. This relates to the pragmatic point made above: the decision makers were the activists in this case, but they responded to the effects of their own campaign. This suggests that the criteria of domination do not always require institutions in order to make moral sense. The activists were able to recognise what happened and alter their behaviour even in the absence of courts or other authorities to judge what had happened. Nevertheless, I think the case also shows how people can find themselves in an ongoing and even institutional relationship as a result of their actions. This case is more institutionally dense than Nagel's minimal humanitarianism, even if it is less dense than the relationship between citizens of the same state. The point here is that while people can find themselves to be in morally demanding institutional relationships, I do not see why they also always need institutions to *judge* those relationships. Third, this case suggests that it is possible to alleviate at least some forms of domination even in

²³¹ I think the case also undermines Miller's criticism of global civil society (referred to in the chapter on Dryzek) to some extent. Miller suggests that global civil society actors are not bound by the same ties of reciprocity as fellow citizens, and that this undermines responsibility. However, this case suggests that responsible action is possible: if Miller is claiming that responsibility is only possible within bounded communities, he is overstating his case.

the absence of strong substantive equality. Careful attention to the way control of one resource can be used to reduce access to another resource is necessary, but this does seem to be what the activists in this case provided. Of course, this is not to say that a world in which such domination is possible is more attractive than a more substantively egalitarian situation. However, it does show that intermediate possibilities for the alleviation of domination do exist.

Although the example used provides some support for the arguments about domination made here, it would be fantastically optimistic to generalise too far from this particular case. It is unlikely that all campaigns meet these standards, and there are other institutions that lack the moral motivation that presumably prompted these groups to act in the first place. The arguments I have made here do have broader institutional implications though, which I want to develop in the next chapter.

Seven. Domination and International Labour Standards: Institutional Proposals

Chapter Outline

- I) Introduction
- II) Defining Cosmopolitan Institutions
- III) Bhagwati's Approach
- IV) The ILO and Exit Options
- V) The ILO and Voice
- VI) Conclusion and Summary

Introduction

The aim of this chapter is to consider ways in which a specific existing institution might do more to alleviate domination of the kind described in the previous chapter. Before looking at the argument I want to develop, I want to pause to consider a couple of institutional alternatives. Bhagwati raises these possibilities as alternative ways of understanding the role of the ILO in relation to other institutions, before describing his own approach. The first is more obviously cosmopolitan, based on an ambitious expansion of existing institutions. The second is state-based, following the path of encouraging states to enforce high labour standards against one another. The third is a hybrid approach: giving states more capacity to set their own labour standards, but also enabling international institutions to assist in the implementation and enforcement of those standards. I find the general conclusions he draws convincing, although they can be further developed in line with the proposals for alleviating domination referred to in the previous chapter.

I) Defining Cosmopolitan Institutions

One of the key claims of institutional cosmopolitans like Held and Caney is that a range of robust institutions is needed at the supra-state level.

They argue that these institutions are needed to deal with problems states cannot address unilaterally, to deal with inter-state problems that result when states exercise their power in various legitimate and illegitimate ways, and to pressure states that are internally illegitimate to improve their domestic behaviour. These cosmopolitan institutions have three main features. First, they would have global, ultimate control over functionally defined policy areas. Second, they would be subject to some kind of direct democratic control. Third, they would have some sort of (possibly last-resort) coercive power. Although there are many international institutions that might fulfil some of these criteria²³², it is hard to think of any that fulfil all of them. Assuming that these institutions are both necessary and attractive raises the question of how we might progress from the current situation to one in which genuinely cosmopolitan institutions actually exist and function²³³.

Bhagwati rejects two possibilities. The first is for existing institutions like the WTO to widen their mandates and begin to act more like states, covering a range of issues such as human rights, the environment, labour standards and so on²³⁴. Part of the justification for this is that these institutions already have some coercive capacity. The WTO can impose trade sanctions, for example, and partly for this reason, Elliott and Freeman advocate the use of sanctions by the WTO to enforce labour standards when such violations are relevant to trade issues. The second

²³² For example, both the UN and NATO have used military intervention justified in terms of protecting human rights. They both have some capacity for coercion, but since two different agencies are both capable of intervening in this policy area, it is clear that neither of them has exclusive or ultimate control. See Hurrell, 2008, p. 63-4. The same could be said of economic institutions like the WTO and World Bank.

²³³ Nagel raises this question in a forceful and morally troubling manner when he argues that there are no standards of justice to which we can hold institutions that are not states. His own view is that any such transition is likely to involve a period of illegitimate and unjust behaviour on the part of international institutions.

²³⁴ A further reason to reject this approach is Thomas Carothers' argument about sequencing. Carothers' argues that strengthening undemocratic state institutions at the domestic level has not generally led to democratisation and may have consolidated the position of authoritarian rulers (Carothers, 2007).

is for individual states to broaden their mandates in a similar way, passing more substantive judgements on the failures of other states to meet their own *domestic* standards and possibly intervening to correct those failures.

Bhagwati rejects the first possibility for two main reasons. First, he argues that there is a real danger that powerful states will use regulations on issues such as labour standards as an excuse to impose protectionist barriers on cheaper goods from countries with lower production costs²³⁵. Weaker states are less able to do this because they cannot retaliate against such decisions, for example by withdrawing development aid. The fact that issues such as labour standards are generally broadly defined at the global level in order to achieve moral consensus makes this more likely to occur in practice²³⁶. Second, the WTO is itself badly suited to expand its mandate, partly because it is not well funded enough and partly because it is a specialised institution with limited knowledge of other policy areas²³⁷. While some critics point to the expansion of the WTO mandate into intellectual property (TRIPs) and other areas, as a sign that the organization should also play a more active role in promoting

²³⁵ For further arguments against the use of the WTO to enforce labour standards, see Maskus (2004) and Srinivasan (2004). Maskus expresses doubts about whether the WTO could restrict resort to protection through its article XX clauses, or whether expansion of labour rights sanctions into non-trade areas could be prevented (Maskus, 2004, p. 502). Srinivasan observes that Elliott and Freeman base their case for WTO enforcement on the US incorporation of labour standards in its Generalised System of Preference (GSP) trade agreements. He argues that this is of doubtful relevance because it relates to bilateral agreements between the powerful US and not to multilateral agreements in the WTO.

²³⁶ So Bhagwati points out that various studies have argued that the US violates freedom of association with its current labour laws. He suggests the main reason this is not used by other states as an excuse for protectionist regulation is the threat of retaliation in other areas (Bhagwati, 2004, p. 245).

²³⁷ Amrita Narlikar makes the same arguments against expanding the mandate of the WTO, and adds two further points. First, states are unlikely to accept the further restrictions of their capacity to determine their own policies that would result if the WTO were expanded. Second, the predecessor to the WTO, the ITO, did attempt to deal with a wider range of issues, but collapsed because it could not reconcile the many different interests that were involved (Narlikar, 2005, p. 131-2).

labour standards and other social issues, others respond that even the expansion into intellectual property was a mistake²³⁸. Similar claims can be levelled at the other major international financial institutions, which are often accused of pursuing trade and economic liberalization at all costs²³⁹.

The other alternative is that individual states could hold other states to the domestic standards that they already have in place, so if India violates Indian labour standards, the USA or Britain would have standing to refuse to trade with it²⁴⁰. The four main objections to this are as follows. First, domestic trade unions in countries like the US have pressured less developed countries to *raise* their standards, but it can be argued that they do so partly out of protectionist motives. Second, revisions of domestic standards are at least in part necessary due to changes in circumstance and difference in context. This flexibility would be lost if other states had an incentive to ensure states maintained standards at present levels. Third, Bhagwati argues that countries such as India have put in place very high labour standards that they cannot and do not intend to enforce, partly in order to appease various domestic groups. Finally, it can be argued that any attempt to monitor domestic standards by other

²³⁸ “[One] can argue that introducing intellectual property rights into the WTO was a mistake in terms of its imbalance of benefits and of the questionable relationship to trade in the context of deep standards” (Maskus, 2004, p. 500). See also Narlikar, who refers to the problems developing countries face in implementing standards that mainly serve the interests of developed countries (Narlikar, 2005, p. 83-4).

²³⁹ Held advocates broadening the *economic* agenda of the WTO and other international financial institutions, suggesting that they, [need] to move their agenda away from a narrow set of policies concerned with market creation and supervision to a broader range of policies which encourage different national economic systems to flourish within a fair and equitable rule-based global market order (Held, 2004, p. 53).

It is not clear if this involves extension into areas such as social policy, but Bhagwati and Narlikar would resist such moves.

²⁴⁰ This is different from current practices, in which individual states and regional bodies refuse to trade with countries on the grounds that goods from those countries do not meet their *own* standards. Examples include the EU ban on US beef imports on health grounds and the US ban on Mexican tuna due to failure to use dolphin friendly nets. The WTO judged both bans to be illegal (Woods and Narlikar, 2001, pp. 571-2).

states is likely to be seen as partisan and biased, especially considering that alleged violations of domestic standards can be used as a cover for protectionism.

II) Bhagwati's Approach

If these two possibilities – expanding existing institutions or encouraging states to act in a more cosmopolitan fashion – are rejected on the grounds given, what is Bhagwati's preferred approach? Broadly speaking, he argues that independent institutions like the ILO should play a greater role in negotiating and monitoring the *domestic* standards that states set²⁴¹. Once the ILO negotiates such standards, they can then be adopted by states²⁴². There are two main advantages of this approach

²⁴¹ This approach in some respects resembles the practice of requiring heavily indebted poor countries (HIPC) to produce poverty reduction strategy papers (PRSPs) that the IMF and World Bank have jointly instigated. This practice originally envisaged broad participation in producing nationally owned strategies. Two shortcomings have been noted, though. First, "in many cases the ideal of ensuring local participation in planning poverty reduction has given way to the urgent need to disburse debt relief. Hence a large number of countries have adopted a blueprint PRSP rather than instigated the kinds of participatory processes envisaged" (Woods and Narlikar, 2001, p. 575). Second, "the world bank has published a voluminous sourcebook on how to write the plans. Borrowing governments know very well that unless plans are in keeping with the model they will not be acceptable to the funders" (Thomas and Reader, 2005, p. 90). One possible remedy for these defects could be to increase ILO involvement in writing such strategies, at least in relation to areas relevant to the ILO's mandate.

²⁴² This proposal resembles Cohen and Sabel's claim that member states of international regimes are

[Agreeing] to remake their rules, in domain after domain, in light of the efforts of all the others to reconcile their distinctive regulations with general standards in whose determination they participate and that are assumed to be attentive to the interests of others elsewhere (Cohen and Sabel, 2006b, p. 786).

It is important to stress two significant differences, though. First, Bhagwati is much clearer in his insistence that states adopt such standards through *internally* legitimate procedures, and that the states must themselves be democratic. Second, the ILO is a tripartite organisation that includes representatives from business and labour unions, so it has a degree of independence from state influence.

over the two alternatives outlined above. First, it allows for greater flexibility in the determination of standards than any attempt to strengthen an institution like the WTO would. The concern with that proposal is partly that setting standards very high or very vaguely at the outset will make poorer countries subject either to sanctions or intervention from wealthier or more powerful ones. Secondly, in comparison to letting states monitor one another directly, it reduces the likelihood that local standards will be used in a partisan way by other states to justify sanctions or intervention. Given these two advantages, I believe this is the approach that deserves further elaboration in the terms of the theory of domination I have already outlined²⁴³. Before proceeding, though, I want to stress that I would not endorse the claim that the ILO is adequate to perform the functions outlined below in its present form²⁴⁴. The proposals set out below are, I believe, broadly in line with the ILO's existing objectives and practices, but would involve extension of its powers in some areas²⁴⁵.

²⁴³ Similar arguments for the use of the ILO as the most appropriate international institution to promote labour standards can be found in Maskus and Srinivasan. Maskus argues that the WTO should have greater power to approve multilateral sanctions of egregious violations of core standards, "analogous to the sanctioning power of multilateral environmental agreements" (Maskus, 2004, p. 502). Srinivasan argues that the ILO's present enforcement capacities are adequate (Srinivasan, 2004, p. 514). This argument does neglect the problem that many member governments of the ILO are not democratic and have various reasons to resist the implementation of standards that would serve the interests of their own citizens. Maskus makes this point: "Where governance is weak and corruption is rife, all manner of efficient regulation [including labour standards] can be stifled in the name of 'enterprise', where that is a euphemism for monopoly" (Maskus, 2004, p. 499).

²⁴⁴ Some sceptics see the emphasis on the ILO in its present form as the appropriate organization to deal with labour standards among free trade enthusiasts as a way to avoid raising labour standards at all: "calls to rely exclusively on the ILO, as in the WTO's 1996 Singapore ministerial communique, without increasing the ILO's capacity to act, could simply be a way to preserve low standards without directly saying so" (Elliott and Freeman, 2004, p. 532).

²⁴⁵ Elliott and Freeman note in a paper published after their book on labour standards that lack of local enforcement of existing legal standards is often a problem:

[Many] developing country governments, even though they ratify ILO conventions and pass labour laws that sometime exceed rich

The first possibility is to prevent domination by providing better exit options to those at risk. In the case of labour standards, the main priority is to provide alternative means for people to access the resources they need to vindicate their basic interests. There are two rationales for this. First, providing exit options reduces the likelihood that workers are reliant on their employers as the sole source of income, and thus that employers can impose otherwise unacceptable working conditions on them. David Miller describes an international corporation setting up a nuclear reprocessing plant in a developing country with safety standards that are lower than those in the developed world. As Miller notes,

[Given] the levels of unemployment prevalent in many poor countries, those who sign up with the corporation are likely to be desperate to earn wages and therefore willing to take on these jobs despite the health and other risks they pose (Miller, 1999, p. 206)²⁴⁶.

Miller is (unwittingly) describing a form of domination here: the workers lack of income is used to impose lower standards than would be accepted in developed countries.

Second, the presence of viable exit options may lead to competition that ultimately compels employers in different sectors to improve their standards. It is important to distinguish different ways of developing this approach, though. One interpretation of Wolf's arguments suggests that

country standards, often do not comply with their own standards, for a number of reasons. We noted that in some cases, governments lack the political will to stand up to powerful private interests, and that in others dictatorial regimes oppose independent political power. In yet other cases, lack of financial and technical capacity prevents effective enforcement. We focused on the supply of standards in the private sector as a means of supplementing or complementing government efforts where capacity is weak (Elliott and Freeman, 2004, p. 534).

The approach described below focuses more directly on developing a range of relevant local capacities, both governmental and non-governmental.

²⁴⁶ Miller uses the term "exploitation" to describe the situation of the workers in his example, although he tries to distinguish this from the Marxist theory of exploitation based on the value of labour. For a discussion of the Marxist theory, see Roemer (1995).

he believes that competition alone should be used to raise standards and wages (see Wolf, 2004, pp. 236 and 240)²⁴⁷. The problem with this approach is that Wolf seems to focus on comparisons with other workers in the same countries, rather than on the establishment of a minimum baseline for standards. While some of the improvements in wages and standards that Wolf cites seem impressive, and may on an optimistic interpretation be viewed as part of an upward trend, it is important to note that even a very large improvement in wages or standards for the very poorest people may not yet bring them above the threshold of sufficiency for an adequate or decent life.

A more ambitious version of the same proposal would focus on competition that might occur once a minimum baseline has been set. So, in Miller's case, the owners of the reprocessing plant might be compelled to offer better safety conditions and protection for their workers if those workers already have a meaningful choice about working at the plant. This meaningful choice would itself be based on the availability of other jobs that meet a minimum standard for wages and working conditions, not merely on comparison with the only other alternatives available.

III) The ILO and Exit Options

There are three main ways in which the ILO might work to promote better provision of the kinds of exit options I am advocating here. The first two are quite closely connected to the ILO's existing mandate and practices. The third extends into areas that are not currently seen as core ILO priorities.

The first priority is the improvement and extension of social security and welfare provision. The ILO estimates that only 20 percent of the world's population has adequate access to social security and that more than half

²⁴⁷ See also Moran (2002, 2003) for a version of the claim that labour standards can be set by competition among employers to provide better voluntary standards. For a sceptical view of this argument, see Lipschutz (2004).

of people have no access to social security at all²⁴⁸. From the point of view of domination, this situation is troubling because people who do not have access to adequate social security are more directly dependent on their employers and the job market for the resources they need if they or their dependents are to live a decent or successful life. Provision of social security in areas like health care means that workers are less directly dependent on their employers and thus less vulnerable to domination. Similarly, provision of unemployment benefit means workers have more viable exit options from abusive and exploitative working conditions.

The ILO currently provides assistance on the design and implementation of domestic social security schemes through its Social Security Department. There appears to be emphasis on a range of different possible ways of providing social security, as indicated by references to both national and community level social security programmes²⁴⁹. This is broadly consistent with Miller's observation that there are several ways in which welfare can be delivered:

It does not matter, from this perspective, whether the institutions and policies in question are formally integrated into the state, as they are in some countries, or whether they are partly located in civil society, for instance, when employers and/or trade unions provide employees with health insurance or unemployment benefits on terms laid down by the government (Miller, 2003, p. 95).

It can be argued, though, that these differences do matter for two reasons. First, differences in the political and social cultures and in the level of development of different countries may mean that private or civil society provision of social security is more appropriate, and it thus makes sense to pay attention to the full range of possibilities for provision if we want to ensure wider coverage. Secondly, from the perspective of

²⁴⁸ See ILO, <http://www.ilo.org/global/Themes/lang--en/index.htm>, accessed 2nd January 2009.

²⁴⁹ See http://www.ilo.org/global/Themes/Social_Security/lang--en/index.htm, accessed 2nd January 2009.

domination, it may make sense to focus on providing a range of sources of welfare in order to provide people with better exit options. For example, exclusive state provision of welfare may lead to clientelism. Similarly, employer provision of health insurance may leave employees vulnerable if they are dismissed from their jobs and lose the benefits the job provides. In general, the ILO's focus on a range of possible ways of providing social security seems appropriate from the perspective of preventing domination.

A second contribution the ILO can make to the prevention of domination is through provision of training and skills development. The rationale here is that providing people with a range of work skills can reduce their dependency on a single source of income and resources, and thus reduce their vulnerability to domination. There is particular emphasis on the importance of these programmes for women and disabled people in developing countries. This is because these groups have often lacked some of the basic skills needed to seek employment. It has been argued that this situation has contributed to the low social standing of these groups, and that provision of better employment prospects can be an important factor in their liberation²⁵⁰.

This area is dealt with through the Skills and Employability Department of the ILO. It is worth noting that the department places emphasis on the development of both state and non-state based programmes of training and skills development. Again, sensitivity to local conditions is important here, and a focus on local level programmes seems to form an important part of the department's work. Furthermore, there is also a link to micro-credit agencies which allow people with new skills to set up businesses: this is an area that is not directly within the ILOs mandate, but shows a need for co-operation across different agencies.

The third area the ILO can focus on to reduce domination is the openness of labour markets and the variety of jobs available in developing countries. Again, the rationale in terms of reducing domination is fairly simple: provision of a wider range of job opportunities reduces the

²⁵⁰ See, for example, Sen, 1999, p. 115-6.

chances that workers are dependent on a single employer for the resources needed to vindicate their basic interests. This question raises the broader issue of foreign direct investment and the best way to ensure a diverse and varied labour market. One standard view is that foreign direct investment is a form of exploitation of very poor countries – that outside investors such as multi-national companies exploit the low labour and wage standards of developing countries in order to increase profits. Both Martin Wolf and Theodore Moran dispute this claim. Wolf points out that most foreign direct investment continues to flow to developed countries that are politically stable and have effective state institutions, skilled workers and large markets²⁵¹. Furthermore, poorer countries that share these features attract more investment than poorer countries that do not.

There are two important areas in which this argument about investment needs further elaboration. First, Moran argues that the attempt by some developing countries to attract foreign investors and employers by focusing on low skilled work and export processing zones with weak labour standards has generally been misguided and is being changed:

Overall, the idea of trying to use a large unskilled labour pool with low wages and no employment alternatives to attract FDI has given way to a recognition that investment promotion has been far more successful in countries and regions where educational institutions produce a literate, semi-skilled and trainable workforce. In Costa Rica, the Dominican Republic and the Philippines, vigorous secondary education and vocational training programmes

²⁵¹ See also Maskus (2004) and Kucera (2004), both of whom dispute the claim that strong labour standards discourage foreign direct investment. Maskus refers to evidence that “recognition and enforcement of the core labour standards...are more likely than not to improve productivity and export performance for developing countries” (Maskus, 2004, p. 498). Kucera cites a sophisticated study that asked managers of multinational corporations to rank a set of FDI criteria in order of importance. The results indicated that although labour rights might be associated with higher labour costs, this was offset by other benefits: “Thus, stronger trade union rights might be associated with no less or even more foreign direct investment, even if they lead to higher labour costs” (Kucera, 2004, p. 518).

have had a high payoff in pulling FDI in industries like electronics...alongside more traditional garment and footwear producers. The same has been true of Mexico (Moran, 2003, p. 13)²⁵².

The point here is that it is preferable for developing countries to try to attract a broader range of outside investment, and that repressing workers and limiting their access to training and education is a very bad way to do this. Again, I would stress that developing a range of employment opportunities is also relevant to limiting domination, for the reasons outlined. Furthermore, Moran adds that attracting employers who need skilled workers can actually improve conditions, as employers begin to recognise the need to offer conditions that can draw these workers away from other jobs (Moran, 2003, p. 13). The quality of foreign investment is important as well as the quantity.

The other issue is that the very poorest developing countries often rely on natural resources to attract foreign investment, but that this reliance tends to make them more prone to corruption and authoritarian governments. The increasingly well-documented resource curse makes it more likely that one elite will control the countries in question, as in Nigeria where the top 2 per cent had the same income as the bottom 55 per cent in 2000 (Wolf, 2004, p. 146). Furthermore, it makes it more difficult for these countries to pursue policies that might attract a diversity of industries and employment opportunities, as Wolf suggests:

A country that has specialised in natural-resource exports will find it correspondingly hard to shift into competitive manufactures as it must break into world markets after having already achieved quite high real wages and, correspondingly, must do so at relatively high levels of productivity (Wolf, 2004, p. 148).

²⁵² Moran also argues that the *perception* that low labour standards are a good way to attract investors is more damaging to workers' rights than the reality. Although some countries have carried out very repressive policies, for example against trade unions, Moran cites evidence from two sources that suggest that there is little evidence to link low labour standards to foreign investment.

Again, this makes the risk of domination higher if it means more people rely on a small range of employers and industries as their main sources of income²⁵³.

Economic policies and conditions can thus play an important indirect role in attracting the diversity and quality of employment opportunities that can play a role in reducing the risk of domination. Unlike the previous examples, these policies are not a central part of the ILO's mandate or expertise. Nevertheless, they are relevant to its broad concerns with promoting decent work and sustainable development. As a result, the ILO has an interest in encouraging both states and international institutions with more direct economic responsibilities to find ways to follow these policies. I have also argued that the policies are relevant to the attempt to prevent domination. In terms of the current ILO priorities, these issues might be pursued through its programmes on decent work, economic and social development, and employment promotion.

There are thus at least three areas in which the ILO can work to prevent the kind of domination I have outlined. To some extent, the current priorities of the organisation already reflect possible ways of preventing domination. The organisation's focus on welfare and social security reflects a need to ensure that people are not entirely reliant on any single source for the resources they need to vindicate their basic interests. This is justified in my view as a way of providing people with exit options. The ILO's efforts in this area could thus be focused on ensuring that countries are more able to provide a range of social security provision, from local and community based initiatives to more traditional state forms of social

²⁵³ As Held notes, reliance on a small number of primary commodities by poorer countries has been a major obstacle to development in some of the poorest countries:

Fifty of the world's poorest countries, in fact, depend for over half their export earnings on three or fewer primary commodities. Today, low and unstable prices for such commodities are a major factor hindering trade from working for many of them...For example, since 1997 coffee prices have fallen by over 70 per cent, costing developing country exporters some \$8 billion in lost foreign exchange earnings and creating severe hardship for already vulnerable communities (Held, 2004, p. 40).

security. Similarly, training and skills development reduces the likelihood that people will be entirely reliant on one source for their income and thus provides them with exit options. The ILO's efforts in this area are thus to be encouraged and could be better funded and supported as a means of preventing domination. Finally, there are different economic policies that can do more to ensure that countries attract a diversity of employers, again reducing the dependency of employees on a single source of income. I have stressed that the ILO is best placed to co-operate with other agencies to ensure that developing countries pursue policies that attract a range of industries and develop a broader range of skills. This is a more obvious departure from the ILO's current mandate and involves more direct co-operation with outside agencies. Nevertheless, since it is connected to the way employment opportunities can be used to mitigate domination, it is relevant to the ILO's work²⁵⁴.

The main objection to these proposals is that it not immediately obvious what this has to do with democracy or encouraging participation. I have a couple of general responses to this criticism. First, the aim of this proposal is to alter institutional power relations in a way that limits the likelihood that they will involve domination. There are a number of different ways of doing this. As I noted in the previous chapter, one possibility is to pursue a strong policy of egalitarian redistribution. My worry is that without appropriate democratic control, this is itself a possible source of domination. A second way is to pursue more conventional forms of democratic equality. However, my discussion of Nagel and Held in the earlier chapters focused on the role of a limited form of political equality in a competitive electoral system. I argued that

²⁵⁴ See also Kucera's comments on poverty reduction and its relationship to labour standards. Responding to Elliott and Freeman's proposal that the WTO should be able to place trade sanctions on persistent violators of labour standards, Kucera concludes:

It should be emphasised...that poverty is an important determinant of forms of forced labour and child labour both...Therefore, if [Elliott and Freeman's] proposed WTO system were to work similarly to the GSP system, one outcome could be further impoverishment of poor countries, giving rise to more poverty related labour standards violations, setting off a downward spiral (Kucera, 2004, p. 522).

the purpose of this form of equality is to prevent domination by the *state*. There are three reasons to doubt whether the same approach can be applied to other institutional relationships. First, there is the question of whether it is really feasible to pursue a system of political competition in smaller contexts such as employment relationships. Second, one reason for ensuring greater participation in state decisions is that, for most people, exit costs are almost by definition very high indeed. The state enforces most laws through coercion, which can be understood as an artificial way of limiting exit options. Similarly, for most people, emigration from their own country is difficult and expensive. Finally, it can be argued that states do not in practice require a high degree of democratic participation in areas in which it is feasible to provide exit options²⁵⁵. The aim of providing the exit options outlined above is to provide an alternative way of ensuring that people do not find themselves in institutional relationships in which they are vulnerable to domination.

Second, it could be argued that provision of exit options contributes to a form of participation by putting people in a better bargaining position with regard to their employers.

Third, it is important to stress the focus on the *quality* of the options outlined above. I have argued that it is not enough that people should have exit options that are simply equivalent to their current situation, or even worse. It is not enough to argue that people working in a sweatshop can always go back to their gruelling former job as an agricultural

²⁵⁵ On the one hand, provision of goods such as food in a market based system does usually provide people with a range of different sources and is not subject to democratic demands. On the other, decisions about planning such as the construction of major roads generally do involve people for whom exit costs are high and they are thus subject to demands for greater participation. Shapiro describes some interesting intermediate cases such as health care and education provision in societies where some can afford to opt out of state provision but others cannot. He argues that we need to find ways to strengthen the position of those who cannot opt out (see Shapiro, 2003, p. 47). These cases are closest in character to the situation of workers in countries with weak welfare provision and limited job options.

labourer²⁵⁶. In this regard, the ILO might criticise countries that pursue policies designed to attract employers offering large numbers of low-skilled jobs in narrowly defined industries when it is possible for those countries to try to attract a broader range of employers and job types. Similarly, exit options make more sense against a background in which workers have access to welfare provision that provides for their basic interests.

IV) The ILO and Voice

I have considered the provision of exit options first because in the case of labour standards and relations it is more obvious what can be done to mitigate domination by providing such options. In general, provision of exit options is possible through the means outlined above: states can do more to ensure that they provide welfare, training and a range of employment opportunities for their citizens. The ILO can help ensure that they do these things. In the first instance, it can do so through various forms of technical assistance, although it may also be necessary to compel them. In the interests of preventing domination, other states, international institutions and corporations are also bound to act in ways that make it possible for states to provide a better range of exit options. Provision of adequate exit options means workers are less likely to be compelled to take jobs with dangerous working conditions and unfair pay in order to provide for their most basic interests. It may indirectly raise labour standards by giving workers a more effective bargaining position. However, there are situations in which it may be difficult or impossible to offer adequate exit options to workers. The most obvious examples are poor countries that have difficulty attracting foreign investment. These countries may be at an early stage of development and thus have limited

²⁵⁶ Sometimes this suggestion is implied in arguments that poor people in developing countries are at least relatively better off than they would otherwise be. See, for example, Wolf, 2004, chapter 9. I would emphasise the importance of meeting an absolute minimum standard for welfare.

infrastructure to provide training or a range of alternative sources of employment²⁵⁷. They may be reliant on a limited range of natural resources, meaning they tend to rely on a narrow range of industries for their income. In these cases, it is much more difficult for states to provide an adequate range of exit options. This makes workers more vulnerable to domination, since they are more likely to be reliant on a single source of income. Furthermore, even in wealthier countries, differences in wealth and resources may make some workers more vulnerable to domination than others. The situation of migrant workers in the US referred to in the previous chapter is one example of this. In these situations, it is necessary to focus on the way voice – or participation – can be used to mitigate domination. I want to look at several ways the ILO can work to improve the situation of workers who have limited exit options.

One of the core priorities of the ILO is the promotion and protection of freedom of association. As several authors point out, basic freedom of association is one of the more obvious tools workers need in order to draw attention to issues such as violation of labour standards or mistreatment by employers²⁵⁸. The most serious violations of freedom of association also amount to violations of more basic human rights or moral standards. The murders of trade union activists in Colombia²⁵⁹ and the violent attacks on strikers and union activists in Bangladesh²⁶⁰ are examples of this kind of case. In this situation, the ILO has a mandate

²⁵⁷ Moran refers to a range of different countries, from Madagascar, which comes fairly low on the UNDP's Human Development Index rankings (143rd of 177) to mid-table countries such as the Philippines (90th of 177). See UNDP, http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_PHL.html, accessed January 5, 2009.

²⁵⁸ See for example Young, 2006, p. 108-9, Elliott and Freeman, 2003, chapter 5, and Bhagwati, 2004, p. 245-6.

²⁵⁹ According to Freedom House, 60 per cent of killings of trade union activists take place in Colombia. Until recently, there was a high rate of impunity for these killings, although pressure from the US and the ILO has led the Colombian government to be more active in seeking prosecutions. See Freedom House, <http://www.freedomhouse.org/template.cfm?page=22&country=7373&year=2008>, accessed 6th January 2009.

²⁶⁰ See ILO, 2008, p. 59.

and even moral duty to try to prevent these violations. These types of violation are of concern to other institutions from the UN and other states to activists in NGO groups. Up to now, the ILO has only used its enforcement powers against very obvious violations of its conventions against forced labour in Burma, and was not able to encourage other international institutions to co-operate in its enforcement (see Elliott and Freeman, 2003, p. 106). It did, however, indirectly encourage various clothing manufacturers to stop their operations in the country via a human rights campaign. In general, the lesson here is that it may be best to focus on the way some violations of specific aspects of freedom of association cross over into the moral concerns of other institutions and organisations. Even if the ILO itself is not powerful enough to enforce its conventions, it can pass on information about violations that cross over into broader moral concerns about the way states treat their citizens and employers treat their workers. The ILO could do more to publicise its findings when investigating cases such as the Bangladeshi strike, given that these are presumably of interest to institutions like the UN, as well as to groups such as Amnesty International.

This contrasts somewhat with the ILO's current approach to promoting freedom of association, which, according to Elliott and Freeman has been focused on providing seminars on freedom of association and collective bargaining. Elliott and Freeman point out that the effectiveness of these seminars is hard to assess (Elliott and Freeman, 2003, p. 101). In contrast, a focus on specific violations of narrow rights might provide more obvious and tangible results, as well as providing cases for other international organisations and campaigners to latch onto.

The above discussion reflects a general concern with providing conditions in which workers in developing countries might have greater opportunity to advance their own concerns and interests. The standard criticism by globalisation enthusiasts of anti-globalisation movements is that they reflect the moral priorities and even the guilty consciences of wealthy westerners, rather than the genuine concerns of those in developing countries. These arguments tend to avoid the more difficult question of whether or how it is possible to provide more effective channels for the

expression of the genuine concerns of developing country workers, however. I want to elaborate on two possible ways of doing this through the ILO.

The first is to provide a voucher based funding scheme for unions in developing countries. As defenders of unions often point out, many trade unions are both independent from states and business and internally democratic and answerable to their members. They often compare favourably with NGOs on these points (see, for example, Spooner, 2004, p. 8, although Spooner distinguishes between independent unions and state controlled ones such as the ACFTU). Part of the accountability of unions may result from the way these independent unions are funded through dues paid by their members. However, the poorest workers have limited funds to pay union dues, and in some of the lowest paid areas such as agriculture, unions are consequently poorly funded and organised (Spooner, 2004, p. 22). The aim of this proposal is to make unions in poorer countries more directly accountable to the poorest workers without requiring those workers to give up a substantial part of their wages, bearing in mind that many of the worst off workers already live at or below subsistence level. The basic proposal is that the poorest workers would be given vouchers that they could use to pay union dues, and the unions could then redeem these vouchers in the form of funding from the ILO. There are a number of qualifications and modifications that might be made to this basic scheme²⁶¹, but it can be broadly defended along the following lines.

First, the explicit aim of the proposal is to provide a more effective voice for the poorest workers. These groups might be identified using the

²⁶¹ The most obvious concern is that the scheme might result in client unions, as has been the case with unions in poorer Southern countries funded by wealthier Northern unions (Spooner, 2004, p. 6). This danger might be avoided in part by the ILO itself seeking a broad base of funding for the scheme. A second question is whether poor workers should have to spend the vouchers on unions – it might be made possible for them to redeem them against other goods or services if they choose to. Third, there is a question about whether or how the funding could be gradually reduced if unions become more established and better able to support themselves. Fourth, there is a question about how to ensure that a range of possible unions is actually available for workers to choose between.

criteria for domination already outlined, although other measures of deprivation could also be used. One frequent complaint in the literature on sweatshops and labour standards is that these groups rarely have an effective voice (see, for example, Elliott and Freeman, 2003, p. 69ff and Young, 2006, p. 128). Allowing workers themselves a greater opportunity to influence decisions about who represents them may alleviate this problem to some extent.

Second, the proposal insures that the decisions of the workers about who represents them have an impact on the funding of the unions in question. This gives those unions a stronger incentive to ensure that they demonstrate that they are effective in representing the interests of their constituents. It allows workers to discipline unions by withdrawing funding. It may also improve the standards of unions themselves if it encourages different unions in the same country to compete for funding.

Third, the proposal is intended to establish unions that have a degree of independence from the state. One of the most frequent criticisms of the unions that do exist in developing and authoritarian countries is that they are state controlled and thus have limited scope to protest at the state's actions. The most obvious example of this is the All China Federation of Trade Unions, which is accused of siding with the state and management in the most serious cases of worker complaints (see Elliott and Freeman, 2003, p. 124, Spooner, 2004, p. 7). The proposal for funding by the ILO aims to get around this problem by providing unions with an independent source of support. It is worth noting that Larry Diamond advocates a similar approach in his discussion of broader concerns about promoting civil society in democratising countries: "My own view is that civil society organizations are likely to have more space to act independently and define their own agendas when their financial dependence is on foreign donors rather than their own government, especially when that international dependence is dispersed among a number of donors" (Diamond, 1999, p. 257)²⁶².

²⁶² Diamond also proposes matching of funds from local sources with funds from outside, so that for example each dollar raised locally by an NGO could be matched by ten dollars from international donors

Fourthly, a frequent criticism of unions among both globalisation enthusiasts and authoritarian states is the concern that they will behave irresponsibly, promoting the interests of their narrow constituency at the expense of wider society (see for example, Wolf, 2004, p. 5, Bhagwati, 2004, p. 176, Elliott and Freeman, 2003, p. 125)²⁶³. Basing funding of unions in the ILO provides a clear way to address these concerns. The ILO is a tripartite organisation, including representatives of states, employers and workers. As a result, there is scope for allowing state and employer representatives to bring complaints against unions that are felt to be acting irresponsibly. If these complaints are upheld, the ILO would be in a position to withhold funding from those unions. Despite this, the unions in question would still have a greater degree of independence from states than if they were directly state funded, as in the case of the ACFTU.

Fifthly, the proposal lends greater credibility to Bhagwati's claims about setting domestic standards with the assistance of the ILO. If the ILO itself is able to encourage unions and civil society groups in developing countries, this may allow it to help set standards that are more directly representative of the interests of ordinary citizens, rather than of state delegates to the ILO.

This proposal is intended to demonstrate how it might be possible to use an existing institution like the ILO to provide a more effective voice for developing country workers. It is intended to give them a greater measure of control over the institutions that represent them, without requiring them

(Diamond, 1999, p. 258). This kind of scheme could be accommodated in the basic proposal set out here.

²⁶³ Maskus notes that some authoritarian governments worry that unions are a threat to their stability and their ability to benefit from rent-seeking and rent-sharing:

To governments in China, Myanmar, Indonesia and elsewhere, the spectre of the Solidarity Labour Movement in Poland in the early 1980s still looms large. In this light, repression of labour rights is less about markets and productivity than it is about sustaining power in what might be considered, in a more open framework, illegitimate government institutions" (Maskus 2004, p. 499).

to directly bear the costs of setting up those institutions²⁶⁴. Despite the arguments that can be made in favour of this proposal, many authoritarian countries remain hostile to state independent unions. Furthermore, the proposal may be somewhat difficult and expensive to set up. It would probably be most likely to succeed through a process of experimentation with smaller countries in order to demonstrate its effectiveness to larger and more powerful states. These concerns suggest that we need a further intermediate way of promoting a more effective voice for developing country workers.

The ILO has a further possible role in this area, in that it could provide audits of both non-governmental systems for monitoring labour standards and of campaigns against sweatshops by NGOs. I will briefly examine these two possibilities.

Bhagwati places heavy emphasis on his argument that domestic labour standards in developing countries like India are at least partly subject to democratic determination (Bhagwati, 2004, pp 50-1). This argument neglects the fact that several countries with Export Processing Zones (where labour standards are generally lowered in order to attract outside investment) do not meet the Freedom House criteria for status as free, and in some cases are not even classed as electoral democracies²⁶⁵. There may be a case for developing democratic countries setting their own labour standards (and receiving technical assistance from the ILO to enforce and implement those standards when they are in place). This argument is much less plausible when applied to un-democratic and un-free countries, where workers are denied the right to organise and draw attention to the problems they face, though. Perhaps the best way in is to

²⁶⁴ It might also be added that most early trade unions and many unions today provide services such as health care and social security. If unions in developing countries are able to do this, it might again reduce domination by making workers less directly dependent on their employers.

²⁶⁵ Countries with export processing zones that are not electoral democracies include the UAE, which also prevents its workers from organizing, striking, or collectively bargaining. See <http://www.freedomhouse.org/template.cfm?page=22&year=2008&country=7513>, accessed 10th January 2009.

monitor and audit the non-governmental codes of conduct that outside investors sometimes bring to these countries. These investors probably have the most direct leverage over governments and employers in the countries in question, but are less directly threatening to the authority of those governments than anti-sweatshop campaigns. One example of the way this pressure can work in practice is a case where Reebok pressured Taiwanese owned factories to hold secret ballot elections of union representatives. Nevertheless, as O'Rourke and Elliott and Freeman emphasise, there is still a lack of credible monitoring of standards. This is where ILO audits are relevant. They could give more credibility to the better quality monitoring systems that some companies and employers use. At the same time, it can undermine the complacency of companies that deny problems simply because they use their own monitors. Because of the ILO's tripartite structure, there is scope for union influence over the way these audits are carried out. The concerns about domination raised in the previous chapter suggest a framework for assessing the credibility of monitoring. It is important to consider carefully what workers have at stake if they raise problems and issues about standards in their workplace. Are they likely to be dismissed from employment if they raise issues with monitors? Is a negative monitoring report likely to result in a lost contract for an employer, leading to job losses for workers? Is there a threat that a rise in production costs will lower wages for workers? Considerations such as these arise from the vulnerability of workers who depend on their employment for the resources they need to vindicate their basic interests. Remedies might include providing anonymous help-lines or websites for workers to report violations (Senser, 2002, refers to initiatives of this type that have been set up in China). Similarly, there may be a case for not making reports of violations of labour standards public immediately, since companies tend to react in knee-jerk fashion by cutting contracts with factories, rather than working to improve the situation. Perhaps a more effective strategy would be to use the *threat* of publicising the reports to pressure companies to improve standards. The point here is to look for ways of making worker participation possible without directly threatening other basic interests workers may have.

Despite these possibilities, there are shortcomings to this approach. Most obviously, there is a concern that encouraging corporate codes of conduct and other non-governmental monitoring will crowd out more robust and effective labour standard enforcement, and act as a substitute for genuine freedom of association (Donfang, 2002, makes this point forcefully). Similarly, there is limited scope for workers themselves to set labour standards, or influence decisions about them. There is a worry that the standards offered reflect the priorities of employers and the influence of western consumers more than the interests of the workers themselves. Finally, it is observed that corporate codes have most influence on industries where outside investors play a major role. They tend to affect high profile, export oriented industries such as sporting goods manufacture, while leaving heavier industries untouched (see, for example, Elliott and Freeman, 2003, p. 131). For these reasons, it is important to emphasise that this proposal should be seen as a rather poor second best to the more robust suggestions about union funding made above. The aim of this weaker proposal is to find ways of ensuring that workers in authoritarian and un-democratic states are not left completely isolated.

A similar proposal could also be extended to global NGO campaigns against sweatshops. Here again, the ILO could monitor and audit campaigns to assess whether they include workers and ensure their basic interests are taken into account. The case of the Bangladeshi child labourers discussed at the end of the previous chapter could be an example of the kind of campaign that might get ILO approval, since the campaigners did make efforts to ensure that the children who lost their jobs had access to education and were not left destitute.²⁶⁶ The same concerns about “crowding out” of more robust and wide ranging attempts to improve labour standards still apply here, though. To some extent,

²⁶⁶ Elliott and Freeman suggest that the staid, bureaucratic image the ILO has may make it less threatening to authoritarian leaders and regimes. Although this may help the organization get a foothold in such regimes, the implementation of some of the suggestions here would involve an increase in the robustness and power of the ILO that could undermine this image in the long term.

these worries might be mitigated by the fact that unions and workers themselves do have some involvement in the ILO through its tripartite structure. They thus have at least some opportunity to identify campaigns that serve to suppress broader attempts to improve workers' freedom of association and other rights. The auditing and monitoring process may also bring out common concerns between unions and campaigners and open the possibility for greater co-operation. Despite these points, it is still worth emphasising that these campaigns, and any ILO approval or support of them should be seen as a poor second to the more robust suggestions outlined above.

v) Summary

In conclusion, I have looked at a range of practical and policy proposals that are relevant to the ILO's role in protecting workers. I have fitted these proposals into the framework for the analysis of domination that I set out in the previous chapter. Broadly speaking, the aim is to show how institutional arrangements can be structured to prevent or mitigate domination. In this case, providing workers with realistic and adequate exit options is one way to prevent their domination by employers. These exit options can be provided through welfare provision, training, and an open labour market. The ILO has a direct role to play in the first two options, providing technical assistance to countries so that they are better able to offer welfare and training to their citizens²⁶⁷. It has a less direct but important role in the third, by encouraging countries and the international

²⁶⁷ Bhagwati points out that funding for similar schemes ought to come from global economic institutions. As he puts it,

Poor countries typically can ill afford adjustment programs...So we need to think of institutional programs of adjustment assistance that can be domestically implemented but financed externally. The obvious candidate for this is the World Bank, which should put its money where its pro-globalization mouth is (Bhagwati, 2004,p. 235).

Since the ILO has a stake in these programmes, there is a clear case for giving it some influence over the way they are implemented and assessed.

economic institutions that influence them to adopt policies that ensure more open, diverse labour markets that can give workers more realistic exit options.

There is a range of situations in which the role of exit options is limited, though. Countries at lower levels of economic development are likely to lack the infrastructure to support diverse economies. Even in more developed countries, some workers are likely to find themselves in situations in which they rely on a single source of income, and are thus vulnerable to domination. In these cases, the most direct moral responsibility falls on employers, who are in a position to impose arbitrary reductions in people's capacity to vindicate their basic interests. In the interests of preventing domination, employers are morally bound to show why changes in working conditions are not merely arbitrarily imposed. Workers have a claim to voice in the sense that they are entitled to demand that employers show that this is the case. I looked at some of the ways in which workers might actually be given more effective voice. First, attempts to prevent workers from organising often take the form of violations of other basic rights. In these cases, other agencies besides the ILO have relevant concerns and may have better capacity to intervene. The ILO has scope to work with other institutions such as the UN and human rights NGOs in cases of direct attacks on workers and strikers. These attacks constitute the most obvious violations of rights to organise and protest at violations of labour standards. Second, the ILO could take a more active role in helping to ensure that unions give voice to some of the worst off workers. The voucher scheme I outlined above is an attempt to show how this could be done. Finally, there are ways to ensure that monitoring and campaigns to improve labour standards pay more attention to workers' interests. The ILO can monitor and audit these practices in order to make sure this is done. Even if such monitoring and campaigns do not always directly deliver improvements in labour standards in particular cases, there are ways to ensure that participation does not directly threaten workers' jobs and incomes. Provision of anonymous procedures for reporting violations is one example of this.

Another is to be more cautious about publicising violations when they are discovered.

The different circumstances of different countries mean that different parts of the proposals outlined above may be more or less appropriate in particular cases. Although some parts of the proposals are more robust and demanding than others, I have tried to show that smaller steps may be taken to try to alleviate domination even in the least promising cases.

Eight. Further Challenges

Chapter Outline

Introduction

- I) Answering some possible objections
- II) Comparing the alternatives
- III) Suggestions for further research

Introduction

In this final chapter, I have three main aims. First, I want to try to address some questions that may have been left open by the theoretical and practical discussions from the previous chapters. The aim is to try to bring together as neatly as possible the more abstract discussion from the first chapter and the more practical, policy-oriented discussion from the second one. I address five main issues here. First, I give a broad overview of the scheme into which the policy suggestions are supposed to fit. Second, I attempt to address the possible charge that my approach is not demanding enough. Third, I address the question of whether there needs to be a tighter fit between the claim that employers bear direct responsibility for their employees and the emphasis on the ILO as an institution charged with promoting better labour standards. Fourth, I address a worry from critics of republican political theory that preventing domination leads to excessive interference, particularly by states. Finally, I address the question of whether my approach is too narrowly focused on a specific example.

In the second section, I want to try to sum up the ways in which my approach improves on the arguments from the four main figures I looked at previously. Again, the aim is to try to bring these arguments together as neatly as possible. I restate my objections to Dryzek's civil society approach, to Nagel's statist approach, to Held's cosmopolitan democracy and to Cohen and Sabel's deliberative polyarchy. I also attempt to show how my arguments can answer the objections. Finally, I want to propose

some avenues for further research. The aim here is to show that the various theoretical and practical suggestions made here could be developed as part of a broader research agenda. I look at the possible application of my practical suggestions to the problems faced by women workers. I suggest an extension of my argument about domination to issues of migration, asylum and citizenship. Finally, I provide a rough outline for empirical research that might be used to support my arguments about the role of local level civil society.

1) Answering some possible objections

In this first section, I will look at some issues that may have been left open from the previous chapters.

a) First, I have offered a rather fine grained set of proposals for a particular institution. It is also worth setting out the broader scheme that a focus on preventing domination as a priority of international justice would imply: to provide the woods to accompany the trees of the previous chapter. The first implication of my argument is that all states are required to be internally democratic and to create an environment in which it is possible for civil society organisations to function. A combination of competitive electoral democracy and civil society can be defended as ways of preventing domination by states. Electoral competition and active civil society help compel states to show that their policies do not impose arbitrary burdens on either their citizens as a whole or specific groups of citizens. Second, because state-citizen relationships are not the only morally significant relationships in which people stand, we also need to think carefully about how to mitigate or prevent domination in these other types of relationship. Taking our example, there are two main differences between state-citizen and employer employee relationships. First, in most cases employers do not face the same exit costs from the relationship as employees. As various commentators have argued²⁶⁸, wealthier employers (and shareholders) do not usually have *basic* interests at stake

²⁶⁸ See, for example, Barry, 2001, p. 146ff, and Shapiro, 2003, p. 44ff.

when deciding whether to exit a particular business relationship. The situation is different for poor workers, particularly those in poor countries²⁶⁹. Second, employers are not usually bound by the same rules that apply to their employees. This contrasts with states in which, in principle at least, most laws apply to all citizens. These differences are intended to bring out the contrast between state-citizen and employer-employee relationships, and to emphasise the need for different approaches to mitigating domination in them. Third, even if states have greater capacity to set their own domestic policies and standards in many areas, international institutions can still hold states to account for their failure to live up to those domestic standards: Bhagwati's example of the Indian government setting demanding labour standards it has no intention or capability of enforcing is an example of this. Furthermore, local level civil society groups are important in bringing these failures to light, and as I have argued, international institutions have an important role to play in supporting such groups. Internally independent civil society groups are an important ally for international institutions like the ILO, and I have attempted to show how the ILO could do more to support some of them. In summary, the argument here is that even when states *can* legitimately set their own domestic standards in particular areas, there is a need for international institutions to ensure that they actually live up to those standards. They can do this by supporting local level civil society groups, including trade unions in the case of the ILO.

b) Second, this scheme may seem somewhat less demanding than the kind of cosmopolitan democratic institutions that Held and others demand. Cosmopolitans tend to criticise more limited approaches for being morally undemanding, particularly in the face of severe global poverty²⁷⁰. I want to answer this criticism by asking whether we need to

²⁶⁹ It is perhaps worth noting that this difference between state-citizen and employer-employee relationships is a matter of degree. It is possible for the very wealthy to leave one state without great cost (see Sangiovanni, 2007, p. 12). However, the costs of emigration for most ordinary people are very high.

²⁷⁰ Simon Caney directs this charge at Miller (see Caney, 2002). He also directs the charge at Rawls (see Caney, 2001). John Tasioulas

distinguish between demandingness and appropriateness. Held's cosmopolitan democracy is substantively demanding in terms of the goods it redistributes and in terms of the requirement that people actually participate on an equal footing in decisions that significantly affect them. However, we might respond to this by asking whether equal inclusion or participation is really appropriate when people have very different interests at stake. If a particular group of people are made especially worse off by the outcome of a particular decision, it is worth asking ourselves whether our objection to this outcome is because the people concerned were not given an *equal* chance to influence the decision or to participate, or whether they were given an *adequate* chance to participate in a way that allows them to protect their basic interests²⁷¹. As I have argued, this question of whether people have had an adequate chance to participate requires careful attention to the circumstances that may make such participation costly or difficult, but I have also argued that the theory of domination I have described can provide a framework for assessing those circumstances.

c) Third, there may seem to be a gap between the agent bearing moral responsibility and the agent that is required to discharge that responsibility in the proposals I have described here. I have argued that the moral responsibilities that fall on employers are more demanding in the absence of other institutions – particularly the state – that are able to provide exit options. Employers face a more direct demand to provide voice to their workers in the sense of explaining why their decisions do

emphasises that principles of distributive justice such as Rawls's duty of assistance are more demanding than current levels of redistribution in the form of international aid, but nevertheless asks whether the minimum Rawls sets is too low.

²⁷¹ Beitz suggests a similar problem in a very brief paper called the "Problem of Global Democracy". Beitz argues, "the question whether global governance processes should be made more democratic is ill-formed. We do better to begin with a view about the respects in which global governance processes can be unjust" (see Beitz, unpublished manuscript, accessed 22nd January 2009, http://www.economyandsociety.org/events/Beitz_Cornell_Precis.pdf).

Beitz does not address the question of whether participation plays a role in the conception of justice he has in mind.

not arbitrarily reduce the workers' capacities to vindicate their basic interests. The institutional proposals I outlined are not explicitly directed at employers, though; they are mainly directed at the ILO. This suggests that there is a rather puzzling gap between the agent bearing the moral responsibility (in this case, the employer) and the agent charged with actually carrying that responsibility out (in this case, the ILO). It is possible to close this gap by pointing out that the agent bearing a particular responsibility is not always best equipped to discharge that responsibility²⁷². In the case of labour standards, it is often pointed out that the various schemes to monitor and raise labour standards that corporations set up tend to lack credibility. Even if we take the rather optimistic view that these schemes are a genuine attempt to monitor and improve labour standards, there are concerns that these schemes lack the independence and rigour needed to ensure that employers adhere to labour standards. If the various proposals described above amount to a more credible scheme for determining and monitoring labour standards, employers and firms would be under an indirect obligation to support such schemes. This might include, for example, contributing to the funding that the voucher scheme for unions would distribute, as an indirect way of ensuring that the ILO is able to monitor labour standards at the local level.

d) A fourth concern develops a common criticism of republicanism, and Pettit's republicanism in particular. Several critics have pointed out that Pettit's concern with potential domination can lead to an oppressive and overly interfering state, precisely the outcome that Pettit's republican freedom seeks to avoid. The more fine-grained account of domination I have provided here provides us with the resources to answer this criticism. Because domination occurs in situations in which some people have limited exit options due to limited resources, the most obvious remedy for the threat of domination is to try to provide them with

²⁷² As Robert Goodin points out, someone who causes an accident might not be well placed to help out, even if we would rightly see them as at fault: "When the wake from a passing speedboat capsizes my sailboat, it must be the responsibility of other nearby sailors rather than the long-gone speeder to pull me out of the water" (Goodin, 1985, p. 780).

adequate exit options. This does not always require direct interference with the agent in the position to dominate. As we have seen, provision of exit options depends on adoption of policies that support a range of alternative sources of the resources people need to vindicate their basic interests. In the case of labour standards, the hope is that providing such a range of options to workers will give employers a greater incentive to offer better conditions in order to attract workers. The main burden of proof that would lie on employers would be to show that adequate exit options do exist for their employees, but this burden seems less onerous than more direct forms of interference. In the case of exit options, a concern with potential domination may be appropriate, given that the remedy itself does not necessarily involve excessive interference.

I have argued that participatory, deliberative processes are most appropriate when adequate exit options cannot be provided. However, it can be argued that participation itself can be very costly for some people²⁷³. Again, there is a worry that the remedy to domination here may turn out to be at least as costly as domination itself. The most obvious example is the difference in resources between employers and individual employees. The latter are not usually in a direct position to bring expensive litigation against employers who violate labour standards. There are a couple of points to be made in response. First, by focusing on exit options first, I have tried to limit the number of cases in which deliberation would be a strong moral requirement. Second, emphasising a basic requirement to protect basic interests means that the type of deliberation used should not itself become a source of domination. For example, the mechanisms employees should have to raise and remedy complaints against employers should not put them in a position in which they are likely to be dismissed or disciplined. Anonymous reporting of violations of labour standards is preferable to reporting in which managers can easily identify complainants, for example. Again, the general point is that participation needs to be designed with sensitivity to

²⁷³ See Miller, 2000a for discussion of some of the arguments about the burdens that political participation can impose.

the possibility that certain forms of participation can themselves be excessively costly for those involved.

I have thus tried to steer a middle way between those who might advocate very strong intervention to prevent potential domination and those who would limit the definition of domination to actual or attempted arbitrary interference²⁷⁴. I have done so by arguing that the remedy does not always involve direct interference with those in a position to be potential dominators. Similarly, I have argued that participation can be designed in such a way that it does not itself threaten the basic interests of those who participate.

e) Finally, it may be objected that the proposals I have outlined are very fine grained and focused only on the response that specific institutions might make to specific forms of domination. In response, I believe that this may simply be the price we would have to pay for not directly pursuing a more robust form of global egalitarianism. If, as I have argued, inequalities of resources are a source of domination, then perhaps the simplest and most direct way to prevent domination is to pursue the kind of global egalitarianism that some contemporary cosmopolitans advocate. There is a range of possible objections to this, including various communitarian and libertarian concerns. My own main objection is the worry that any global institutions strong enough to pursue egalitarianism of this type are themselves likely to become sources of domination. My focus on exit options and participation is intended as a less substantively demanding alternative to cosmopolitan egalitarianism as a means of preventing domination. Although this proposal is intended to be less substantively demanding in terms of redistribution, it seems hard to avoid the conclusion that it will often be intellectually demanding. It will require the kind of careful attention that was shown by the activists in the case of

²⁷⁴ As Marilyn Friedman points out, “a state often controls behaviour by means of punishment or penalties. However, someone who does not exercise her capacity to interfere arbitrarily with others does not deserve to be punished or penalized by the state” (Friedman, 2008, p. 252). More broadly, John Ferejohn argues, “I think non-domination is a good thing, but, if pushed too far, it could end up intruding on so much of our lives that what ordinary people call freedom (not what Pettit calls it) will be seriously compromised” (Ferejohn, 2001, p. 85).

the Bangladeshi sweatshops, for example, when they continued to pay attention to the further problems that resulted from their campaign and found ways to alleviate those problems by working with the people affected.

II) Comparing the alternatives

In this section, I want to sum up the various improvements that my approach offers over the various alternatives I criticised earlier in this thesis.

With regard to Dryzek, I want to focus on two of my main criticisms. First, Dryzek's own criticisms of the state are not worked out sufficiently clearly. Second, he seems to take voluntary participation as a sufficient sign that protesting groups actually have significant interests at stake in particular cases. I will look at these in turn.

First, Dryzek assumes that the state is a source of oppression, but fails to acknowledge or address the possibility that the state might also serve to mitigate certain forms of oppression (or, in my terms, domination). As Shapiro and Young point out, this exclusive focus on the state repeats a basic mistake of liberal political theory. I have provided an account of some of the ways in which states might act to mitigate domination. In particular, I have focused on the way states can act to provide exit options to people who might otherwise be dependent on a single source of income. This is based on my argument that lack of exit options is one of the sources of domination. I have argued that the ILO as an international institution has a significant role to play in developing states' capacities to provide such exit options, through welfare provision, training, and through encouragement of a diverse and open labour market. It is worth stressing the importance of providing a diverse range of possible alternative sources of income. This follows from my arguments about the role of limited exit options in domination. Broadly speaking, while states themselves have a role in trying to prevent or mitigate domination, they should also promote other agencies that offer

alternative resources that people can use to vindicate their basic interests²⁷⁵.

Second, Dryzek's claim that global civil society movements have more freedom to act than traditional actors neglects the moral responsibilities that may nevertheless fall on such agents²⁷⁶. As Young notes, it may be possible for wealthier western consumers to express their moral indignation at low labour standards by boycotting products, but these actions usually come at little personal cost to those consumers. As we have seen, the effect of such boycotts on workers can potentially be much more drastic. This suggests that the comparative freedom to act that the western consumers have is accompanied by a much greater degree of moral responsibility than Dryzek acknowledges. My suggestions about the role of the ILO in providing voice to developing country workers are partly motivated by this concern. For many such workers, the costs of protesting about their working conditions are extremely high. My proposals are aimed at making it easier and less costly for those workers who wish to protest about their situation to do so. For example, the proposal for a voucher scheme for union membership is intended to make it possible for the very poorest workers to join unions without having to bear the costs of doing so directly.

As a final point, I want to stress that I do not wish to dismiss the achievements of the more effective civil society campaigns, as many of the defenders of economic globalization tend to. The Bangladeshi child labour campaign referred to above is a case in which those involved did take considerable care to establish who might be affected by the campaign and ensure that those people were not harmed by the closure of their factories. Nevertheless, this case demonstrates the importance of responsibility in such campaigns. The substantive moral demands that the campaigners accepted in this case are much more stringent than Dryzek's approach to civil society acknowledges. I argued that the theory

²⁷⁵ Michael Walzer makes some similar arguments in *Spheres of Justice* and more directly with regard to controlling state power in his essay on civil society. See Walzer (1983, 1995).

²⁷⁶ As we saw above, Miller presses this point forcefully against advocates of global civil society. See Miller, 2000.

of domination outlined above can be used to help identify vulnerable people in such cases.

Nagel's statist objection to global justice insists that there are no moral demands outside the state, beyond minimal humanitarianism. The only *institutional* morality that matters is the egalitarian justice that holds between fellow citizens. Nagel seems to take the ideal type of a well-functioning state and use it as a baseline for their approach to global justice, yet this neglects the reality of international politics in some rather obvious ways. I have argued that this position misses two large points with regard to the differing capacities of states.

First, where states are weak or incapable, other actors may find themselves in a position of primary responsibility for providing people with basic resources. A sweatshop employer in a country with limited social security provision is an example of this. Nagel's argument implies that the employer has no moral responsibilities beyond minimal humanitarianism. I would argue that precisely the opposite is true. Because in this case the state does not provide the kinds of exit options that the sweatshop workers would need to avoid domination, the employer faces more onerous moral demands than otherwise. If the employer is not able to show that the workers have realistic exit options (in the form of social security or alternative employment), he is under a direct obligation to show that his decisions do not subject his employees to arbitrary reductions in their capacity to vindicate their basic interests. At his most sceptical, Nagel argues that it is not possible even to give a coherent account of these kinds of moral obligation. I hope to have shown that institutionally *and* morally significant relationships can exist outside the state. While a combination of coercion and legal authority might be shown to raise the distinctively egalitarian moral demands of justice, other significant relationships are possible. The work relationship is one example. It is morally significant because, for most people, work is their main source of the resources they need to vindicate their basic interests. As a result, employers - particularly employers in states with weak social security and limited job markets - are in a position where they have the capacity to dominate their employees.

Second, Nagel's argument about the responsibilities of international institutions ignores large parts of the reality of what those institutions actually do. Part of the mandate of the ILO, for example, is to support and develop domestic, state-level capacities in a number of areas, from drafting and enforcement of labour laws to creation of employment opportunities. This reflects the fact that state capacities are unevenly distributed, but it may also reflect some awareness or acceptance of a moral responsibility to develop those capacities when they are weak. Even if we accept Nagel's claim that states are the primary institutions of justice, the fact that state capacities to actually fulfil the responsibility to promote justice are unevenly distributed suggests a need for some sort of institutional cooperation to address this problem.

In general, the problem with Nagel's account is that it does not go deeply enough into what states are actually *for*. Nagel is concerned with coercion and legal authority, but the moral significance of these aspects of the state is the role they play in enabling people to pursue other goods. It is possible to improve on Nagel's argument by stressing the importance of states in providing the basic goods that people need to pursue their projects or live decent lives. However, once this move is made, it becomes clearer that there is a number of ways in which people can provide those goods. These include working relationships and various forms of civil society activity. One of my main points in this thesis has been to stress the importance of providing a range of attainable alternative ways of providing these resources as a way to prevent domination. This leads, for example, to the stress on encouraging an open employment market as one priority for the ILO.

As a separate point, Nagel's focus on the state as the primary, or even only, site of justice neglects the role that non-state relationships also play in preventing domination *by* states. This returns us to the point about states promoting a diversity of institutions that was just made in the discussion of Dryzek above. Nagel's suggestion that the state should provide a background of equality against which all other interactions can legitimately be seen as voluntary may lead to a very interventionist form of state authority. My approach is instead to focus on the provision of

adequate exit options by a range of agencies as a means of preventing domination. Again, in the case of labour, the provision of an open labour market and an effective social security system seem to be the most obvious way to do this. Participation becomes particularly important when it is not possible to offer such options.

Held's most recent formulations of his cosmopolitan principles place emphasis on a concern with the moral agency of individuals. A concern with domination is compatible with these cosmopolitan concerns because domination – understood as interference without regard to the legitimate interests of those interfered with – is itself a significant threat to moral agency²⁷⁷. However, it is notable that Held's later work does not give any explicit account of whether or how democracy or political participation might work to prevent or mitigate arbitrary actions by states. I argued that the republican thinkers I have looked at can be used to generate an appropriate account of how the state works to do this. This extends in two broad directions. From Pettit (and Bellamy) we can draw an account of how electoral competition works to prevent arbitrary use of power by the state. The effectiveness of these mechanisms is limited by the scale of competition and by factors such as linguistic diversity, though. From Shapiro, we can draw an account of how the state can work to provide exit options from relationships that might otherwise result in domination. Drawing these accounts together, we can argue that if the state itself is subject to democratic control, it is less likely to dominate those individuals to whom it provides exit options.

These points can be related to Held in the following ways. First, as Held's concerns about subsidiarity themselves acknowledge, we want democratic institutions to actually be effective. On the arguments just given, this points to reinforcing domestic democracy at the state level as

²⁷⁷ The point is to some extent acknowledged in Held's discussions of the modern state and its role in facilitating autonomy: "The equal treatment of all before the law, and the protection of subjects from the arbitrary use of political authority and coercive power are *sine qua non*" (Held, 1995, p. 145).

the most likely site for effective democratic competition²⁷⁸. Furthermore, as Pettit argues, governments that are subject to domestic democratic control are also constrained to protect the interests of their citizens at the inter- and supra-national level. On this view, some of the problems faced by the worst off may be as much due to lack of domestic, state level democracy as to lack of cosmopolitan democracy. This pushes us to reformulate Held's project in three ways. First, one of the main priorities should be the reinforcement of domestic level democracy. Second, the fact that not all states are well-functioning democracies means that citizens of such states are particularly vulnerable to actions that disregard their interests. Third, a concern with the interests of such citizens does not necessarily manifest itself in equal treatment or equal capacity to influence political processes. This is in part because they lack the background of secure welfare and institutions that would otherwise make such equality justifiable. Here, some version of Held's principle of urgent need and avoidance of serious harm is appropriate, although I would modify it by emphasising that even in these cases, some form of participation is appropriate.

Because it places less emphasis on strong cosmopolitan institutions, this outline scheme is less demanding in the long run than Held's proposals. Ultimately, the plausibility of my own approach depends on whether the arguments I have made do result in a less institutionally demanding programme than Held's, and on whether the institutions I defend can be shown to prevent domination. The beginnings of such a case can be made by looking at the proposals for the ILO that I have already outlined. My overall preference is for a world of states that are internally democratic and promote a range of non-state institutions that provide their citizens with adequate resources and exit options. International institutions are needed to ensure states are willing and able to provide this range of institutions. This rough scheme is less demanding on

²⁷⁸ On this point, see also David Miller, who in an early article argued that electoral competition should be carried out at the state level, while local forms of participation should be encouraged to secure the intrinsic benefits of democratic participation (Miller, 1983).

international institutions than Held's cosmopolitanism. This is because the international institutions in question would mainly be charged with promoting and protecting individual states' capacity to provide a range of resources and exit options for their citizens. They would not be as directly responsible for the egalitarian redistribution of resources or enforcement of rights as they would under Held's scheme. I believe my less demanding scheme fits more closely with the ILO's current mandate, in that this particular institution remains primarily concerned with *states'* capacities to provide welfare, social security, a safe working environment and other work-related goods for their citizens. This is not to take an uncritical view of the ILO: the practical proposals I outlined would require the organisation to be better funded and have greater powers than it has at present. The proposals about providing voice for the worst off workers are substantively less demanding than Held's proposals, although they are likely to present significant intellectual challenges in practice. The challenges are posed by the difficulties of deciding how much needs to be done to make it possible for workers to report issues such as violations of labour standards in particular cases. I do not think these challenges are insurmountable: there is already a range of possible solutions to this problem that ingenious defenders of labour standards and workers' rights have developed. However, the fact that the circumstances that make participation and protest difficult for workers vary between particular cases is the main source of the challenges.

I have argued that the approach to domination and international institutions that I have defended is somewhat less demanding than Held's institutional cosmopolitanism. However, it is also possible to hedge my bets by pointing out that even if some form of institutional cosmopolitanism *is* the most plausible and attractive theory of global justice, we would still need to think about how to construct the kind of institutions Held advocates in as fair and legitimate a fashion as possible. Given that the world is not as egalitarian as cosmopolitans would like, it is likely that the burdens of constructing cosmopolitan institutions are likely to fall unevenly on different groups. As a result, if we are interested in constructing those institutions fairly and legitimately, we would need

some kind of principles and institutional structures to make sure that particular groups do not have to bear excessive or illegitimate burdens. Because the theory of domination I have described here is designed to identify those with the most urgent stakes in particular decisions, it is better suited to the task than the substantively egalitarian democracy that Held advocates.

Turning finally to Cohen and Sabel, there are two points I want to emphasise in order to draw a sharper contrast between my arguments and theirs. First, I criticised them for lack of attention to the need for incentives to ensure that those with urgent interests have a greater chance to influence decisions that affect them. The voucher scheme I outlined can be said to address this problem in two ways. First, it gives unions themselves greater incentive to pay attention to the interests of the worst off people in particular societies, since the scheme would (indirectly) provide funding or other support to unions that are attentive to the interests of those groups. Second, it could provide those workers with greater access to the influence that unions have over governments, employers and policy making. The scheme could thus increase the voice of workers both within the unions themselves and in society more generally.

Second, I have argued that there are good reasons for workers to play a greater participatory role in setting and monitoring labour standards, but that this requires careful attention to the specific problems of workers in countries that do not respect rights such as freedom of association, and in which workers are particularly vulnerable to employers. There is thus room for a high degree of contextual difference in the nature of the problems in particular cases, and I have argued that the ILO may be one of the better equipped international organisations to deal with these problems. Despite this contextual variation, the theory of domination provided here is intended as a framework for assessing particular cases. This approach contrasts with Cohen and Sabel's focus on inclusion, which, as I stressed above, does not necessarily mean participation.

Despite these objections, Cohen and Sabel's more pragmatic approach does have some attractions. In particular, the fact that a particular agent

is in a position to help in a particular case is often the result of a series of accidents or contingencies, but their situation nevertheless generates a moral obligation²⁷⁹. The Bangladeshi child labour case may be an example: the consumers' and activists' ability to influence the factory owners may be an accident of this type. In these cases, the most morally appropriate thing to do may be to worry how these people exercise their capacity to act in these particular cases, rather than to worry about how they people came by their capacity to act (who elected them?). Elliott and Freeman's analysis of this particular case shows how it was possible for the activists to do more to listen to the people most directly and seriously affected by their campaign. Again, the theory of domination I have described is intended as a framework for critical analysis of these cases.

III) Suggestions for further research

Finally, I want to look at some areas for further research that might follow from the arguments developed here.

With specific reference to the labour standards issue, one broad area of concern and debate has been the effect of the spread of export oriented industries on women. Although these industries form only a fairly small proportion of world exports, it has been observed that the number of women employed in them is disproportionately high. For example, Bhagwati points out that in 1995, 90 per cent of the 1.2 million workers in the Bangladeshi garment factories were female (Bhagwati, 1995, p. 85²⁸⁰). This issue is of interest for at least two reasons. First, there is a debate about whether the opportunity for such employment improves the situation of women or subjects them to harassment and dangerous working conditions. Defenders of these industries argue that they offer significant improvements over the alternatives available in the societies in

²⁷⁹ Jacob Levy makes this point in a recent discussion of David Miller's arguments about national responsibility (see Levy, 2008).

²⁸⁰ Young claims that many of the workers in these factories are also young, from thirteen to fourteen years. See Young, 2006, p. 108.

question, and serve to increase the status and power of women²⁸¹. It has been argued that women often choose to work in factories, even those with sweatshop conditions, because they provide flexible employment opportunities. Critics point out that women are vulnerable to sexual harassment and abuse at work. Some of the working conditions are intolerable from any moral or ethical perspective. It could also be argued that it is somewhat complacent to focus on *relative* improvements in women's living conditions when the alternatives are often desperately bad.

The theory of domination I have described is relevant to these issues. The definition of basic interests I outlined above includes a minimal requirement for the resources necessary to function as an independent moral agent, *because* this agency is necessary to adapt one's conception of a reasonably successful life according to circumstances. Although this conception of basic interests is sensitive to context, it still includes a minimal standard. It thus contrasts with the relative comparisons between the conditions of sweatshop workers and non-sweatshop workers that Wolf and Bhagwati draw. The point would not be to simply draw comparisons between the alternatives the workers have in their current society, but between the possible availability of options that would provide the conditions for some form of independent moral agency. This is the point of the stress on *adequate* exit options. To make the point more concrete, it is more plausible to argue that women will have chosen low paid, temporary jobs out of considerations of convenience or flexibility if they are in a situation where adequate alternatives are actually available to them.

Second, there is concern that women are generally under-represented in the trade union movement²⁸². I have argued that – at a minimum – trade unions are an important source of information for international institutions that might seek to hold states accountable to the labour standards that they set for themselves. Trade unions are also a source of internal pressure on states to set decent and realistic internal standards. It seems

²⁸¹ See, for example Wolf, 2004, p. 239.

²⁸² Spooner, 2004, discusses this problem.

plausible to argue that these standards are more likely to reflect the broad needs of society – women included – if the unions themselves are more responsible and accountable to a broader cross-section of society. The voucher scheme for union membership that was discussed above may thus be relevant to the problem of including women. There is room for discussion about a range of adaptations that could be made to the basic scheme that has been outlined. Perhaps the failure of unions in some countries to include and represent women might be used to justify providing vouchers to women regardless of whether they are subject to domination. Alternatively, the fact that most women do seem to work in sectors where the violation of labour standards and other basic rights is particularly widespread might mean that a voucher scheme directed at the most vulnerable would increase the representation of women anyway. It has been observed that some non-union NGOs have been set up in response to women's dissatisfaction at the failure of conventional trade unions to represent their interests. Examples of these groups include Women Working Worldwide and the International Gender and Trade Network²⁸³. It might be possible to adapt the voucher scheme to include these NGOs: if women feel that these kinds of organisation are likely to do a better job of representing them, they could have the opportunity of using their vouchers to support them. Alternatively, more work could be done to encourage the formation of unions in industries that employ disproportionate numbers of women. The affiliation into the International Trade Union Confederation of the Indian Self-Employed Women's Association (SEWA) in 2006 is a relevant case study here. The ILO could investigate ways to encourage these developments.

There are thus two directions in which concern about the specific problems of women in relation to labour standards might be developed. First, more detailed consideration might be given to the specific problem of ensuring that women have adequate exit options and resources necessary to vindicate their basic interests. Second, the use of a voucher

²⁸³ Research into these groups is currently being carried out by Women in Informal Employment: Globalizing and Organizing (WIEGO). See <http://www.wiego.org/index.php> (accessed 16th June 2009).

scheme to increase the voice of the most vulnerable workers in poorer societies could be adapted to address the specific problem of the under-representation of women in trade union movements.

The previous section suggested some avenues for further research within the scope of the issue of labour standards and workers' rights that has formed the central focus of this thesis. In this section, I want to broaden out the possibilities for further research into two other areas beyond this central focus. First, I want to look at the relevance of the arguments made here for a question regarding the status of migrants and asylum seekers. Second, I want to look at a possibility for broader empirical research into the role of local level civil society in protecting rights within states.

The first question is motivated by a question that Cohen and Sabel direct at Nagel. As Cohen and Sabel point out, the basic argument behind Nagel's justification for limiting egalitarianism to states runs as follows: "In short, egalitarian justice is the internal morality of the association of equals that is formed by a legal order in which the subjects of the law are represented as its authors" (Cohen and Sabel, 2006b, p. 161). However, this raises the following practical question: "what happens when the state is populated by resident non-citizens?" (Cohen and Sabel, 2006, p. 161n25). This question is clearly relevant to the broader issue of migration and asylum. There are complex moral issues at stake here, and a growing literature addressing the questions of the rights of migrants and asylum seekers to citizenship status. Clearly, this is not the place to address these issues in detail: I can only give an outline of how the theoretical approach I have described here might deal with this question. To begin with, it is worth outlining what I think our moral intuitions would be with regard to the question of resident non-citizens. We expect non-citizens such as tourists, migrants, visiting students and asylum seekers to obey national laws. The laws these groups are subject to are often coercively applied. We might also assume that they are enforced in part in the broad interests of those groups: they might be justified in terms of the way they ensure basic security and safety of such groups. Failing this, we might expect that compliance should not impose excessively heavy

burdens on them. Yet Nagel's argument seems to run into difficulties here. We do not generally give all these groups a right to participate in determining the laws – tourists do not have the right to vote in our elections. Neither do they have a full claim to the benefits of our social security system. Yet a strong reading of Nagel's argument suggests that this is what moral consistency would require. Tourists are subject to at least some of our laws, and thus would appear to have a reasonable claim to participate in determining them. Similarly, if they comply with those laws, they might have a reasonable claim on our social security system, if subjection to the law is the basis of Nagel's rather broad conception of equal treatment. As far as I can tell, Nagel's only response to this would be to emphasise the practical problems of, for example, letting tourists take part in national level politics. There does not seem to be any morally consistent objection to this point, despite the fact it runs quite sharply against our moral intuitions. Furthermore, most people would probably want to draw some distinction between asylum seekers and tourists. We set up procedures to assess the claims of asylum seekers and successful ones are entitled to at least some sort of claims on our social services, rights to work and even citizenship rights, as well as a reasonable assurance that their initial claims will be handled in a fair manner. Again, this distinction seems to fit with our moral intuitions but it is hard to see how it fits into Nagel's argument.

The argument about domination would handle this problem in roughly the following way. The moral significance of states and other institutions is the role they play in ensuring people have a chance to fulfil their basic interests without being subject to domination. Where people have limited exit options, they are entitled to a form of participation that gives them the opportunity to be shown that these basic interests are protected. Our intuitive distinction between tourists and asylum seekers reflects this point. Tourists presumably do have exit options and are not in the country because they rely on its various institutions to provide for their basic needs. Their observance of our laws might broadly be construed in terms of a duty not to undermine the institutional scheme that does protect basic interests for citizens. Asylum seekers are presumed to be in a very

different situation. The reason for their claim usually depends on the fact that they are at serious risk in their own countries and cannot expect that their basic interests would be adequately protected there. If the country in which they seek asylum is the only safe place for them, or they cannot afford to move between countries, it can be argued that they have limited exit options. This generates a claim to the kind of participation referred to: they have a reasonable claim to demand a form of participation that enables them to protect their basic interests.

This brief argument suggests that my institutional approach to domination and participation may be better equipped to handle the objection Cohen and Sabel level at Nagel. Clearly, there is much more that can be said here. There is a range of alternative approaches to the question of immigration and citizenship that could be used to criticise this basic argument. There are questions about the other groups I referred to – particularly economic migrants. There are also questions about the institutional requirements that this approach generates: just what sort of participation would give vulnerable groups a realistic chance of protecting their basic interests? Nevertheless, I hope to have given at least a rough idea of how the theoretical work done in this part of the thesis might be expanded beyond the example of labour standards that I looked at in detail here.

A different, more directly empirical avenue for research relates to the arguments about local level civil society made above. The general argument was that it is important to promote local level civil society as well as state level democracy wherever possible. This fits into a scheme in which states have greater opportunity to set domestic rules but are also held accountable for enforcing those rules. Local level civil society is important for those international institutions that monitor states' efforts to live up to their own domestic standards. Again, promoting local level civil society in non-democratic states may be the best alternative we have in some cases, However, I would stress that it is a poor second best to a

broader emphasis on promoting democracy at a range of levels, including both local level civil society and states²⁸⁴.

The basic claim behind this approach is that societies with both effective state level institutions *and* a robust and active civil society ought to perform better in terms of protecting citizens' basic interests. The justification for this claim is that, especially in an unequal world, certain groups are particularly likely to have urgent interests at stake and need effective means to publicise those interests and demand that they are protected. Civil society groups are one of the most important institutional means for doing so²⁸⁵. In order to test this claim, it would be worth trying to group states according to whether they are democracies and whether they have robust civil societies, and then assess their performance with reference to protecting basic interests. Using the Freedom House survey as a rough guide might produce the following comparisons:

| Country | Electoral Democracy? | Civil Society? |
|----------------|-----------------------------|-----------------------|
| Vietnam | No | No |
| Cambodia | No | Yes |
| Indonesia | Yes | No |
| Taiwan | Yes | Yes |

²⁸⁴ The approach I favour is thus broadly similar to the wide ranging approach to democracy promotion that Larry Diamond advocates in his book *Developing Democracy* (see Diamond, 1999).

²⁸⁵ This basic argument bears a broad resemblance to Philip Pettit's arguments for a two-dimensional model of democracy. Pettit's basic argument is that elections partly serve to protect broad general interests, but that non-electoral mechanisms are also needed to protect more specific interests in particular cases. The main difference between my approach and Pettit's approach is that the two dimensional approach focuses on *constitutional* measures to protect specific interests as the second, non-electoral dimension. In my view, civil society groups are more important, although I think they need to be assessed more rigorously in terms of their claims to represent specific interests (see Pettit, 1999, 2000, 2005).

This is a crude scheme that is intended to draw a contrast between countries that allow some forms of active civil society but are not electoral democracies, countries that are electoral democracies but have various restrictions on freedom of speech and assembly that restrict the effectiveness of civil society, and countries that allow for both elections and a robust and active civil society. If a study of this kind is to support the theoretical arguments made above, we might hope to find that countries with both elections and active civil society would do significantly better in terms of measures of protection of basic interests. Of course, a lot more needs to be said about the detail of how such a study might be carried out, and about the way it could be shown to support the arguments made here. However, if the outcome was that countries with both electoral democracy and civil society perform better in terms of protecting basic interests, this might be taken as support for the general arguments outlined here. It might be used to support a general advocacy for developing both electoral democracy and local level civil society that could be used to influence democracy promotion efforts by states and international institutions.

I have thus outlined three possible directions for further research. The first develops some implications and suggestions for a specific aspect of the example of labour standards. It suggests ways in which the theoretical arguments and practical suggestions made above might be applied to the specific problems faced by women workers in developing countries. In particular, it attempts to address the issue of the under-representation of women in some trade union movements, even though women often make up a large majority of the workforce in sectors such as garment manufacturing. The second proposal suggests a way in which the theoretical arguments about domination made above might be applied to the question about citizenship that Cohen and Sabel direct at Nagel. It suggests that the theory of domination outlined here provides a more fine grained set of criteria for deciding which groups have a legitimate claim to participation in state-level decision making procedures. The third proposal suggests a wide ranging study that could be used to give support for the general argument about the role of civil society in protecting basic

interests. It takes up the suggestion that a combination of local level civil society and electoral democracy is the best way to protect such interests, and suggests a way in which this thesis might be given empirical support.

Conclusion

By way of conclusion to this thesis, I want to set out in a basic and abstract form some of the key claims that were made. The aim of this is to demonstrate how the claims fit together, and to clarify the role of the main components of republicanism that, it is claimed, can contribute to debates about global justice. I will do this by setting out the claims a fairly formal way. The claims are made in several stages, each of which is made up of a number of steps.

Stage I: Universal Moral Concern

- i) Individual human beings are objects of equal, general and ultimate moral concern.

This is the basic statement of moral cosmopolitanism.

II) Stage II: The State and Basic Interests

- i) All human beings require the fulfilment of a set of basic interests in order to live a decent and successful life, compatible with a similar life for all other human beings.
- ii) Fulfilment of some basic interests requires institutional relationships.
- iii) Institutional relationships involve control over resources and capacities needed to fulfil basic interests.
- iv) Control over resources needed to fulfil basic interests puts some people in a position to act in ways that reduce other people's capacity to fulfil the full set of basic interests.
- v) Institutional relationships pose a potential threat to people's capacity to fulfil their basic interests.
- vi) The state is an institutional relationship that controls resources that are necessary for people to fulfil their basic interests.

- vii) States can provide resources directly or indirectly, by allowing and enabling other institutional relationships.
- viii) States can be made to act in ways that take account of the interests of their citizens through democratic, electoral competition.
- ix) The mechanisms that make democratic, electoral competition effective in controlling the state are limited in scale.
- x) Democratic states are institutional relationships that can provide for the basic interests of their citizens without posing a threat to their ability to fulfil those basic interests.

This argument brings in the main republican points in the following two ways. First, steps iii, iv and v in particular bring in Shapiro's concerns about the way institutional relationships involve control over important resources that people need in order to live a decent or worthwhile life. Step iv also brings in Pettit's concern with domination, in that domination involves actions that do not take regard of people's interests. Second, step vii brings in Pettit's concern with mechanisms that are designed to ensure that institutions effectively track the interests of those affected by the institutional relationship.

The steps in this argument thus aim to explain how democratic control of the state works to enable people to access resources necessary to fulfil their basic interests while preventing the state from acting in ways that threaten those basic interests. They yield the main claim of this stage of the argument: democratic states are a reasonably effective means for enabling their citizens to fulfil their basic interests, but the mechanisms that prevent such states from acting in dominating or arbitrary ways are limited in scope.

III) Stage III: Democratic States and Other Societies

The second stage of the argument makes a claim about the role of states in their interactions with other states.

- i) States that are subject to internal democratic control will pursue the interests of their citizens in their interactions with other societies.
- ii) States that are subject to internal democratic control will aim to prevent other states from acting in ways that are contrary to the interests of their own citizens.
- iii) A world in which all states are democratic would prevent actions by states that are against the interests of individual citizens.
- iv) A world in which all states are democratic is compatible with cosmopolitan concern for the basic interests of all individuals.

Stages I and II set out in a formal way a basic claim to the effect that a world in which all states were domestically democratic would be reasonably effective in fulfilling a general cosmopolitan concern with the interests of all individuals.

IV) Stage IV: Differences Between States

The next stage makes a basic claim about the capacities of different states.

- i) Not all states are effective, internally well functioning democracies
- ii) Not all states are institutional relationships that can provide for the basic interests of their citizens without posing a threat to their ability to fulfil those basic interests.

V) Stage V: Non-state Institutional Relationships

This stage makes a claim about the possibility of institutional relationships within states that are not internally well functioning democracies.

- i) States that are not effective, internally well-functioning democracies can still allow and enable institutional relationships that involve control over resources that are necessary for citizens to fulfil their basic interests.
- ii) States that are not effective, internally well-functioning democracies are not always able to prevent those who control those relationships from acting in ways that undermine people's ability to fulfil their basic interests.

The basic claims made in the four stages above can be combined to give us a rough outline of the main institutional – and, from the republican perspective outlined here, moral – problem that this thesis has attempted to address. The problem is as follows:

In the absence of effective democratic states, people stand in institutional relationships upon which they depend for resources and capabilities necessary to fulfil their basic interests, but which are not subject to effective controls that prevent domination.

This basic problem motivates both the criticisms developed in the chapters on Dryzek's version of the global civil society approach, on Nagel's version of statism, on Held's version of cosmopolitanism and on Cohen and Sabel's deliberative polyarchy. To summarise the main points:

Chapter Summaries

Dryzek

My main objection to Dryzek's position is that his account of global discursive democracy focuses on the effectiveness of democratic movements without acknowledging their considerable capacity to act without regard for the interests of those they affect. This is a fairly straightforward case of *dominium* in Pettit's terms. The main weakness of

Dryzek's case is that he neglects the role of states that are themselves subject to democratic control in preventing or mitigating this type of domination. So, to illustrate again, the sweatshop example emphasised the worry about the effects of boycotts and campaigns when those campaigns lead to the closure of factories upon which workers depend for fulfilment of their basic interests.

The discussion of Dryzek raises the issue of how we decide when actions impact on people. Dryzek's claims about participatory democracy make more sense against the background of a state that can work to protect people and ensure that they are not vulnerable to the kind of *dominium* that was identified in the chapter. However, the absence of such a state for many people at the global level is the relevant disanalogy between the domestic and global levels of politics.

Nagel

Nagel argues that subjection to coercive laws that are collectively authorised is the source of claims of justice, and of egalitarian justice in particular. My main objection to this argument is that it focuses too narrowly on these institutional features of states without asking what the broader moral function of states is.

The second part of the chapter set out a concern about the claim that institutions states set up are legitimate because of their connection to internally legitimate or just states. This argument might be appropriate in a normative sense, but Nagel also applies it to existing international politics. The argument above about the possibility of institutions people depend on for provision of basic interests existing outside the state (Stage IV) indicates why this is an unconvincing move: there are relationships outside the state upon which people depend for provision of basic interests, and this is the source of the moral significance of those relationships.

Held

Held's recent work has affirmed versions of the cosmopolitan principles that are central to many other contemporary accounts of cosmopolitanism. These principles were also endorsed at the beginning of this thesis. The endorsement, coupled with Held's focus on democratic participation, may make it harder to distinguish the approach taken here from Held's cosmopolitanism. The key difference is in the way Held moves between his moral and his political principles. Although Held does sometimes refer to interests, I argued that a substantive conception of interests is much more important in moving from the moral to the institutional claim. More specifically, an understanding of how different institutional relationships affect people's ability to vindicate their basic interests helps understand the relevance of political principles like democratic equality in preventing and mitigating domination in those relationships. I argued that Held is not sufficiently sensitive to this issue. He continues to endorse a principle of equal influence over decisions that is not appropriate in situations in which people have very different interests at stake. I argued that the absence of effective democratic states at the global level makes this situation a likely one. This also makes Held's principle of urgent need and avoidance of serious harm more pertinent at the global level, but it is not clear what Held's position on participation in these cases is. I argued that participation in such cases may be appropriate, but needs careful attention to the basic interests that are at stake in these cases.

Cohen and Sabel

Cohen and Sabel's approach to the issue of global democracy uses the European Union as a model for the institutional approach they advocate. As a union of reasonably well functioning democratic states, the EU is potentially an empirical model and even test case for the claim made in stage III. However, Cohen and Sabel's application of the EU model to the

global level is inappropriate for several reasons. First, it is not clear that their claims about deliberative polyarchy as a source of legitimacy would hold in a society in which decision makers are not at least at some point held accountable to elected officials or through electoral processes. Yet they nevertheless attempt to generalise their argument to cases where no such accountability exists, for example, to authoritarian states. Second, they do not acknowledge the role of electoral competition in democracies as a source of control that helps ensure that decision makers track the interests of affected people. This has been an important theme in recent republican discussions of democracy. While it was argued here that electoral competition is unlikely to work at the global level, other institutional forms of competition might be used to ensure decision makers have an incentive to track the interests of those they affect. Third, Cohen and Sabel generalise from the EU by using claims about the absence of a state that are unclear and sometimes confused. While the absence of a state may refer to areas that are legitimately free from direct state interference, it may also refer to areas in which states either fail to fulfil their responsibilities or have broken down altogether. The latter is the situation that seems to generate more obvious cause for moral concern, since the state is not providing for basic interests in these cases and citizens are thus left in a position of vulnerability.

The common thread linking these different arguments is a concern about the absence of the state. States are institutional relationships that can provide either the resources or the conditions for providing the resources that people need to fulfil their basic interests. Furthermore, the arguments about competitive electoral democracy are the basis for demonstrating how the states' potential for arbitrary use of its power can be brought under some control. This is the point of the last four stages set out above. I have argued that none of the approaches addressed above deal adequately with institutional relationships in which the state as an adequate and effective background is absent. However, the labour standards example provides examples of the kinds of vulnerability that people in such institutional relationships face.

The constructive parts of this thesis set out an account of the substantive principles that provide a link from a cosmopolitan claim about individual humans as objects of moral concern to institutional principles that help fill out what it might mean to actually treat people as objects of such concern.

The basic argument was that cosmopolitan concern with the well being of all people requires individual moral agency. People should be able to pursue projects that contribute to their own well being and that of those around them in responsible ways, where responsibility requires attention to the basic needs of others. Individual well being is thus at the basis of this attempt to fill out the substantive content of a cosmopolitan position, and moral agency follows from there. It would be possible at this point to give a further account of the resources, goods or capabilities that contribute to individual moral agency. However, I argued that one reason for not doing so too explicitly is that we should compel decision makers to give an account of how their decisions affect individuals, and leaving the substantive content of the idea of individual moral agency fairly open is one way to do this. This is the point of the substantive minimalism referred to in the chapter above. Substantive minimalism thus gives expression to the republican idea of forcing institutions to track the interests of those they affect by forcing them to give an account of how their decisions and actions take account of the basic interests of those affected.

The institutional proposals set out in the second constructive chapter on domination above are intended to address a world in which the claims made in stage IV and V of my outline are true. That is, they are intended to address problems that occur in a world in which not all states are able or willing to provide for or to protect their citizens' basic interests. If it is possible for citizens of such states to stand in other relationships upon which they depend to vindicate their basic interests, those relationships are of direct and often urgent moral concern. Looking at the literature on labour standards and sweatshops demonstrates how such relationships

are possible. Many states that are too poor or weak to provide adequate social security for their citizens are nevertheless able to guarantee sufficient stability for companies to set up operations on their territory. Many states that are too undemocratic or unjust to make such provision are able to do the same. The citizens of such states often find themselves in employee-employer relationships upon which they depend for a range of resources necessary to provide for their basic interests. In the terms of this thesis, these people are vulnerable to domination. They are in a position in which they have limited exit options, and control of resources necessary for the vindication of some basic interests is used to reduce their capacity to vindicate a full set of basic interests. This is a matter of cosmopolitan concern, even when the employers are not the multinational corporations often referred to in discussions of globalization.

The second chapter on domination canvassed some possible remedies to the situation of the workers. These fell into two groups: those designed to provide exit, and those designed to provide voice. The former focused on ways of providing alternative ways of vindicating basic interests so that employees are not dependent on a single source. The latter focused on giving workers greater capacity to demand that decision makers show that decisions affecting them are not arbitrary and actually do take account of their basic interests. Provision of exit options is preferable in some circumstances, for a number of reasons. It can generate opportunities for those who wish to use voice to do so through bargaining. It also takes account of the fact that protest and use of voice often have costs for the people involved and that it may be better not to impose such costs given the context. However, in some cases it is not possible for affected people to be given adequate exit options. In this case, forms of voice are required. The rationale for this is to try to ensure that different options are at least explored and brought to light. As was stressed already, such forms of voice need to be sensitive to the fact that participation involves significant costs for the people involved, and to find ways to minimize or redistribute such costs.

I focused on the ILO as the main institution that is appropriate to deal with the reforms I proposed as means to deal with domination in the domain of work relations. Improvements in labour standards, poverty reduction, improved social security provision and improved participation by workers in decisions that affect them were all advocated as means to provide workers with a combination of exit options and voice. The reasons for focusing on the ILO had little directly to do with domination. The main reasons for focusing on that institution related to the fact its mandate and current practices mean that it has relevant concerns in this area and because some of the tools it has at its disposal – technical assistance in a number of areas, moral suasion and in some cases sanctions – make it one of the most appropriate international institutions to deal with the problems identified.

In the final chapter on domination, I examined some further criticisms of my basic argument, looked again at my arguments in relation to the other positions looked at in the body of the thesis, and finally set out some avenues for further research.

The five main objections I looked at were addressed in the following way. My concern throughout the thesis has been with what Pettit might call a form of *dominium*: domination that occurs in non-state relationships. In this case, the *dominium* examined occurs between individuals and groups when states are weak, absent, or otherwise unable to fulfil their normal duties. I argued that some forms of participation are appropriate, but a strong democratic form of participation on an equal footing is unlikely to be. Second, failure to include people in participatory processes can itself be seen as a failure to treat them as independent moral agents – and is thus a violation of their basic interests. Beyond this, failure to include them makes it less likely that their interests will be taken into account. Again, I would stress that the aim here is not to make participation conditional on the likelihood that it will protect basic interests. Rather, because the failure to enable people to participate means decisions are less likely to track their basic interests, we need to find ways to ensure participation is possible even for the most vulnerable, and to ensure that

such participation is not itself excessively onerous. In practice, this may involve designing institutions in such a way that representatives have more effective incentives to defend the basic interests of those they represent. The voucher scheme outlined is an example of this. Third, a concern with preventing domination requires institutions that are appropriately situated to deal with specific problems. While employers bear responsibility for their workers, it is not always clear that they are well placed to discharge that responsibility. In such cases, other institutions, such as the ILO in my example, may be more appropriate. Fourth, the institutional design challenge is to find ways of alleviating domination that do not themselves make it difficult for people to vindicate their basic interests. This is partly expressed, for example, in Shapiro's conception of democracy as a subordinate foundational good. The challenge for institutional design is to find ways of preventing domination that enable people to vindicate their basic interests. Fifth, I argued that the fine-grained approach taken here is appropriate if we do not advocate a strong form of institutional global egalitarianism. Again, the argument is that limits to such a strong institutional scheme are set by the limits of electoral democracy to control state institutions.

The arguments offered in the final three chapters of the thesis also constitute a more positive response to the positions criticised earlier. In response to Dryzek, I would argue that a concern with the kind of domination outlined provides more robust criteria for assessing the effects of global civil society campaigns. It provides outline criteria by which to judge the vulnerability of those likely to be affected by such campaigns. As a result, it provides a starting point for understanding how to pursue those campaigns more responsibly. It also, it should be stressed, helps us distinguish between existing campaigns in terms of the way they take basic interests into account. This was illustrated using the Bangladeshi sweatshop campaign.

In regard to Nagel, my approach emphasises more strongly the role of international institutions in ensuring that states are able to fulfil their basic responsibility to protect basic interests. Again, the ILO's focus on

technical assistance to states reflects this priority, although I also stressed the importance of building the capacity of civil society actors as a component of functioning domestic democracies.

Against Held, my argument was that his project needs to be recast in terms of developing state level democratic capacities. This point is acknowledged in his more recent work on globalization. However, the existing unevenness of the distribution of state capacities leaves some people more vulnerable than others. This leads to a greater need to focus on criteria such as Held's seventh principle, relating to serious harm and urgent need. I argued that institutions like the ILO have a number of policy options that could be used to ensure that workers in states that do not do enough to protect their basic interests have at least some exit options and voice. Taking account of the situation of such people is a necessary part of Held's cosmopolitan argument, since Held's cosmopolitan principle requires moral concern with all individuals.

Finally, Cohen and Sabel's account was criticised for not taking account of differences in state capacity, and for not being sufficiently attentive to the situation of groups with urgent interests at stake. My proposals are broadly directed at addressing these issues. Again, the ILO has policy options and a mandate to address state capacities in the relevant areas discussed here, as well as to act in ways that might give exit options and voice to some of the most vulnerable workers.

My last task in the final chapter was to set out some avenues for further research. The first of these related to the position of women in the global economy. Improvements in economic prosperity and employment prospects can be argued to make a significant contribution to women's well being. However, it is also argued that women tend to be disproportionately represented in types of employment that make them vulnerable to exploitation and to the types of domination outlined here. This includes work in the informal sector in particular. It can also be added that these sectors are weaker in terms of union representation. As a result, there is an argument for adjusting the institutional proposals outlined in order to take better account of these problems.

A second avenue for research would be to apply the arguments made here to issues of asylum and immigration. A rationale for the limited size of states was provided here, but this argument was made in terms of a more general cosmopolitan concern for all individuals. When not all states can or do fulfil their responsibilities to individuals, it can be argued that some individuals find themselves subject to a form of domination. They have basic interests at stake and limited options for fulfilling those interests. This policy area thus raises questions that are relevant for the theory of domination outlined here.

Thirdly, empirical research on the role of civil society in preventing domination could be extended. The main arguments in this summary and the thesis as a whole have been directed towards situations in which states are generally weak or incapable, and the role of non-state actors in such cases. However, it is also argued that civil society plays a central role in functioning democracies. An argument that developed the theoretical perspectives defended in this thesis would look more closely at the role of civil society in preventing domination. It might, for example, ask how civil society works to protect basic interests in cases where otherwise well-functioning democratic institutions fail individual citizens or groups.

Some Key Concerns

Having summarised the main arguments made in this thesis, I now want to turn back to the schematic outline of the claims provided at the beginning of this conclusion. Although that scheme did not provide a full account of all the details of the arguments made in the thesis as a whole, setting out these arguments in a schematic way does have the advantage of drawing out some of the more controversial claims made in the thesis. I would identify the claims made in stage II, steps viii, ix and x and stage III, i, ii, iii, and iv as the most controversial. I want to turn to these claims again to look at ways to reinforce them.

Stage II

- xi) States can be made to act in ways that take account of the interests of their citizens through democratic, electoral competition.
- xii) The mechanisms that make democratic, electoral competition effective in controlling the state are limited in scale.
- xiii) Democratic states are institutional relationships that can provide for the basic interests of their citizens without posing a threat to their ability to fulfil those basic interests.

This set of claims was defended on the basis of republican claims about the role of electoral competition in protecting people's interests (Pettit, 1999, 2000, Bellamy, 2008, Shapiro, 2003). They were used to draw a distinction between moral and political equality, but also to develop an argument about the limited scale of democratic competition. I picked out these two examples because they seem most plausible claims about the limits of effective democracy. There are three strategies for strengthening the basic claims here. First, they could be related back to the more general political science literature on democratic competition. Relevant theoretical and empirical studies here would include Schumpeter (1942), Miller (1983), Powell (2000), Medearis (2001), Mackie (2003). Developing the claims about linguistic diversity would take us into different literature: as noted in the chapter on Held below, this could include Kymlicka (1999) Carothers (2007) and Van Parijs (2007) as starting points. It would at the very least have to address some of the more obvious counter-examples, such as Switzerland, Belgium and Canada. One way to do this would be to emphasise the strength of democracy *within* the separate linguistic communities that make up these states, and to ask about how far democracy really works across their boundaries.

A second strategy if we wanted to develop the argument about the limited scale of democratic communities would make use of the literature that claims that a common culture is a necessary background to an effective, functioning democracy. This includes work by Miller (1995, 2008), Taylor

(1996) and Barry (1999). Critical responses include Stepan (1998), Mason (2000) and Abidezah (2002). There are two comments worth making about this strategy, though. First, it again has to face familiar counter-examples such as Belgium, Canada and India. The argument is perhaps somewhat harder than in the language case though, since countries like Britain are made up of different national cultures that share the same language. Second, and perhaps more importantly, it is not necessarily incompatible with a broadly cosmopolitan moral outlook. A cosmopolitan could argue that it is a matter of moral concern about each individual that he or she be a member of a political community that is subject to adequate democratic control. The national identity claim is then largely instrumental to this purpose, and nationality is of less direct moral significance.

I have set out some strategies for reinforcing my argument about the role of democratic states in a broadly cosmopolitan moral order. Individual humans are objects of general, equal and ultimate moral concern, but states are means to make good on that concern. Again, I have presented arguments derived from republicanism about why this is so, and looked at some strategies for reinforcing those arguments. A third, more radical, approach might abandon these republican claims about the limits of democracy but retain the concern about domination. On this view, the main contribution of republicanism would be the observation that individuals are subject to relationships in which control of resources needed to vindicate certain basic interests leads to a reduction in the capacity to vindicate the full set of basic interests. On this view, absence of genuinely *cosmopolitan* institutions would be identified as the problem that such individuals face, and we would need to proceed more directly to the construction of such institutions. There are a couple of major problems with this approach, though. First, it would still need to give an account of how to bring the cosmopolitan institutions themselves under some sort of control. It might argue for some sort of direct or representative democratic control of such institutions. The second problem is that the more radical proposal runs counter to the positions of a wide range of contemporary cosmopolitans. Many such cosmopolitans

accept Kant's worries about the prospect of a world government degenerating into a soulless despotism and are thus suspicious of strong global institutions along the lines of a world state. Other cosmopolitans have come up with a range of moral justifications of various limited forms of state sovereignty and provided ways to accommodate basic cosmopolitan concerns with sovereign states. It should be noted that these arguments have not generally addressed the issue of whether states have a role to play in controlling supra-national institutions. Nevertheless, these arguments suggest that this third version of the argument is too radical. Concern with the form of domination Pettit calls *imperium* requires institutional structures that can be brought under some sort of control, and arguments about how to bring a world government under control must address the concerns about scale and linguistic diversity set out here.

Stage III

- i) States that are subject to internal democratic control will pursue the interests of their citizens in their interactions with other societies.
- ii) States that are subject to internal democratic control will aim to prevent other states from acting in ways that are contrary to the interests of their own citizens.
- iii) A world in which all states are democratic would prevent actions by states that are against the interests of individual citizens.
- iv) A world in which all states are democratic is compatible with cosmopolitan concern for the basic interests of all individuals.

The steps made in this claim are perhaps more likely to draw direct criticism from cosmopolitans. The argument holds that the long term way to deal with the democratic problems of inter- and supra-national institutions is to make them more directly accountable to citizens of states. This argument would require that delegates to inter- and supra-

national institutions should be more directly accountable to elected officials, or that elected officials should themselves be delegates to such institutions. Luis Cabrera has recently advanced a version of this proposal, arguing for more direct representation by parliamentarians in the WTO (Cabrera, 2007). In similar vein to Held, Cabrera argues for direct elections of representatives to the WTO in the long term, but his short term proposal is consistent with the approach outlined here. The question is whether the short term version of Cabrera's proposal could work. Cabrera cites an episode in which the Clinton administration embarked on a vigorous campaign to counter public opposition to NAFTA, eventually resulting in a shift in favour of the proposal to join the association. Cabrera states,

The episode helps to demonstrate that rather than viewing a retreat to supra-state elite policy formation as the only feasible response to potential collective economic irrationality induced by a narrow protectionism, elites can respond by providing public outreach and education in efforts to actually persuade the potential beneficiaries of liberalization (Cabrera, 2007, p. 226).

This example raises two questions about how to reinforce the basic stage III claims. First, what other kinds of examples would provide similar empirical evidence in relation to this claim? The obvious place to start looking would be the large literature on the democratic legitimacy or deficit of the EU and other international institutions (for a starting points, see Grimm, 1995, Bellamy and Castiglione, 2000, Greven and Pauly, 2000, Moravcsik, 2004). A comparative study might look at the extent to which elites in different institutions actually do work to try to change public opinion. Second, what kinds of institutional reforms might be necessary to ensure that domestic democratic representatives actually work to represent the interests of their constituents in international institutions? One possibility would be to select delegates from groups of local parliamentarians, so that in Britain, for example, Welsh, Scottish and English MPs might be sent as delegates to international institutions.

These arguments suggest ways in which the stage III argument could be reinforced and defended. Support for them would reinforce the claim that

the long term aim should primarily be domestic democratization of states as a step to democratization of international institutions, rather than more direct democratization of such institutions.

Drawing out this step III claim is also relevant to the claim about the less ideal cases of societies that are not already democratic, which was the central focus of the practical proposals about the ILO discussed in the final chapters below. It suggests that a criterion for deciding which NGOs or unions to support would be their degree of support for eventual state level democratization. This reflects an approach found in Thomas Carothers' work on democracy promotion strategies, with regard to civil society: "The basic idea is that where a democratic transition is seriously faltering due to disinterest or resistance from the power structure, the most likely source of pro-democratic values or initiatives is likely to be civil society" (Carothers, 1997, p. 21). Carothers cites a democracy-promotion programme in Kenya as an example. The general aim is to keep popular support of democracy alive even in the face of official intransigence or opposition by supporting pro-democracy elements in civil society.

The general point of this example is that a clearer idea of where we are ultimately going (which I drew here from my stage III claim) would give us a somewhat clearer set of criteria for distinguishing between different NGOs and unions, based on their degree of support for domestic level democratization.

I have summarised the arguments made in the individual chapters and provided a general overview of the argument made in the thesis as whole in this conclusion. Providing a schematic overview of the general argument has helped to draw out areas that could be given further support through theoretical analysis or empirical evidence. This provides scope for further work. However, drawing together this argument should also have made clear that the main focus of this thesis has been on the situation of people in non-democratic societies and on the possibility that they might be more vulnerable to others to the kind of domination outlined

here. I have tried to argue throughout that attention to their situation is a matter of moral concern during a transition to a more just cosmopolitan order. Even if it is not possible to offer them the full benefits of such an order, it is a matter of moral concern that a transition to such an order takes as much account as possible of their interests, and of their basic interests in particular. I have tried to argue that this is morally required from the perspective of cosmopolitanism, and to suggest some ways of doing so.

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APPENDIX ONE: The History, Structure and Powers of the ILO²⁸⁶

I) History

The ILO was created in 1919 in the aftermath of the First World War. The organisation's constitution was based on ideas tested in the International Association for Labour Legislation, and the constitution was adopted by the post war Peace Conference, becoming Part XIII of the Treaty of Versailles.

There were three motives for founding the ILO. The first was a humanitarian concern about the conditions of workers. Second, a political motivation was a worry that the poor conditions of workers could lead to social unrest. Third, the possible effect of social reform on production costs led to an economic concern that countries failing to improve labour standards would have an unfair advantage over their competitors and thus generate incentives to keep standards low.

The ILO was the only former League of Nations institution to survive World War II. In 1946, it became a specialized agency of the UN. It was awarded the Nobel Peace Prize in 1969. Its current Director General, Juan Somavia, is the ninth person to hold the office.

II) Structure

The ILO's tripartite structure makes it unique among UN agencies. Rather than being purely intergovernmental, its governing body consists of representatives of governments, employers and workers' organizations. In 2003, there were 175 member states and 700 delegates. Each state has two government representatives, one employer representative and one worker representative.

²⁸⁶ This summary is drawn from the outlines of the ILO in Elliott and Freeman (2003, chapter 5), and from the ILO website, [http://www.ilo.org/global/About_the_ILO/Origins_and_history/lang--en/index.htm](http://www.ilo.org/global/About_the_ILO/Origins_and_history/lang-en/index.htm), accessed 05 June 2009).

There are 28 government members in the ILO's executive Governing Body. Of these, 10 are permanently held by states considered to be of chief industrial importance. At present, these 10 states are Brazil, China, France, Germany, India, Italy, Japan, Russia, the UK and the USA. The remaining members of the governing body are elected every three years. There are 14 employer and 14 worker members of the Governing Body, elected respectively by the employer and worker delegates.

The International Labour Conference is held annually in Geneva. At the conference, conventions and recommendations are adopted. Decisions about general policy, work programme and budgets are also made. Each country's four delegates has an equally weighted individual vote.

The International Labour Office is the ILO secretariat and provides advisory services, research and technical co-operation.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) reviews and comments on the application and ratification of ILO conventions. Its reports also comment on other areas of law and practice that are relevant to the application of conventions in member states.

The Conference Committee on the Application of Standards identifies problem cases from the CEACR and invites delegates from the countries involved to address these problems in the open session of the International Labour Conference.

The Committee on Freedom of Association has the power to deal with complaints about this fundamental right, observation of which is a constitutional obligation. Any member state can be subjected to a complaint regarding this right, regardless of whether it has ratified the convention on freedom of association.

III) Powers

- i) Standards and Conventions

The ILO sets labour standards by adopting conventions that form the International Labour Code. Adopted conventions are considered international labour standards. Governments are not obliged to ratify conventions, and are thus only legally bound by the conventions they have voluntarily ratified. However, when a set number of governments do ratify a convention, they become treaties in international law.

Although the ILO's International Labour Code covers a wide range of issues, in 1998 the International Labour Conference adopted a Declaration on Fundamental Principles and Rights at Work. This declaration four core labour standards that all members are obliged to respect, and eight conventions associated with realising them. The four standards relate to freedom of association and collective bargaining, discrimination, forced labour and child labour. The majority of states have now ratified the conventions relating to these core labour standards.

After taking office in 1999, Juan Somavia set up a "Decent Work" strategy. This programme promotes the four core labour standards and job creation; supports the development of social security; calls for dialogue between management, workers and government and expands the ILO's International Programme on the Elimination of Child Labour (IPEC).

ii) Supervision and Publicity

ILO conventions require members to report annually on ratified conventions and to report on failures to ratify conventions. Since the 1998 Declaration on Fundamental Principles, the ILO also requires countries that have not ratified the conventions associated with the core labour standards to report on their efforts to promote them, and encourages employers and workers representatives to comment on these reports.

The main direct purpose of the reports is to expose violations of labour standards. However, other organizations such as the OECD and the International Confederation of Free Trades Unions also use ILO reports to identify violations of labour standards and human rights.

iii) Technical Assistance

ILO technical co-operation aims to implement the Decent Work agenda introduced by Somavia. The aim is to implement the agenda at national level by assisting in the design and application of development programmes. More than half of the ILO's resources are devoted to technical co-operation and more than 1,000 programmes are conducted in 80 countries. Support and funding comes from around 60 donor institutions, including the EU, UN, World Bank, regional development banks and employers' and workers' associations.

Technical assistance has been decentralised to local level offices. There are four main categories of co-operation: labour law reform; labour administration and dispute settlement; organization and collective bargaining for workers' and employers' associations and awareness raising. In the late 1990's, contributions from donor nations to the ILO increased. Much of this money went to the IPEC programme on child labour.

iv) Enforcement

Although the ILO is frequently criticised for lacking enforcement powers, Article 33 of its Constitution allows it to take any action it deems suitable to ensure compliance with ratified conventions or with the conventions relating to freedom of association (which are binding regardless of ratification). In practice, this means the ILO can authorise governments to impose sanctions – only the UN Security Council can require that sanctions be imposed by member governments. Further articles (24 and 26) allow worker or employer organizations and official delegates to bring complaints against governments for failures to comply. The Governing Body will try to resolve such complaints informally, but Article 33 authority provides authority for sanctions if no resolution is found through informal processes. Although the wording of Article 33 was altered in 1946, this change did not rule out the possibility of economic or other sanctions against members.

It is argued that the main reason the ILO does not use its sanctioning powers against members is that it is not believed that sanctions will be effective against members that lack genuine commitment to domestic change. The ILO's first ever invocation of Article 33 was in 2000 against Burma, over forced labour. Discussions of the effectiveness of this invocation can be found in Howse, Langille and Burda (2006) and Elliott and Freeman (2003).

APPENDIX TWO: Gathering Empirical Data on Violations of Labour Standards

This table is a summary of some of the available data on violations of trade union rights and labour standards among ILO member states. It is by no means intended as an exhaustive study, or as an attempt to establish correlations between different factors such as democracy or level of development and violations of rights and standards. Rather, it has three purposes. First, it aims to give a very rough empirical overview of the extent of violations, based on some of the available measures. Second, it aims to indicate some of the ways in which trade union rights and labour standards have been measured and give an overview of some of the observed problems with such measurements. Third, the table indicates some possible avenues for research into correlations between different factors.

Column B categorises countries according to their status on Freedom House's annual *Freedom in the World* survey for 2008. Freedom House rates countries as Free (F), Partly Free (PF) or Not Free (NF). These categories are based on a combined average of scores for ratings in two categories: political rights and civil liberties. These scores are obtained by rating each country on ten political rights and fifteen civil liberties questions. Each question is marked from one to four, and the totals are used to determine a country's rating. Qualitative information for the ratings is drawn from a variety of sources referred to in the survey, although Freedom House does not use ILO data on issues such as child labour or freedom of association. Ratings such as these may be useful in determining whether there is a connection between domestic democracy and compliance with labour standards.

Column C covers the Freedom House scores for the three questions on Associational and Organizational Rights. Each question is given a score out of four, with zero representing the lowest and four the highest degree of protection of rights. These scores are relevant to the union rights and labour standards issue because the Associational and Organizational Rights questions explicitly include questions about the presence of free

trade unions and effective collective bargaining. Kucera (2004b) suggests using the more general Civil Liberties score for countries, because the Civil Liberties questions include references to other issues relevant to concerns about labour standards, such as exploitation of workers and the economic rights of women. The advantage of the narrower focus is that it allows for the possibility of establishing a link between freedom of association and organization and other rights. A broader focus could, however, provide background information for an examination of union rights in particular.

Column D provides rankings from the UN's Human Development Index for 2008. The index is itself a rough guide to development levels that combines measures of life expectancy, literacy, educational attainment and GDP per capita. Use of an index like this could establish links between levels of development and observation of labour standards. Kucera includes GDP per capita in his study for similar reasons.

Column E collects the weighted scores for Kucera's trade union rights index. Data was collected for the period from 1993-1997. 37 criteria were used to classify types of violation of rights to freedom of association and collective bargaining. Weightings were used to indicate severity of violations. Scores are from one to ten, with lower scores indicating higher degrees of violation of trade union rights. Data is drawn from the ILO's reports from the Committee on *Freedom of Association*, from the International Confederation of Free Trade Unions *Annual Survey of Violations of Trade Union Rights* and from the U.S. State Department's *Country Reports on Human Rights Practices*.

These scores are relevant to the labour standards issue, since they cover issues such as intimidation, murder, harassment and dismissal of trade union members and officials. However, as Kucera notes, high numbers of violations of union rights may indicate vibrant and effective unions that authoritarian states wish to suppress, while low scores may indicate that unions are weak and effectively suppressed.

Column F indicates whether countries have ratified all of the conventions relevant to the ILO's four Core Labour Standards. Rodrik (1996) used ratification of these core standards, although both Rodrik himself and

Block (2005) acknowledge that ratification of the core standards is a poor measure of observance of those standards, since many countries that have ratified the conventions are unwilling or unable to enforce them.

Columns G, H, I and J gather data from an attempt to provide quantitative measures of countries' *de facto* performance in implementing the four core labour standards (Cuyvers and Van Den Bulcke, 2005). This is an experimental study that gathers data from a previous analysis (Cuyvers, Van Den Bulcke and Wijaya, 2001). The authors focus on the ILO's four core labour standards, freedom of association (G), freedom from child labour (H), freedom from gender discrimination (I) and freedom from forced labour (J). Scores are from 0 (low level of compliance) to 1 (high level of compliance). These scores are composed of weighted averages of two distinct scores. The first measures "formal" compliance, drawn from documents on ratification and reporting on the ILO conventions. The second measures "real" compliance. Information on such compliance is drawn from ILO reports, U.S. State Department Reports and ICTFU reports. 79 countries are covered.

This study provides a more fine-grained analysis of violations of specific rights. As the authors note, some surprising results, such as the fact Myanmar was *not* rated as the worst violator in terms of forced labour, were found. However, the authors stress that their measurements of violations were based on rules of thumb for interpreting written sources, and emphasise the difficulty of providing quantitative data. The study is in part an experiment in designing a social development index rather than an exhaustive survey of the most recent data on labour standards violations. Compared to the other studies, the range of countries covered is quite small.

Overall, the empirical sources examined here should be treated with caution. They are not exhaustive or detailed surveys. Several of the authors refer to both a lack of sufficient data and a lack of established methods of analysis. This is presumably compounded by the fact that many authoritarian countries repress or inhibit the very organizations that might gather data on standards. Nevertheless, some of the surveys produce surprising results about violations and compliance in specific

countries. They indicate that violations of labour standards and union rights are persistent problems. They also indicate possible patterns of factors that might be studied in further detail. Finally, they provide pointers to more specific violations that could be studied in relation to the context of the country in question.

| A | B | C | D | E | F | G | H | I | J |
|---------------|----|----|---------|------|---|------|------|------|------|
| Afghanistan | PF | 4 | N/A | 0 | N | | | | |
| Albania | PF | 8 | H/0.807 | 5.49 | Y | | | | |
| Algeria | NF | 6 | M/0.748 | 5.79 | Y | | | | |
| Angola | NF | 6 | L/0.484 | 6.69 | Y | | | | |
| Antigua | F | 12 | H/0.830 | | Y | | | | |
| Argentina | F | 11 | H/0.860 | 2.56 | Y | | | | |
| Armenia | PF | 5 | M/0.777 | | Y | | | | |
| Australia | F | 12 | H/0.965 | 7.44 | N | 0.79 | 0.84 | 0.9 | 0.89 |
| Austria | F | 12 | H/0.951 | 10 | Y | | | | |
| Azerbaijan | NF | 3 | M/0.758 | 9.1 | Y | | | | |
| Bahamas | F | 12 | H/0.854 | 8.95 | Y | 0.79 | 0.96 | 0.77 | N/A |
| Bahrain | PF | 3 | H/0.902 | 7.14 | N | 0.7 | 0.93 | 0.63 | 0.84 |
| Bangladesh | PF | 6 | M/0.524 | 1.73 | N | | | | |
| Barbados | F | 12 | H/0.889 | 8.65 | Y | | | | |
| Belarus | NF | 0 | H/0.817 | 3.98 | Y | | | | |
| Belgium | F | 12 | H/0.948 | 9.1 | Y | | | | |
| Belize | F | 11 | M/0.771 | 4.59 | Y | | | | |
| Benin | F | 12 | L/0.459 | 8.2 | Y | | | | |
| Bolivia | PF | 10 | M/0.723 | 1.43 | Y | | | | |
| Bosnia | PF | 8 | H/0.802 | | Y | | | | |
| Botswana | F | 10 | M/0.664 | 7.44 | Y | | | | |
| Brazil | F | 10 | H/0.807 | 3.83 | N | 0.79 | 0.87 | 0.84 | 0.78 |
| Brunei | NF | 3 | H/0.919 | | N | | | | |
| Bulgaria | F | 11 | H/0.834 | 6.24 | Y | | | | |
| Burkina Faso | PF | 9 | L/0.372 | 8.5 | Y | | | | |
| Burundi | PF | 5 | L/0.382 | 7.44 | Y | | | | |
| Cambodia | NF | 6 | M/0.575 | 5.94 | Y | 0.78 | 0.76 | 0.62 | 0.92 |
| Cameroon | NF | 3 | M/0.514 | 3.08 | Y | | | | |
| Canada | F | 12 | H/0.967 | 8.65 | N | 0.85 | 0.94 | 0.78 | 0.73 |
| Cape Verde | F | 11 | M/0.705 | 7.44 | N | | | | |
| CAR | PF | 6 | L/0.352 | 6.69 | Y | | | | |
| Chad | NF | 4 | L/0.389 | 3.23 | Y | | | | |
| Chile | F | 12 | H/0.874 | 5.86 | Y | | | | |
| China | NF | 2 | M/0.762 | 0 | N | | | | |
| Colombia | PF | 6 | M/0.787 | 0 | Y | 0.4 | 0.76 | 0.87 | 0.86 |
| Comoros | PF | 6 | M/0.572 | 6.84 | Y | | | | |
| Congo | NF | 7 | M/0.619 | 6.24 | Y | | | | |
| DRC | NF | 5 | L/0.361 | 2.93 | Y | | | | |
| Costa Rica | F | 11 | H/0.847 | 2.56 | Y | 0.76 | 0.78 | 0.78 | 0.94 |
| Cote D'Ivoire | NF | 4 | L/0.431 | 5.34 | Y | | | | |

| | | | | | | | | | |
|-------------------|----|----|---------|------|---|------|------|------|------|
| Croatia | F | 12 | H/0.862 | 6.77 | Y | 0.77 | 0.97 | 0.87 | 0.94 |
| Cuba | NF | 1 | H/0.855 | 0 | N | | | | |
| Cyprus | F | 12 | M/0.912 | 8.65 | Y | | | | |
| Czech Rep | F | 12 | M/0.897 | 7.29 | Y | | | | |
| Denmark | F | 12 | H/0.952 | 8.2 | Y | | | | |
| Djibouti | PF | 5 | M/0.513 | | Y | | | | |
| Dominica | F | 12 | M/0.797 | | Y | | | | |
| Dominican Rep | F | 11 | M/0.768 | 4.29 | Y | | | | |
| Ecuador | PF | 11 | H/0.807 | 2.78 | Y | | | | |
| Egypt | NF | 2 | M/0.716 | 4.59 | Y | | | | |
| El Salvador | F | 8 | M/0.747 | 2.78 | Y | 0.67 | 0.9 | 0.78 | 0.94 |
| Equatorial Guinea | NF | 0 | M/0.717 | 0 | Y | | | | |
| Eritrea | NF | 0 | L/0.442 | 9.55 | Y | | | | |
| Estonia | F | 12 | H/0.871 | 8.05 | Y | | | | |
| Ethiopia | PF | 3 | L/0.389 | 2.33 | Y | 0.76 | 0.43 | 0.58 | N/A |
| Fiji | PF | 4 | M/0.743 | 5.19 | Y | | | | |
| Finland | F | 12 | H/0.954 | 9.55 | Y | 0.79 | 1 | 0.94 | 0.94 |
| France | F | 12 | H/0.955 | 8.95 | Y | | | | |
| Gabon | PF | 6 | M/0.729 | 9.1 | N | | | | |
| Gambia | PF | 6 | L/0.471 | 8.2 | Y | | | | |
| Georgia | PF | 7 | M/0.763 | 9.55 | Y | 0.71 | 0.79 | 0.72 | 0.93 |
| Germany | F | 12 | H/0.940 | 9.47 | Y | | | | |
| Ghana | F | 11 | M/0.533 | 7.89 | N | | | | |
| Greece | F | 11 | H/0.947 | 9.1 | Y | 0.79 | 0.85 | 0.81 | 0.87 |
| Grenada | F | 9 | M/0.774 | | Y | | | | |
| Guatemala | PF | 8 | M/0.696 | 2.48 | Y | 0.8 | 0.66 | 0.55 | 0.8 |
| Guinea-Bissau | PF | 8 | L/0.383 | 8.35 | N | | | | |
| Guinea | NF | 5 | L/0.423 | 6.99 | Y | | | | |
| Guyana | F | 10 | M/0.725 | 8.65 | Y | | | | |
| Haiti | PF | 6 | M/0.521 | 6.24 | N | | | | |
| Honduras | PF | 8 | M/0.714 | 3.08 | Y | 0.85 | 0.65 | 0.7 | 0.88 |
| Hungary | F | 12 | H/0.877 | 6.84 | Y | | | | |
| Iceland | F | 12 | H/0.968 | 9.1 | Y | | | | |
| India | F | 10 | M/0.609 | 5.34 | N | | | | |
| Indonesia | F | 9 | M/0.726 | 0.98 | Y | 0.67 | 0.92 | 0.59 | 0.76 |
| Iran | NF | 2 | M/0.777 | 0 | N | 0.69 | 0.76 | 0.54 | 0.95 |
| Iraq | NF | 3 | N/A | 0 | N | | | | |
| Ireland | F | 12 | H/0.960 | 10 | Y | 0.79 | 1 | 0.84 | 0.95 |
| Israel | F | 12 | H/0.930 | 6.69 | Y | | | | |
| Italy | F | 12 | H/0.945 | 9.55 | Y | 0.79 | 0.97 | 0.83 | 0.93 |
| Jamaica | F | 9 | M/0.771 | 8.5 | Y | | | | |
| Japan | F | 10 | H/0.956 | 6.39 | N | | | | |
| Jordan | PF | 5 | M/0.769 | 6.69 | N | | | | |
| Kazakhstan | NF | 4 | H/0.807 | 6.24 | Y | 0.79 | 0.82 | 0.87 | 0.92 |
| Kenya | PF | 9 | M/0.532 | 4.44 | N | | | | |
| Kiribati | F | 12 | N/A | | N | | | | |
| Republic of Korea | F | 11 | H/0.928 | 2.93 | N | 0.58 | 0.97 | 0.74 | 0.63 |
| Kuwait | PF | 6 | H/0.912 | 3.53 | N | | | | |
| Kyrgyzstan | PF | 7 | M/0.694 | | Y | | | | |
| Lao PDR | NF | 1 | M/0.608 | 0 | N | | | | |
| Latvia | F | 12 | H/0.863 | 9.1 | Y | | | | |

| | | | | | | | | | |
|----------------------------------|----|----|---------|------|----|------|------|------|------|
| Lebanon | PF | 8 | M/0.796 | 5.34 | N | | | | |
| Lesotho | F | 7 | L/0.496 | 5.19 | Y | | | | |
| Liberia | PF | 8 | L/0.364 | 0 | N | | | | |
| Libya | NF | 0 | H/0.840 | 0 | Y | | | | |
| Lithuania | F | 11 | H/0.869 | 6.84 | Y | 0.79 | 0.79 | 0.92 | 0.92 |
| Luxembourg | F | 12 | H/0.956 | 9.55 | Y | | | | |
| Macedonia | PF | 7 | H/0.808 | | Y | 0.79 | 0.82 | 0.79 | 0.78 |
| Madagascar | PF | 8 | M/0.533 | 8.35 | Y | | | | |
| Malawi | PF | 8 | L/0.457 | 5.04 | Y | | | | |
| Malaysia | PF | 5 | H/0.829 | 2.18 | N* | | | | |
| Marshall Islands | F | 11 | N/A | | N | | | | |
| Mali | F | 9 | L/0.391 | 7.59 | Y | | | | |
| Malta | F | 12 | H/0.894 | 9.55 | Y | 0.69 | 1 | 0.71 | N/A |
| Mauritania | PF | 8 | M/0.557 | 5.34 | Y | | | | |
| Mauritius | F | 12 | H/0.802 | 6.39 | Y | | | | |
| Mexico | F | 9 | H/0.842 | 2.63 | N | 0.82 | 0.85 | 0.76 | 0.85 |
| Moldova | PF | 6 | M/0.719 | | Y | | | | |
| Mongolia | F | 10 | M/0.720 | 7.14 | Y | | | | |
| Montenegro | PF | 10 | H/0.822 | | Y | | | | |
| Morocco | PF | 6 | M/0.646 | 3.68 | N | 0.47 | 0.87 | 0.54 | 0.87 |
| Mozambique | PF | 7 | L/0.366 | | Y | | | | |
| Myanmar | NF | 0 | M/0.585 | 0 | N | | | | |
| Namibia | F | 12 | M/0.634 | 7.59 | N | | | | |
| Nepal | PF | 6 | M/0.530 | 6.39 | N | | | | |
| Netherlands | F | 12 | H/0.958 | 9.55 | Y | | | | |
| New Zealand | F | 11 | H/0.944 | 9.1 | N | 0.67 | 0.97 | 0.91 | 0.88 |
| Nicaragua | PF | 7 | M/0.699 | 6.09 | Y | 0.88 | 0.88 | 0.61 | 0.85 |
| Niger | PF | 8 | L/0.370 | 6.99 | Y | | | | |
| Nigeria | PF | 8 | L/0.499 | 2.03 | Y | | | | |
| Norway | F | 12 | H/0.968 | 8.65 | Y | | | | |
| Oman | NF | 3 | H/0.839 | 7.89 | N | | | | |
| Pakistan | NF | 4 | M/0.562 | 2.78 | Y | | | | |
| Panama | F | 11 | H/0.832 | 5.19 | Y | | | | |
| Papua New Guinea | PF | 9 | M/0.516 | 8.65 | Y | | | | |
| Paraguay | PF | 8 | M/0.752 | 2.33 | Y | | | | |
| Peru | F | 8 | M/0.788 | 2.03 | Y | 0.87 | 0.76 | 0.71 | 0.84 |
| Philippines | PF | 8 | M/0.745 | 1.95 | Y | 0.69 | 0.91 | 0.92 | 0.73 |
| Poland | F | 12 | H/0.875 | 8.2 | Y | | | | |
| Portugal | F | 12 | H/0.900 | 10 | Y | | | | |
| Qatar | NF | 2 | H/0.906 | 0 | N | | | | |
| Romania | F | 11 | H/0.825 | 4.29 | Y | | | | |
| Russia | NF | 4 | H/0.806 | 3.98 | Y | | | | |
| Rwanda | NF | 3 | L/0.435 | 0 | Y | | | | |
| St Kitts and Nevis | F | 12 | H/0.830 | | Y | | | | |
| Saint Lucia | F | 12 | H/0.821 | | N | | | | |
| Saint Vincent and the Grenadines | F | 11 | M/0.766 | | Y | | | | |
| Samoa | F | 10 | M/0.760 | | Y | | | | |
| San Marino | F | 12 | N/A | | Y | | | | |
| Sao Tome and | F | 10 | M/0.643 | | Y | | | | |

| | | | | | | | | | |
|---------------------|----|----|---------|------|----|------|------|------|------|
| Principe | | | | | | | | | |
| Saudi Arabia | NF | 0 | H/0.835 | 0 | N | | | | |
| Senegal | F | 10 | M/0.502 | 5.94 | Y | | | | |
| Serbia | F | 11 | H/0.821 | | Y | | | | |
| Seychelles | PF | 9 | H/0.836 | | Y | | | | |
| Sierra Leone | PF | 8 | L/0.329 | 7.59 | N | | | | |
| Singapore | PF | 3 | | 8.2 | N* | | | | |
| Slovakia | F | 12 | H/0.872 | 8.2 | Y | | | | |
| Slovenia | F | 12 | | 8.05 | Y | 0.64 | 0.82 | 0.92 | 0.94 |
| Solomon Islands | PF | 9 | M/0.591 | 7.44 | N | | | | |
| Somalia | NF | 0 | N/A | 0 | N | | | | |
| South Africa | F | 12 | M/0.670 | 5.49 | Y | | | | |
| Spain | F | 12 | H/0.949 | 8.05 | Y | 0.79 | 1 | 0.82 | 0.88 |
| Sri Lanka | PF | 8 | M/0.742 | 6.09 | Y | 0.85 | 0.98 | 0.92 | 0.72 |
| Sudan | NF | 3 | M/0.526 | 0 | N | | | | |
| Suriname | F | 11 | M/0.770 | 9.55 | N | | | | |
| Swaziland | NF | 3 | M/0.542 | 3.23 | Y | | | | |
| Sweden | F | 12 | H/0.958 | 9.55 | Y | 0.79 | 0.97 | 0.93 | 0.94 |
| Switzerland | F | 12 | H/0.955 | 9.55 | Y | 0.94 | 1 | 0.76 | 0.94 |
| Syria | NF | 0 | M/0.736 | 0 | Y | | | | |
| Tajikistan | NF | 4 | M/0.684 | | Y | | | | |
| Tanzania | PF | 7 | M/0.503 | 6.69 | Y | | | | |
| Thailand | NF | 5 | M/0.786 | 5.04 | N | 0.45 | 0.85 | 0.61 | 0.87 |
| Timor-Leste | PF | 7 | L/0.483 | | N | | | | |
| Togo | NF | 6 | L/0.479 | 5.49 | Y | 0.78 | N/A | 0.52 | 0.76 |
| Trinidad and Tobago | F | 11 | H/0.833 | | Y | | | | |
| Tunisia | NF | 2 | M/0.766 | 6.54 | Y | | | | |
| Turkey | PF | 7 | M/0.798 | 0.68 | Y | 0.81 | 0.73 | 0.64 | 0.93 |
| Turkmenistan | NF | 0 | M/0.728 | | N | | | | |
| Tuvalu | F | 12 | N/A | | N | | | | |
| Uganda | PF | 6 | L/0.493 | 6.09 | Y | | | | |
| Ukraine | F | 10 | M/0.786 | 5.04 | Y | | | | |
| UAE | NF | 3 | H/0.910 | 0 | N | | | | |
| UK | F | 12 | H/0.942 | 4.14 | Y | | | | |
| USA | F | 11 | H/0.950 | 4.74 | N | 0.67 | 0.97 | 0.64 | 0.73 |
| Uruguay | F | 12 | H/0.859 | 8.65 | Y | | | | |
| Uzbekistan | NF | 0 | M/0.701 | 9.1 | N | | | | |
| Vanuatu | F | 11 | M/0.686 | | N | | | | |
| Venezuela | PF | 6 | H/0.826 | 6.92 | Y | | | | |
| Vietnam | NF | 2 | M/0.718 | 0 | N | | | | |
| Yemen | PF | 4 | M/0.567 | 5.04 | Y | | | | |
| Zambia | PF | 8 | L/0.453 | 2.48 | Y | | | | |
| Zimbabwe | NF | 2 | N/A | 4.44 | Y | | | | |